

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

Appellate Case No. 2024-001550
Lower Court Case No. 2023-CP-40-04072

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Jun 18 2025

SC Court of Appeals

Michael L. Perry and Lonnie L. Long, Respondents,

v.

American International Industries, Atlas Turner Inc., Avon Products, Inc., Barretts Minerals Inc., BlockDrug Company, Inc., Brenntag North America, Inc., Brenntag Specialties, LLC, Bristol-Myers Squibb Company, Buy-Low General Merchandise, Inc., C&S Wholesale Grocers, LLC, Calvin Klein Inc., Chanel Inc., Charles B. Chrystal Company, Inc., Chattem, Inc., Colgate-Palmolive Company, Color Techniques, Inc., Cosmetic Specialties, Inc., Coty Inc., CVS Health Corporation, CVS Pharmacy, Inc., EDC Drug Stores, Inc., Estee Lauder Inc., Estee Lauder International, Inc., The Estee Lauder Companies Inc., Food Lion, LLC, Genuine Parts Company, Glamour Industries Co., Himmel Management Co. LLC, Himmel Media LLC, Honeywell International, Inc., Idelle Labs, Ltd., IMI Fabi (Diana) LLC, IMI Fabi (USA) Inc., IMI Fabi, LLC, Janssen Pharmaceuticals, Inc., Johnson & Johnson, Johnson & Johnson Holdco (NA) Inc., Kenvue Inc.; L'Oreal USA, Inc., L'Oreal USA Products, Inc., LLT Management LLC, Long's Drugstores of South Carolina, Inc., LTL Management LLC, Minerals Technologies Inc., The Neslemur Company, Piggly Wiggly, LLC, Pneumo Abex LLC, Presperse Corporation, The Procter & Gamble Company, PTI Royston, LLC, PTI Union LLC, Ralph Lauren Corporation, Rite Aid of South Carolina, Inc., Shulton, Inc., Specialty Minerals Inc., Sumitomo Corporation of Americas, Union Carbide Corporation, Vi-Jon, LLC; Walgreen Co., Walmart Inc., Defendants,

Of which American International Industries is the Appellant.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.,	)	
	)	
Defendants.	)	

**ORDER ON DEFENDANT AMERICAN
INTERNATIONAL INDUSTRIES' POST-TRIAL MOTIONS**

In this asbestos case, the jury returned a Plaintiffs' verdict on August 15, 2024 in favor of Michael L. Perry and Lonnie L. Long. Defendant American International Industries ("A-I-I") moves to set aside or vacate the default judgment against it, for judgment notwithstanding the verdict, a new trial absolute, a new trial *nisi remittitur*, for a setoff of Plaintiffs' settlements as to the verdict against it, and for a stay of execution of the judgment. The motions have been fully briefed, and the Court heard oral arguments on September 24, 2024. For the reasons set forth below and on the record during oral arguments, A-I-I's motions to set aside or vacate the default judgment, for JNOV, for a new trial absolute, and to stay the execution of judgment are DENIED. A-I-I's motion for new trial *nisi remittitur* as to actual damages and motion for setoff are GRANTED.

I. MOTION TO SET ASIDE OR VACATE OR VACATE DEFAULT

A-I-I argues that the default judgment against it must be vacated or set aside because it answered amended complaints and because procedural deficiencies require it. A-I-I is incorrect.

A. Factual Background

To address the issues raised by A-I-I's motion, some background is necessary. Plaintiffs filed suit against A-I-I and several other defendants on August 4, 2023. A-I-I was served on August 10, 2023. A-I-I's answer was due on September 11, 2023, but it did not file an answer. On September 26, 2023, Plaintiffs filed a motion for default judgment as to A-I-I. On September 29, 2023, A-I-I filed an answer to the complaint. This Court granted default against A-I-I on October 3, 2023. On October 10, 2023, A-I-I moved to set aside the entry of default, which was denied on November 2, 2023.

After entry of default, on November 9, 2024, Plaintiffs moved to amend the complaint solely "to add an additional Defendant responsible for Mr. Perry's exposures to asbestos in South Carolina." The motion was granted on November 21, 2023, and the first amended complaint was filed on November 30, 2023. A-I-I was not served with the first amended complaint because it was in default. Despite the lack of service, A-I-I answered the first amended complaint on December 8, 2023.

On January 31, 2024, Plaintiffs moved to file a second amended complaint, again solely "to add an additional Defendant responsible for Mr. Perry's exposures to asbestos in South Carolina." The motion was granted on February 1, 2024, and the second amended complaint was filed the same day. As before, A-I-I was not served with the second amended complaint because it was in default. Despite the lack of service, A-I-I answered the second amended complaint on February 16, 2024.

From evidence produced to the Court, I find that Plaintiffs consistently communicated their understanding to A-I-I that it was in default. Plaintiffs' counsel sent numerous emails between March 27, 2024 and May 14, 2024, repeating to A-I-I that it was in default. A-I-I did not seek

relief or clarification from the Court. On May 9, 2024, Plaintiffs filed a motion for protective order to quash A-I-I's subpoena for employee records. A-I-I did not file a response before Plaintiffs filed their motion for protective order to prohibit A-I-I from participating in expert discovery except on the issue of damages. A-I-I responded with the argument it has made here—that responding to the amended complaints cured its default. The Court granted the motion for protective order on May 29, 2024, finding that A-I-I remained in default.

A-I-I filed a petition for writ of certiorari on this issue on June 28, 2024. The petition was denied on August 13, 2024. On July 29, 2024, A-I-I also requested a stay in this Court, which was denied.

B. Legal Standard

“The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge.” *Sundown Operating Co. v. Intedg Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (citing *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006)). An appellate court will not disturb the trial court's decision “absent a clear showing of an abuse of that discretion.” *Id.* at 606–607 (citing *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322–23 (Ct.App.1988)). A trial court abuses its discretion “when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.” *Id.* at 607 (citing *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997)).

C. A-I-I remained in default despite answering amended complaints.

A-I-I argues that it could cure its default by answering an amended complaint that made the same allegations against it. A-I-I is incorrect. Once it defaulted as to the original complaint,

that default could not be cured absent new allegations against A-I-I. While there is no clear authority on this point in South Carolina, this result is consistent with South Carolina's Rules of Civil Procedure. Pursuant to Rule 5(a), SCRPC, Plaintiffs did not need to serve A-I-I with the amended complaints because they did not change the allegations against A-I-I, to which A-I-I had already defaulted:

No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.

Plaintiffs' amended complaints simply added additional defendants to the case. They did not change the claims, substantive or otherwise, against A-I-I in any way. Thus, Plaintiffs were not required to, and did not, serve A-I-I with the amended complaints. A-I-I had no right to service and no right to answer. Nothing about the amended complaints changed the status quo or gave A-I-I the ability to cure its default.

There is authority from other states consistent with the Court's ruling. For example, in Wisconsin, "a defaulting party cannot answer an amended complaint, thereby attempting to cure its default, when the party is already in default at the time the amended complaint is filed, unless the amended complaint relates to a new or additional claim for relief." *Ness v. Digital Dial Commc'ns, Inc.*, 227 Wis. 2d 592, 607–08, 596 N.W.2d 365, 373 (1999). The court "recognize[d] an exception to the basic rule that an amended complaint supersedes an original complaint." *Id.* at 600, 596 N.W.2d at 370. Like this Court, the *Ness* court considered it important that the amended complaint did not need to be served on the defaulting defendants because it did not assert new or additional claims for relief. *Id.* at 601, 596 N.W.2d at 370. Essentially, a defaulting defendant halts the action with regard to it at the time of the original complaint. *See id.* at 602–03, 596 N.W.2d at 371. In *Ness*, as here, the defendants "propose[d] a bright-line rule that whenever a plaintiff files

an amended complaint, regardless of the defendant's timing, the defendant receives a new time period to answer.” *Id.* at 603, 596 N.W.2d at 371. The *Ness* court found the argument unpersuasive and inequitable. *Id.* at 605, 596 N.W.2d at 372 (quoting *Ness v. Digital Dial Commc'ns, Inc.*, 222 Wis. 2d 374, 382–83, 588 N.W.2d 63 (Ct. App. 1998), *aff'd*, 227 Wis. 2d 592, 596 N.W.2d 365 (1999)). The court was also concerned with the “serious conflict for a plaintiff who would be torn between taking a default judgment and correcting the pleadings through amendment,” as well as “inefficient judicial administration” from the defendants’ proposed rule. *Id.* at 606, 596 N.W.2d at 372. These are valid concerns that the Court finds persuasive.¹

The claims against A-I-I were not changed by the amended complaints, and A-I-I, having “previously disregarded its opportunity for defending itself or presenting additional issues or claims in the action,” should not be “fortuitously allowed to ‘restart the clock’ for filing a response.”” *Ness*, 227 Wis. 2d at 605, 596 N.W.2d at 372 (citation omitted). The plaintiff should not have to choose between amending the complaint as to other parties and taking a default judgment against the party who “previously disregarded its opportunity for defending itself.” *Id.* at 606, 596 N.W.2d at 372. For the policy reasons stated in *Ness*, the Court’s finds that answering the amended complaints did not relieve A-I-I of its default.

Again, under Rule 60, “the power to set aside a default judgment is addressed to the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion.” *Fassett v. Evans*, 364 S.C. 42, 49, 610 S.E.2d 841, 845 (Ct. App. 2005) (citing *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322–23 (Ct.App.1988)). “The standard for granting relief from an entry of default is good cause under

¹ Other states take the same position. *See, e.g., Wells Fargo Bank, N.A. v. Dechert*, 12 N.E.3d 262, 267 (Ind. Ct. App. 2014); *Spilke v. Wicklow*, 138 Conn. App. 251, 270, 53 A.3d 245, 256 (2012); *Brown v. Funk*, No. 2023-CA-0576-MR, -- S.W.3d --, 2024 WL 2096892, at *5–6 (Ky. Ct. App. May 10, 2024); *Stack v. Welder*, 3 Cal. 2d 71, 75, 43 P.2d 270, 272 (1935).

Rule 55(c), SCRCPP, while the standard is more rigorous for granting relief from a default judgment under Rule 60(b), SCRCPP.” *Richardson v. P.V., Inc.*, 383 S.C. 610, 616, 682 S.E.2d 263, 266 (2009) (citing *Sundown*, 681 S.E.2d 885). “Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or ‘other misconduct of an adverse party.’” *Sundown*, 383 S.C. at 608, 681 S.E.2d at 888 (2009). For the same reasons the Court declined to set aside entry of default, the Court finds that A-I-I has failed to meet the heightened standard for relief from the default judgment. A-I-I’s request to set aside the default judgment based on its answers to the amended complaints is DENIED.

D. Alleged Procedural Defects Do Not Relieve A-I-I of Default Judgment.

1. A-I-I Had Actual Notice of the Damages Trial.

A-I-I argues that it must be relieved of its default because Plaintiffs did not serve it with notice of the damages hearing by first class mail. Rule 5(a), SCRCPP provides that “notice of any trial or hearing on unliquidated damages shall also be given to parties in default.” Rule 55(b)(2) directs that this notice shall be given by first class mail. However, there is no question that A-I-I had actual notice of the damages trial. On June 28, 2024, A I-I stated in its Petition for a Writ of Certiorari that the trial was scheduled for August 5, 2024. On June 29, 2024, A-I-I moved this Court to stay the trial against it, which it acknowledged at the pre-trial hearing. At the pretrial hearing, A-I-I’s counsel stated that A-I-I would “definitely be here” for trial. It participated in the pretrial hearing and at trial regarding damages. Plaintiffs served A-I-I with a trial subpoena by way of Federal Express sent to A-I-I’s counsel at Fox Rothschild LLP in Greenville, SC. There is no question, and A-I-I does not contest, that it had actual notice of the damages trial months before the date of trial. A-I-I cites no case, and this Court is aware of none, where a default judgment was

vacated for a new damages trial or hearing when the defendant was present at the damages trial or hearing.

Moreover, A-I-I did not raise the issue of inadequate notice at any point before the trial in this case. A-I-I “denied the trial judge an opportunity to cure any alleged error by failing to contemporaneously object,” and so it cannot to raise the issue for the first time when cure is no longer possible. *State v. Pauling*, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996). For example, in *State v. Ariail*, the supreme court held that, by proceeding to trial, the defendant waived any objection concerning waiver of arraignment. 311 S.C. 35, 37, 426 S.E.2d 751, 753 (1993). Likewise, by proceeding to trial here, A-I-I waived any objection to notice.

The purpose of the notice rule is to “ensur[e] that notice is properly received by all entitled to it.” *McCall v. IKON*, 363 S.C. 646, 655, 611 S.E.2d 315, 319 (Ct. App. 2005). In *McCall*, the court underlined that the purpose is that the defaulting defendants “actually receive notice” and not some “arcane or highly technical application of the rules.” *Id.* In this case, where A-I-I had actual notice and appeared and participated at the trial, granting a new damages trial for lack of notice would indeed be “an arcane and highly technical application of the rules.” *Id.* In *Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.* also, the court’s concern was whether the defaulting defendant was “given an opportunity to participate in the damages hearing.” 275 S.C. 556, 561, 274 S.E.2d 287, 290 (1981). Again, none of these concerns arise when the defendant actually participates in the damages trial, as A-I-I did.

Even if A-I-I were correct, the purpose of granting a new damages hearing when the defendant did not receive notice is so that the defendant is able to participate. But A-I-I already has participated. There has been no prejudice to A-I-I. Moreover, A-I-I would not be relieved of

its default. If it were correct in its argument, it would be entitled solely to a new damages hearing. See *McCall*, 363 S.C. at 648, 655, 611 S.E.2d at 316, 319.

A-I-I's request to vacate or set aside the default judgment on the basis of lack of notice is DENIED.

2. Plaintiffs Were Not Required to Make a Post-Verdict Request for Default Judgment.

Rule 55 does not provide the means by which the plaintiff must request default judgment. It provides merely that “the party entitled to a judgment by default shall apply to the court therefor.” Rule 55(b)(2), SCRPC. There is no requirement that this request be made after the verdict. Indeed, Rule 55 presumes that the request be made and the court then conduct a damages hearing or trial if necessary. Rule 55(b)(2), SCRPC. At the pretrial hearing, Plaintiffs' counsel reminded the Court that A-I-I was in default. The word default appears 119 times in the trial transcripts. The Court was aware that Plaintiffs sought a default judgment against A-I-I, which was the purpose of the damages trial. The Court was fully apprised that Plaintiffs were seeking default judgment, A-I-I was aware that Plaintiffs were seeking default judgment, and a formal request post-verdict was not required.

A-I-I's motion as to this issue is DENIED.

E. Plaintiffs' Pleadings Support the Default Judgment.

A-I-I also complains that it was barred from challenging the sufficiency of Plaintiffs' complaint. In fact, A-I-I did not *try* to challenge the sufficiency of the complaint until directed verdict—several months after it could have and should have made such a challenge and nearly two months after it took a writ on the validity of the default. For example, A-I-I moved for summary judgment, but it did not argue that the pleadings were insufficient to support claims for fraudulent

misrepresentation or punitive damages. Instead, it simply argued that Plaintiffs did not have evidence to support the pleadings.

“The defendant, by waiving a contest and suffering a default to be taken against him, admits the truth of the allegations, set out in the plaintiff's declaration or complaint.... Hence the default authorizes the entry of any judgment warranted by the facts alleged.” *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 489, 334 S.E.2d 528, 530 (Ct. App. 1985) (quoting *Gadsden v. Home Fertilizer & Chemical Co.*, 89 S.C. 483, 487–88, 72 S.E. 15, 17 (1911), quoting *Gillian v. Gillian*, 65 S.C. 129, 132, 43 S.E. 386, 387 (1903)). When A-I-I did file the directed verdict motion challenging the pleadings, the Court found that the facts were well pleaded. TT 8/13/24 at 1818:19-20.

The pleadings support the claim for fraudulent misrepresentation. In the original complaint, Plaintiffs alleged that:

- “...defendants manufactured products composed of talc that were sold and marketed as safe for daily use by consumers on their person....” Complaint at ¶ 148.
- Defendants “made false statements to plaintiff, the general public, news media and government agencies” as part of “intentional efforts to deceive the general public as to the safety of and presence of carcinogens, including asbestos, in talc-containing products.” *Id.* at ¶ 149.
- Plaintiffs alleged that Defendants “have represented to various news media outlets and the public at large that their products are ‘asbestos-free,’ when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods.” *Id.* at ¶ 183.
- Plaintiffs alleged at length Defendants’ knowledge of the risk and the basis for that knowledge. *Id.* at ¶¶ 150-159, 161-165, 174.
- “Plaintiff Michael L. Perry and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff.” *Id.* at ¶ 115.

- “Plaintiff, directly and/or indirectly relied upon CTFA’s and defendants’ false representations regarding the safety of cosmetic talc.” Id. at ¶ 199.
- “Plaintiff Michael L. Perry act upon the representations by continuing his personal use of, and thereby exposure to, the asbestos-containing talc products.” Id. at ¶ 145.
- “Plaintiff Michael L. Perry was ignorant of the falsity of Defendants’ representations and rightfully relied upon the representations.” Id. at ¶ 145.

These allegations, among others, support Plaintiffs’ claim for fraudulent misrepresentation and punitive damages.

A-I-I has presented no authority for its argument that Plaintiffs cannot make allegations against Defendants collectively, and the allegations gave A-I-I fair notice of the facts supporting the claim against it for fraudulent misrepresentation. *See, e.g., Green v. Indus. Life & Health Ins. Co.*, 199 S.C. 262, 18 S.E.2d 873, 875–76 (1942) (finding allegations adequate to state cause of action when plaintiff alleged conduct of defendants acting together); *McKellar v. Stanton*, 104 S.C. 248, 88 S.E. 527, 527 (1916) (same).

Finally, A-I-I challenges only the fraudulent misrepresentation and punitive damages pleadings. It does not and did not challenge the sufficiency of the pleadings with regard to Plaintiffs’ negligence or strict liability claims. These claims fully support judgment against A-I-I for Plaintiffs’ actual damages. Thus, even if A-I-I were correct that the allegations of fraudulent misrepresentation were insufficient, the judgment would be supported by the negligence and strict liability claims.

A-I-I’s motion as to the sufficiency of the pleadings is DENIED.

F. Because of Its Default, A-I-I Admitted Willful, Wanton, and/or Reckless Conduct.

A-I-I contends that Plaintiffs were required to prove its willful, wanton, and reckless conduct at the damages trial. However, when the defendant has defaulted, “the plaintiff must prove

by competent evidence the amount of his damages, ... Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted.” *Jackson v. Midlands Hum. Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 506 (Ct. App. 1988). Thus, the well-pleaded allegations of the complaint are sufficient to support the defaulting defendant’s liability, and proof is only required to establish the plaintiff’s damages. *Lewis v. Cong. of Racial Equal. &/or C. O. R. E., Inc.*, 275 S.C. 556, 561, 274 S.E.2d 287, 289 (1981) (in case involving actual and punitive damages, “[w]hether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount of damages based on the proof....”).

A-I-I’s argument ignores that it was found in default, resulting in its admitting liability to all the well-pleaded facts. The fact that a case involves punitive damages is no barrier to finding a defendant in default. *See Roche v. Young Bros., of Florence*, 332 S.C. 75, 79, 504 S.E.2d 311, 313 (1998) (not distinguishing between default resulting in actual and punitive damages). In *Lewis* as well, a case involving punitive damages, the supreme court reiterated that “where a defendant has made an appearance but is in default, liability is admitted but the amount of damages is not; the amount must be proved.” 275 S.C. at 561, 274 S.E.2d at 289 (remanding for damages hearing only on actual and punitive damages because award was excessive in light of allegations).

The pleadings in the case support the finding of willful, wanton, or reckless conduct, and the evidence presented supports the amount of punitive damages. In the original complaint, as noted above, Plaintiffs alleged Defendants’ knowledge of the risk of talcum powder products that they marketed as safe for daily use. Original Complaint at ¶ 148. Plaintiffs alleged Defendants’ knowledge of carcinogens, including asbestos, in talc. *Id.* at ¶ 150. Plaintiffs alleged that Defendants “have represented to various news media outlets and the public at large that their

products are ‘asbestos-free,’ when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods.” *Id.* at ¶ 183. There are nearly 20 pages of allegations concerning Defendants’ knowledge and bad acts with respect to the hazards of asbestos in their products. *See id.* at pp. 67-86. These allegations, among others, support Plaintiffs’ claim for punitive damages.

A-I-I’s argument that the Court improperly found it defaulted on allegations of willful, wanton, and reckless behavior is DENIED.

II. MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO (JUDGMENT NOTWITHSTANDING THE VERDICT) (“JNOV”)

A. Legal Standard

“In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt.” *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 338, 611 S.E.2d 485, 487 (2005) (quoting *Jinks v. Richmond Cty.*, 355 S.C.341, 345, 585 S.E.2d 281, 283 (2003)). In the context of a default judgment, the complaint constitutes the “evidence” of liability, while the evidence presented to the jury constitutes the evidence of damages. An appellate court will not reverse a trial court’s ruling on a JNOV motion “unless there is no evidence to support the ruling or where the ruling is controlled by an error of law.” *Gause v. Smithers*, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013) (citation omitted).

B. The Pleadings Support the Fraudulent Misrepresentation Claim.

The Court has addressed the pleadings supporting Plaintiffs’ claim. For the reasons stated above, the allegations supporting the fraudulent misrepresentation claim are well-pleaded and fully

support the claim. Because A-I-I was in default, the Court found that A-I-I was liable for fraudulent misrepresentation in accordance with the pleadings.

Moreover, A-I-I does not and did not challenge the sufficiency of the pleadings with regard to Plaintiffs' negligence or strict liability claims. These claims fully support judgment against A-I-I for Plaintiffs' actual damages. Even when a general verdict is returned, where any theory supports the verdict, any error is harmless. *See Piedmont Aviation, Inc. v. Quinn*, 294 S.C. 502, 504, 366 S.E.2d 31, 32 (Ct. App. 1988). Thus, even if A-I-I were correct that the allegations of fraudulent misrepresentation were insufficient, the judgment would be supported by the negligence and strict liability claims.

A-I-I's motion for JNOV on this issue is DENIED.

C. A-I-I Is Not Entitled to JNOV on the Award of Punitive Damages.

The Court addressed the allegations supporting the punitive damages claim above and found that they were sufficient to support willful, wanton, and reckless conduct. Because A-I-I was in default, Plaintiffs were not required to prove its willful, wanton, and reckless conduct. *See Lewis*, 275 S.C. at 561, 274 S.E.2d at 289; *Roche*, 332 S.C. at 79, 504 S.E.2d at 313. A-I-I admitted the allegations of the pleadings, which supported a claim for punitive damages. Nothing more was required.

A-I-I contends that federal due process requires that it receive notice of the factual basis for the punitive damages claim against it and an opportunity to defend itself against that claim. In light of A-I-I's default, holding that it had admitted allegations of willful, wanton, and reckless conduct did not violate its due process rights. A-I-I quotes the following language from *BMW of North America, Inc. v. Gore*: "Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him

to punishment....” 517 U.S. 559, 574, 116 S. Ct. 1589, 1598, 134 L. Ed. 2d 809 (1996). A-I-I received notice of the claims against it and the facts underlying those claims through Plaintiffs’ complaint, and it defaulted. The United States Supreme Court has held that due process requires notice of the claims against a defendant and the opportunity to be heard, but a defendant gives up the right to be heard on liability when it defaults: “This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Thus, A-I-I acquiesced to the allegations of the complaint and declined the opportunity to be heard on liability, including liability for punitive damages. At that point, it had the right to be heard on one matter: the amount of damages.

Branham v. Ford Motor Co., cited by A-I-I, was concerned with two aspects of due process protections relevant to punitive damages. First, the South Carolina Supreme Court noted that harm to others was not a valid basis for punitive damages. 390 S.C. 203, 238, 701 S.E.2d 5, 23–24 (2010) (quoting *Philip Morris USA v. Williams*, 549 U.S. 346, 350 (2007)). In this case, the jury heard no evidence of harm to others, and A-I-I has not alleged that Plaintiffs’ counsel argued harm to others as a basis for the punitive damages award or that the complaint included allegations of harm to others. This issue is not implicated in the instant case.

The *Branham* court also was concerned with evidence relevant to the amount of punitive damages, specifically what evidence could be admitted consistent with due process in the jury’s evaluation of the proper amount of punitive damages: “Because the United States Supreme Court has discovered that a state court’s punitive damages award implicates federal substantive due process, this Court is not the final arbiter of determining what financial evidence is proper in assessing punitive damages.” 390 S.C. 203, 240, 701 S.E.2d 5, 25 (2010). A-I-I has also not alleged

that any financial or other evidence was improperly presented in the punitive damages phase of the trial.

A-I-I argues that the allegations against it were not sufficient to apprise it of the conduct for which it is being punished because Plaintiffs made the allegations against Defendants' collectively. First, Plaintiffs alleged that Defendants acted collectively in many cases, and Plaintiffs alleged that they acted "individually and collectively." *See, e.g.*, Complaint at ¶¶ 177, 179, 188, 198. As noted above, A-I-I has presented no authority for its argument that Plaintiffs cannot make allegations against Defendants collectively, and the allegations gave A-I-I fair notice of the facts supporting the claim against it for punitive damages. *See, e.g., Green*, 199 S.C. 262, 18 S.E.2d 873, 875–76 (1942); *McKellar*, 104 S.C. 248, 88 S.E. at 527.

A-I-I's motion for JNOV on this issue is DENIED.

D. A-I-I Is Not Entitled to JNOV Because the Initial Complaint Was Operative as to It as a Defaulting Party.

A-I-I argues that it could cure its default by answering an amended complaint that made the exact same allegations against it. In addressing the motion to vacate or set aside the default judgment, the Court has addressed in some detail why this contention is incorrect.

Although the second amended complaint governs the claims against the Johnson & Johnson Defendants ("J&J"), it does not apply to the claims against A-I-I. "The amended complaint ... supersedes the original as to any other party except the defaulting party." *Ness*, 227 Wis. 2d at 602–03, 596 N.W.2d at 371. Thus, A-I-I was not relieved of its default by answering amended complaints, and the original complaint remained operative as to it.²

A-I-I's motion for JNOV on the issue of its default is DENIED.

² Moreover, if A-I-I were correct, the remedy would be a new trial.

III. NEW TRIAL ABSOLUTE

“Upon review, a trial judge's order granting or denying a new trial will be upheld unless the order is ‘wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law.’” *Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 380 S.C. 263, 271, 670 S.E.2d 1, 4 (Ct. App. 2008) (quoting *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 479, 567 S.E.2d 851, 854 (2002); *Folkens v. Hunt*, 300 S.C. 251, 254–55, 387 S.E.2d 265, 267 (1990); *S.C. State Hwy. Dep't v. Clarkson*, 267 S.C. 121, 126, 226 S.E.2d 696, 697 (1976); *Vinson v. Hartley*, 324 S.C. 389, 403, 477 S.E.2d 715, 722 (Ct. App.1996); *Sorin Equip. Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 364, 474 S.E.2d 819, 822 (Ct. App.1996)). The appellate court’s “review is limited to consideration of whether evidence exists to support the trial court's order.” *Id.* (quoting *Folkens*, 300 S.C. at 255, 387 S.E.2d at 267; *Vinson*, 324 S.C. at 403, 477 S.E.2d at 722).

A. A-I-I Had Notice of the Damages Trial.

A-I-I again complains that it did not receive proper notice of the damages trial against it. The Court addressed this argument in response to A-I-I’s motion to vacate or set aside the default judgment. A-I-I has demonstrated and admitted that it had actual notice of the damages trial, and it participated in the damages trial. The purposes of Rule 5(a), SCRCP, and Rule 55(b)(2), SCRCP, have been met. Moreover, because it participated in the damages trial, A-I-I was not prejudiced by any technical defect in the notice. The notice rule is intended to provide the defaulting party the opportunity to participate in the damages hearing, and A-I-I exercised that opportunity.

A-I-I’s motion for new trial for alleged lack of notice is DENIED.

B. Trial Against Defendants on the Operative Complaints as to Each Defendant Was Appropriate.

In addition to arguing that the original complaint was not operative as to it, A-I-I also argues that trial against it and J&J on different operative complaints was improper. It was

appropriate to go to trial against Defendants based on different operative complaints. As the Wisconsin Supreme Court noted, “The amended complaint ... supersedes the original as to any other party except the defaulting party.” *Ness v. Digital Dial Commc'ns, Inc.*, 227 Wis. 2d 592, 602–03, 596 N.W.2d 365, 371 (1999) (emphasis added).

Moreover, there was no difference in the substantive allegations against A-I-I in the original complaint or the second amended complaint. Although A-I-I claims the second amended complaint was “more robust,” the allegations in both complaints were identical as to A-I-I. Indeed, this is the reason that A-I-I remained in default after Plaintiffs amended the complaint.

A-I-I also argues that trying the case under different operative complaints was confusing. There was no confusion. Certainly, A-I-I should not have been confused because the Court’s order of May 29, 2024 made clear that the Court considered A-I-I to remain in default for failure to timely answer the original complaint. As noted above, the allegations against A-I-I were identical in the two complaints. Neither could the jury have been confused since they never saw the complaints, which were inadmissible.

A-I-I’s motion for new trial on this issue is DENIED.

C. Based on Its Default, A-I-I Was Deemed to Have Acted Willfully, Wantonly, and Recklessly, and the Jury Was Properly Instructed About that Fact.

A-I-I argues that the jury was improperly instructed that it was liable for willful, wanton, and reckless conduct. Again, A-I-I ignores the fact that it was in default. Plaintiffs did not have to prove A-I-I’s willful, wanton, or reckless conduct because A-I-I admitted the allegations of such conduct through its default. *See Jackson*, 296 S.C. at 529, 374 S.E.2d at 506. The allegations of the complaint are sufficient to support the defaulting defendant’s liability, and proof is only required to establish the plaintiff’s damages. *Lewis*, 275 S.C. at 561, 274 S.E.2d at 289.

The fact that a case involves punitive damages is no barrier to finding a defendant in default. *See Roche v. Young Bros., of Florence*, 332 S.C. 75, 79, 504 S.E.2d 311, 313 (1998) (not distinguishing between default resulting in actual and punitive damages). In *McEachern v. Poston*, the court stated “that even if respondent is in default, the award of actual and punitive damages must be set aside under our recent decision of *Howard v. Holiday Inns, Inc.*, S.C., 246 S.E.2d 880 (1978), where we held under similar circumstances that a defendant in default was entitled to an opportunity to participate in the hearing to assess damages.” 273 S.C. 122, 126, 254 S.E.2d 796, 798 (1979). In *Lewis* as well, a case involving punitive damages, the supreme court reiterated that “where a defendant has made an appearance but is in default, liability is admitted but the amount of damages is not; the amount must be proved.” 275 S.C. at 561, 274 S.E.2d at 289 (remanding for damages hearing only on actual and punitive damages because award was excessive in light of allegations). South Carolina law supports holding that A-I-I has admitted the allegations of willful, wanton, and reckless conduct, and the jury was rightly directed that A-I-I was deemed to have acted willfully, wantonly, and recklessly.

A-I-I’s motion for new trial on this issue is DENIED.

IV. THE CLAIMS AGAINST A-I-I AND J&J DEFENDANTS WERE PROPERLY TRIED TOGETHER, AND A-I-I SUFFERED NO PREJUDICE AS A RESULT.

Again, A-I-I defaulted, so that liability on the claims against it was established as a matter of law. This determination necessarily includes that A-I-I caused the Plaintiffs’ damages. A-I-I seems to be complaining that J&J was prejudiced by having its liability determined in the presence of a defaulting Defendant. A-I-I then makes the argument that it was prejudiced because, if J&J won on liability, A-I-I would be relieved of its default to avoid an inconsistent verdict. Counsel for A-I-I contends that there should have been a liability phase against J&J and then actual and punitive damages phases against J&J and A-I-I. Counsel for A-I-I proposed this tri-part division

in the middle of trial. TT 8/9/24 at 1369:9-1370:1. The jury had already been instructed on Defendants' status in the case. The suggestion came too late to be feasible even if it were advisable.

In fact, A-I-I cannot show that it was prejudiced by including it in the trial of this matter. First, the Court's instructions made it clear that Defendants were to be considered separately: "You should decide the case against each defendant separately as if it were a separate lawsuit." TT 8/14/24 at 2070:6-8. At the end of the trial, the Court instructed the jury, "Now, while these [liability issues] are issues you must decide against Johnson & Johnson, you are instructed that American International Industries is liable to the plaintiffs in this case." TT 8/14/24 at 2071:7-11. It was clear from this instruction that all of Plaintiffs' claims against J&J would be presented to the jury for resolution. Nothing about the trial Court's instruction to the jury indicated that it should also find J&J liable for Plaintiffs' injuries because of A-I-I. It was equally clear from the instruction that only liability as to A-I-I had been resolved by the trial court. Again, the jury was instructed that these two defendants were to be considered separately. TT 8/14/24 at 2070:6-8.

Moreover, A-I-I would not have escaped liability if J&J had been found not liable. There would be nothing inconsistent about the jury finding that exposure to J&J's product did not cause Mr. Perry's mesothelioma while exposure to Clubman did. These two Defendants did not always use the same talc sources, for example. Clubman talc incorporated Montana and North Carolina talc for certain periods of time, which Johnson's Baby Powder did not. J&J's and A-I-I's liability is not truly joint, and so there would be no reason that a J&J verdict would relieve A-I-I of liability.

The circumstances were entirely different in *Frow v. De La Vega*, 82 U.S. 552 (1872), on which A-I-I relies. In that case, the plaintiff had alleged a joint fraud against the defendants, so that if there was no joint fraud, the defaulting defendants should also be found not liable. A-I-I

suggests that *Frow* would relieve it of liability if J&J won on liability, but in fact, *Frow* is considerably more narrow than that. The Third Circuit has held:

...*Frow* stands for the proposition that if at trial facts are proved that exonerate certain defendants and that as a matter of logic preclude the liability of another defendant, the plaintiff should be collaterally estopped from obtaining a judgment against the latter defendant, even though it failed to participate in the proceeding in which the exculpatory facts were proved.

Farzetta v. Turner & Newall, Ltd., 797 F.2d 151, 154 (3d Cir. 1986). The Eighth Circuit has also limited *Frow* to circumstances of joint liability: “Although [the defendants] share closely related interests, they were not codefendants facing lawsuit on a theory of joint liability, where ‘no one defendant may be liable unless all defendants are liable.’” *McMillian/McMillian, Inc. v. Monticello Ins. Co.*, 116 F.3d 319, 321 (8th Cir. 1997). The District of Columbia Circuit has also found that “a default order that is inconsistent with a judgment on the merits must be set aside only when liability is truly joint—that is, when the theory of recovery requires that all defendants be found liable if any one of them is liable....” *Whelan v. Abell*, 953 F.2d 663, 674–75 (D.C. Cir. 1992). Thus, “when different results as to different parties are not logically inconsistent or contradictory, the rationale for the *Frow* rule is lacking.” *In re Uranium Antitrust Litig.*, 617 F.2d 1248, 1257–58 (7th Cir. 1980). Again, here it is entirely possible that J&J might have been found not liable, for example, because its product did not cause Mr. Perry’s mesothelioma while Clubman’s did. There was no error and no prejudice to A-I-I in including it in the trial.

A-I-I’s motion for new trial on this issue is DENIED.

V. THE JURY WAS INFORMED ABOUT THE ECONOMIC DAMAGES AND THE DEFENDANTS’ STIPULATIONS REGARDING ECONOMIC DAMAGES.

A-I-I argues that the Court’s instructions regarding the stipulation regarding medical expenses were in error and prejudiced it, so that the jury awarded an unjustified amount of economic damages. In fact, the jury saw the joint stipulation, which was entered into evidence. It

clearly identified which Defendants stipulated to which amounts. TT 8/12/24 at 1589:1-23. And the stipulation addressed only current economic damages, not future damages.

As to the identity of Defendants who were parties to the economic damages stipulation, the Court told the jury that “AII, which is the other defendant before you, has not stipulated to the amount of Mr. Perry's economic loss; and, therefore, plaintiff is calling an economist to testify as to the economic loss.” TT 8/12/24 at 1590:7-11. The economist testified, consistent with the stipulation between Plaintiffs and J&J Entities, that Mr. Perry's economic damages, minus medical expenses, were \$2,819,353. TT 8/12/24 at 1611:23-1612:5. A-I-I questioned Plaintiffs' economist, challenging his assumptions. The jury was later told that Plaintiffs and A-I-I had stipulated that “the reasonable and necessary past medical bills as a result of Michael Perry's mesothelioma diagnosis and treatment are \$510,620.05.” TT 8/14/24 at 1879:3-8.

In closing counsel for A-I-I asked the jury to question his assumptions and presumably to reject his testimony:

We so too talked to Robert Johnson. You remember the plaintiffs' economist. We did that -- we hoped it wasn't a waste of time. The reason we did that is because we had concerns about his underlying assumptions that make up the numbers. And we hope that you will also take that to heart and really look at the numbers and question his assumptions as well.

TT 8/14/24 at 1965:18-25. Thus, A-I-I also made clear that it did not accept the economic damages calculated by Plaintiffs' economist and stipulated to by the J&J Defendants. Given that the jury was told A-I-I did not stipulate to economic damages other than medical expenses, which A-I-I underscored in closing argument, there was no prejudice to A-I-I in the Court's instructions.

As to the amount of the stipulations, the Court referred briefly to adding the numbers: “when you saw those two figures added together in argument.” TT 8/14/24 at 2063:23-24. But the

argument on economic damages and in particular medical expenses was clear. Plaintiffs' counsel stated:

And then we had a stipulation read this morning. I know it kind of whizzed by us. I saw somebody trying to write it down. I don't know if you got it all down -- it's in her instruction -- was about \$510,000 more. So 2.8 million plus 510,000, that's how we get the 3.3 number. That's what that means.

It's only the current economic loss. But the number that you have to write down is for the past and the future. And I hate to say it out loud with Michael in here, but there's going to be a lot of medical expenses in Michael's future. A lot. He's already had 510,000, and this has barely started. You heard it came back, and his pleura is twice the size it was. This is going to keep coming back. And it's never going to stop coming back.

And so I think, conservatively, Michael has another half a million dollars of medical expenses in his future. I think the number you should write down is \$3.8 million.

TT 8/14/24 at 1928:24-1929:20. Plaintiffs' counsel's explanation was consistent with the stipulation provided to the jury that economic damages, including medical expenses, were \$3.3 million. Future medical expenses are an aspect of economic damages as well, and Plaintiffs' counsel asked for \$3.8 million to include future medical expenses of \$500,000. The jury's award was for past and future economic damages. The fact that the jury awarded \$3.8 million does not definitively show that the jury added current economic damages and past medical expenses in their award. It is more likely that the award for past and future economic damages reflects the damages stipulated by Plaintiffs and J&J Entities and testified to by Plaintiffs' economist, along with the \$500,000 requested in future medical expenses.

Any error in jury instructions supports granting a new trial only if the movant can show prejudice, as A-I-I acknowledges. "An erroneous jury instruction... is not grounds for reversal unless the appellant can show prejudice from the erroneous instruction." *Cole v. Raut*, 378 S.C. 398, 405, 663 S.E.2d 30, 33 (2008) (citing *Ellison v. Simmons*, 238 S.C. 364, 372, 120 S.E.2d 209, 213 (1961); see also *Ardis v. Sessions*, 383 S.C. 528, 682 S.E.2d 249, 250 (2009)). In addition,

when reviewing a jury charge, the court “must consider the court’s jury charge as a whole in light of the evidence and issues presented at trial. If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error.” *Id.* (quoting *Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999)). In *Cole v. Raut*, the court determined, “Considering the entire jury charge in light of the evidence and issues presented at trial, we conclude that the erroneous charge ... was not prejudicial to the [plaintiffs].” 378 S.C. at 406, 663 S.E.2d at 34 (emphasis added). In this case, even if the charge was misleading, A-I-I cannot show it was prejudiced. The stipulations were admitted into evidence. The closing argument was also clear about what had been stipulated to and what additional economic damages were requested, and the jury’s verdict appears to accord with that request. A-I-I is not entitled to a new trial based on the jury instructions.

A-I-I’s motion for new trial based on the jury instructions concerning economic damages is DENIED.

VI. The Verdict Form Reflected A-I-I’s Default.

A-I-I contends that the verdict form was incorrect because “it made it a foregone conclusion that asbestos-containing talc was a cause of Mr. Perry’s mesothelioma and that A-I-I’s conduct was willful, wanton, and reckless.” In fact, it was a foregone conclusion because A-I-I was in default. The jury was instructed:

Now, I have found as a matter of law that American International Industries, AII, is liable. So you don't have to make that liability determination. They are liable.

The Court has already determined that American International Industries, the company responsible for Clubman talc products, is liable to Michael Perry on each of the causes of action pled against them, specifically negligence, strict liability, fraudulent misrepresentation.

The Court has determined that Clubman asbestos-containing talc products was defective and unreasonably dangerous and was a substantial factor in the development of Michael Perry's mesothelioma.

The Court has determined that American International Industry's conduct was willful, wanton, and reckless, meaning American International Industries acted with a conscious indifference to the rights and safety of others.

Now, while these are issues you must decide against Johnson & Johnson, you are instructed that American International Industries is liable to the plaintiffs in this case. Your task -- your only task as to AII is to determine the total amount of damages that Michael Perry and Lonnie Long have suffered.

TT 8/14/24 at 2070:10-2071:13. It was appropriate for the verdict form to be checked as to A-I-I's liability because it was in default and had admitted the allegations of the complaint. The allegations were sufficient to support A-I-I's liability. As discussed *supra*, there was no need for Plaintiffs to prove A-I-I's willful, wanton, or reckless conduct because A-I-I admitted that conduct when it defaulted.

A-I-I also suggests that finding it liable for willful, wanton, or reckless conduct was improper because "the complaint was neither entered into evidence nor read into the record." There was no reason for the complaint to be entered into evidence or read into the record. It is already part of the Court's record, and it is the Court's province to determine that A-I-I defaulted and thus admitted liability—not the jury's.

A-I-I's motion for new trial on this point is DENIED.

VII. THE JURY WAS PROPERLY INSTRUCTED WITH RESPECT TO PUNITIVE DAMAGES, AND NO LIMITING INSTRUCTION WAS NECESSARY.

A-I-I argues that there was no evidence from which a jury could base an award of punitive damages against it. However, by operation of law, it was established that A-I-I behaved willfully, wantonly, and/or recklessly. This is the basis for punitive damages. As noted above in response to A-I-I's motion for JNOV, there was no due process violation in holding that A-I-I had admitted

the allegations of the complaint and acted willfully, wantonly, and recklessly. In addition, the jury heard by stipulation that A-I-I's net worth was \$76 million. There was evidence by virtue of A-I-I's default to support the award of punitive damages against A-I-I that was entirely separate from the facts proven as to J&J.

At the beginning of deliberations, the Court instructed the jury, "You should decide the case against each defendant separately as if it were a separate lawsuit." TT 8/14/24 at 2070:6-8. Later, the Court went through punitive damages verdict form and pointed out the separate language as to each Defendant, separately noting that the jury could put \$0 in the blank as to J&J or A-I-I. TT 8/15/24 at 2262:20-2263:10. In light of these instructions, there was no need for an additional limiting instruction. In addition, counsel for A-I-I reminded the jury, "Please understand that AII is not associated with Johnson & Johnson, and the evidence that you saw does not apply to us and should not be considered against American International Industries." TT 8/15/24 at 2272:19-24.

A-I-I's motion for new trial on this point is DENIED.

VIII. DR. HABER TESTIFIED ABOUT DAMAGES AND HEALTH CONDITIONS THAT MIGHT HAVE IMPACTED LIFE EXPECTANCY, AND THERE WAS NO PREJUDICE TO A-I-I.

At the end of J&J's cross-examination of Dr. Haber, counsel for A-I-I asked to cross-examine Dr. Haber. Counsel for A-I-I said that she had some additional topics she was ready to proffer. The Court invited her to make her proffer as soon as Plaintiffs' counsel finished redirect examination. TT 8/6/24 at 517:14-518:3. After redirect, Ms. Flynn made an extensive argument about separating the liability evidence regarding J&J from A-I-I.

As to damages, she stated in one sentence, "And in addition to that, he's got a long list of prior medical history that we would have raised to -- just to go to quality of life and/or possible life expectancy issues." TT 8/6/24 at 541:18-22. This comment was buried in A-I-I's argument

about and request for “a limiting instruction so that the jury understands that this is the liability portion of the trial as it relates to Johnson & Johnson on the second amended complaint,” which the Court said would be provided. TT 8/6/24 at 536:2-537:18, 539:1-541:17, 542:14-21.

Again, counsel for A-I-I was invited to make a proffer concerning its proposed questions for Dr. Haber at the end of Dr. Haber’s testimony, which counsel stated she was ready to do. TT 8/6/24 at 517:19-518:3. J&J did make such a proffer. TT 8/6/24 at 642:7-645:20. A-I-I did not. The next morning, A-I-I requested “a proffer of what we could do with the economist,” and the Court asked that it be put in writing for review. TT 8/7/24 at 656:19-23. Also, the day after Dr. Haber’s testimony was over and he could not be feasibly recalled, A-I-I made its proffer concerning his testimony. TT 8/7/24 at 668:5-11.

In fact, Dr. Haber did testify at some length about medical conditions that could have impacted Mr. Perry’s life expectancy. Plaintiffs’ counsel asked him about health and impact on life expectancy:

Q. Did you evaluate Mr. Perry's overall health before he was diagnosed with mesothelioma?

A. I did.

Q. Can you tell us about that?

A. Sure. So the first one, dyslipidemia, that's a fancy medical term for high cholesterol. So he had high cholesterol. He had GERD or acid reflux disease, very common.

AR is allergic rhinitis. That basically is -- you know, when it's seasonal, when you go out and -- pollens and you get watery eyes and runny nose. Very, very common.

And he had diverticulosis. Diverticulosis is where in the -- in the colon there are little outpouchings that can become inflamed sometimes. It can cause swelling in the -- in the abdomen and pain, and he did have diverticulosis. Again, a very, very common condition. But it was not of any limitation.

He had really no significant lung issues, except he did have a little bit of seasonal asthma, which means that -- you know, during certain seasons, when the allergies -- he would get a little congested, a little short of breath and wheezy. But he was on no chronic medications for any lung condition and, really, a quite healthy man.

TT 8/6/24 at 356:2-357:3.

Dr. Haber also testified about Mr. Perry's social history, family history, and genetic issues.

Q. Did you evaluate other --

A. Yeah. So I looked at social history. So he -- he never smoked. This is in the records as well as I talked with him. He had never had any cancer before. And he really had no family history to suggest any sort of a concern.

Q. It says: No family history c/w germline mutation. What does that mean?

A. Consistent with. So there are -- there are certain types of genetic abnormalities. There's a very small number of people in families that they've -- they've been able to find from the past ten years or so across the world.

It's just a handful of -- of these cases. But they can have this genetic defect that causes them to have a number of certain types of rare cancers: cancers of the eye, cancer of the kidney, mesothelioma, certain types of skin cancers. And a lot of people in the family all have -- they'll have multiple cancers, multiple, five, six, seven cancers. And there was nothing his family history that suggested anything like that.

...

Q. And just -- Mr. Perry had no history consistent with having that type of mutation?

A. Correct. And nor did he -- in fact, he -- he absolutely did not, because in the medical record we -- they actually did tests, and he didn't.

TT 8/6/24 at 357:3-358:18. Counsel for J&J also questioned Dr. Haber at length about Mr. Perry's family history of cancer. TT 8/6/24 at 472:5-479:5.

Dr. Haber was asked directly whether anything in Mr. Perry's health condition that would have shortened his life expectancy, and he replied that there was not.

- Q. Was there anything in your review of Mr. Perry's health condition overall before his diagnosis with mesothelioma that would have shortened his normal life expectancy?
- A. No. I mean, he was just a very typical individual. If anything, here, you know, maybe even on the healthier side, but certainly thing that would -- that would make you concerned that he wouldn't just be an average man of his age.

TT 8/6/24 at 358:19-359:3.

“The admissibility of evidence is within the trial court's discretion.” *Haselden v. Davis*, 341 S.C. 486, 497, 534 S.E.2d 295, 301 (Ct. App. 2000), *aff'd*, 353 S.C. 481, 579 S.E.2d 293 (2003). “Generally, there is no abuse of discretion where the excluded testimony is merely cumulative of other evidence proffered to the jury.” *Com. Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 559, 556 S.E.2d 718, 726 (Ct. App. 2001) (citing *Ott v. Pittman*, 320 S.C. 72, 79, 463 S.E.2d 101, 105 (Ct.App.1995)). Further cross-examination on these points would have yielded only cumulative testimony.

Counsel for A-I-I did cross-examine Dr. Gibney, but she did not ask whether she could explore these issues with him. She asked only to cross-examine Dr. Gibney about the relative aggressiveness of Mr. Perry’s mesothelioma. TT 8/7/24 at 728:15-25. Moreover, she asked Dr. Gibney if Mr. Perry was a surgical candidate because he was in “relatively good health.” TT 8/7/24 at 732:10-15.

Even if the Court should have permitted the cross-examination, which was cumulative of the testimony already given, “[t]o warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof.” *Turner v. Med. Univ. of S.C.*, 430 S.C. 569, 589, 846 S.E.2d 1, 11 (Ct. App. 2020) (quoting *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 408, 764 S.E.2d 249, 251 (Ct.

App. 2014)). In this case, because the proposed examination was largely duplicative of the examination that had already occurred, there was no prejudice to A-I-I, and for this reason as well, no new trial is warranted.

A-I-I's motion for new trial based on this point is DENIED.

IX. THERE WAS NO CUMULATIVE ERROR THAT DENIED A-I-I A FAIR DAMAGES HEARING.

No cumulative errors justify granting a new trial to A-I-I. First, it is not clear that the cumulative error doctrine applies in civil cases. *See Lynch v. Carolina Self Storage Centers, Inc.*, 409 S.C. 146, 163, 760 S.E.2d 111, 121 (Ct. App. 2014) ("The cumulative error doctrine, if it applies in civil cases, is inapplicable in this case...."). Even if it does apply, to succeed on a cumulative error claim, the movant must show that the errors had "the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013), *aff'd*, 415 S.C. 632, 785 S.E.2d 202 (2016) (citing *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999)); *see also State v. Daise*, 421 S.C. 442, 467, 807 S.E.2d 710, 722 (Ct. App. 2017) (finding "any errors by the circuit court were not prejudicial and did not combine to affect [the defendant's] right to a fair trial.").

As to A-I-I's argument that the jury should have been instructed that the basis of its liability was its default, the trial court has discretion with regard to jury instructions. *See Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (citations omitted). "A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." *State v. Sanchez*, 435 S.C. 468, 474, 867 S.E.2d 595, 598 (Ct. App. 2021). The instruction simply stated that the Court had determined as a matter of law that A-I-I was liable on the causes of action pleaded against it in the complaint, specifying those claims. TT 8/5/24 at

156:10-157:3. This was an accurate statement of the law, and nothing further needed to be said about it to the jury because there was no decision for the jury to make concerning A-I-I's liability. Nevertheless, counsel for A-I-I violated the Court's directive and shared this information with the jury during her closing argument.

There is no reason the jury should not have been instructed from the beginning of trial and at the end of the actual damages phase that A-I-I had been determined as a matter of law to have behaved willfully, wantonly, and/or recklessly. It was a question for the first phase of the trial, and because A-I-I was in default, it was determined as a matter of law. The Court did make clear that there had been no determination as to actual or punitive damages: "the amount of damages has not been determined. Much less has it been determined that any actual or punitive damages should be awarded. That is for the evidence to proceed and determine." TT 8/5/24 at 167:8-12.

A-I-I again complains of the economic damages instruction, but, as noted above, it has not shown prejudice from the Court's instructions. Because there was no prejudice shown, the instructions do not justify a new trial or contribute to a cumulative error analysis.

A-I-I's motion for new trial based on cumulative error is DENIED.

X. RULING ON MOTION FOR SET OFF

A-I-I contends that they are entitled to a full set-off for Plaintiffs' entire settlement amount and Plaintiffs do not object. A-I-I further contends that Plaintiffs should have to produce their settlement agreements with various co-defendants, with which the Court disagrees. Plaintiffs' settlement releases are not discoverable. Rule 408, SCRE. The Court has reviewed Plaintiffs' settlement agreements in camera and finds they are fair and reasonable. *See Glenn v. 3M Co.*, 440 S.C. 34, 86, 890 S.E.2d 569, 596 (Ct. App. 2023). The Court therefore rules that the amount of

\$11,255,000 in Plaintiffs' pre-trial settlements will be set-off from Plaintiffs' compensatory damages award.

XI. A-I-I IS ENTITLED TO A NEW TRIAL *NISI REMITTITUR* AS TO PLAINTIFFS' ACTUAL DAMAGES.

A new trial nisi remittitur may be granted "when the verdict indicates the jury was unduly liberal in determining damages." *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). "A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice." *Id.*

When reviewing a request for new trial nisi remittitur, substantial deference must be given to the jury's determination of damages. *Hassell v. City of Columbia*, 430 S.C. 620, 635, 846 S.E.2d 373, 381 (Ct. App. 2020). The consideration of a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 320–21, 628 S.E.2d 496, 518 (Ct. App. 2006). "Compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*." *Id.*

The jury award against A-I-I, along with J&J, was for \$23,037,500 in actual damages to Michael Perry, \$30 million in punitive damages to Plaintiffs Michael Perry and Lonnie Long, and \$9,618,750 to Lonnie Long in loss of consortium damages.

In support of its request for remittitur, A-I-I argues:

While the jury had nothing more than this Court's statements upon which to base a verdict against A-I-I, the jury had ample evidence of conduct as it relates to the J&J defendants. Indeed. The entirety of the evidence presented at trial by Plaintiffs was directed to J&J's conduct. There can be no question that the actual damages verdict rendered by the jury was largely, if not entirely, based on Plaintiffs' evidence as to J&J. A-I-I was just "along for the ride," making it wholly unfair to saddle A-I-I with damages the jury found to be appropriate as a result of Plaintiffs' characterization of the J&J defendants' acts and omissions.

A-I-I's Post Trial Motions: Judgment Notwithstanding the Verdict, New Trial Absolute and/or New Trial *Nisi Remittitur* at 35.

A. Analysis of other cases.

- *Firth v. Garlock Sealing Technologies, LLC*, Civil Action No. 2008-CP-23-09186 (Greenville Cty. 2009), involved a 72-year-old deceased mesothelioma. The jury awarded \$300,000 for survival and \$400,000 for wrongful death, for a total of \$700,000 in compensatory damages. The jury declined to award damages for loss of consortium.
- *Garvin v. AGCO Corporation, et al.*, Civil Action No. 2012-CP-40-06675 (Richland Cty. 2013), involved a 74-year-old living mesothelioma who worked on pumps and valves as a millwright for thirty years. The jury awarded \$10 million for pain and suffering and \$1 million for loss of consortium, for a total of \$11 million in compensatory damages. The jury also awarded an aggregate of \$27 million in punitive damages against three defendant parties. After a trial defendant challenged the verdict, and the trial court granted a new trial *nisi remittitur* reducing the compensatory damages award from \$11 million to \$1.5 million (a remittitur of slightly more than 85%) and reducing the punitive damages award against the challenging defendant from \$11 million to \$3.5 million, commensurate with the statutory cap on punitive damages.
- *Keene v. CNA Holdings, LLC*, Civil Action No. 2013-CP-42-03915 (Spartanburg Cty. 2015), involved a 70-year-old deceased mesothelioma who worked as a millwright for Daniel Construction at the Celanese Spartanburg facility from 1969 to 1978. The jury awarded \$2 million for pain and suffering, \$5 million for wrongful death, and \$5 million for loss of consortium, for a total of \$12 million in compensatory damages. The jury also awarded \$2 million in punitive damages.
- *Jolly v. General Electric Co., et al.*, Civil Action No. 2016-CP-42-01592 (Spartanburg Cty. 2017), involved a 73-year-old living mesothelioma who worked for Duke Power as a mechanical inspector around other trades engaged in tearing-out asbestos insulation and gaskets from 1980 to 1984. The jury awarded \$200,000 for pain and suffering and \$100,000 for loss of consortium, for a total of \$300,000 in compensatory damages. This Court granted a new trial *nisi additur*, increasing the compensatory damages award to a total of \$1,870,000.
- *Edwards v. Scapa Waycross, Inc.*, Civil Action No. 2013-CP-46-00368 (York Cty. 2018), involved a 60-year-old deceased mesothelioma who worked at Bowater Paper Mill on a paper machine from 1963 to 2002. The jury awarded \$600,000 in survival and \$100,000 in wrongful death damages. This Court granted a new trial *nisi additur*,

increasing the survival award by \$400,000 to \$1 million and sustaining the damages awarded for wrongful death. After additur, the compensatory damages totaled \$1,100,000.

- *Glenn v. 3M Co., et al.*, Civil Action No. 2015-CP-04-01607 (Anderson Cty. 2019), involved a 69-year-old deceased mesothelioma who worked for Duke Power as an instrumentation worker around trades tearing-out asbestos insulation and gaskets from 1970 through 1996. The jury awarded \$1 million for pain and suffering, \$1 million for wrongful death, and \$1 million for loss of consortium, for a total of \$3 million in compensatory damages. The jury also awarded \$2,125,000 in punitive damages.
- *Weist v. Kraft Heinz Company, et al.*, Civil Action No. 2020-CP-40-01597 (Richland Cty. 2021), involved the death of Kathy Weist. The jury awarded \$11 million for Kathy Weist's survival damages, \$10 million for the wrongful death damages and \$1 million for the loss of consortium damages. The jury also awarded \$10 million in punitive damages.
- *Plant v. Whittaker Clarke & Daniel et al*, Civil Action No. 2022-CP-40-01265 (Richland Cty. 2023), involved a 35 year old living mesothelioma who was exposed to talcum powder and cosmetic products. The jury awarded \$871,356 in past medical expenses, \$3,368,336 in future medical expenses, \$20 million in other damages, and \$5 million in loss of consortium.

1. ***Garvin v. Crane Co.***

This Court points to now-Justice Hill's prior order in the *Garvin v. Crane Co.* case. *Order Denying in Part and Granting in Part Defendant Crane Co.'s Motion for Post-Trial Relief, Garvin v. AGCO Corporation*, No. 2012-CP-40-6675, Richland County Court of Common Pleas of South Carolina (Nov. 10, 2014)). After Mr. Garvin's trial, Justice Hill remitted the jury finding from \$10,000,000 in compensatory damages to \$1,500,000. The reasons for this remittitur were that Mr. Garvin was 74 years old, had testicular mesothelioma, and had several other serious medical conditions unrelated to his testicular mesothelioma. Additionally, Mr. Garvin was cancer-free and only had economic damages in the amount of \$149,000. Justice Hill noted that based on Mr. Garvin's pecuniary damages, the nature of his injury (testicular mesothelioma), his treatments, his age, and his life expectancy, there were compelling reasons to remit Mr. Garvin's verdict.

2. *Seay v. CNA Holdings, LLC*

Justice Hill also evaluated a request for new trial nisi remittitur in the *Seay v. CNA Holdings, LLC* case. *Order Denying Defendant CNA Holding, LLC's Motion for Post-Trial Relief, Angie Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Decased, and Linda Seay v. CNA Holdings, LLC*, No. 2013-CP-42-03915, Richland County Court of Common Pleas of South Carolina (Jan. 8, 2016)). Celanese requested that Justice Hill remit the jury's compensatory verdict from \$2,000,000 to \$1,500,000, which Justice Hill declined to do. *Id.* at *31. In support of his ruling, Justice Hill noted that Mr. Seay had pleural mesothelioma and suffered with chest and lung pain before his diagnosis. He noted all of Mr. Seay's pain and suffering, including all of his medical treatments and surgeries to try and prolong his life. He noted that before his pleural mesothelioma diagnosis, Mr. Seay was "strong and in very good physical shape," Justice Hill noted that Mr. Seay suffered from excruciating pain and mental distress, and that he found no compelling reason to reduce the compensatory verdict. Justice Hill further noted that the compensatory verdict was similar to other jury awards for someone with pleural mesothelioma.

Justice Hill further elaborated in his *Seay* post-trial order that:

As Celanese points out, in Garvin, this Court did remit the pain and suffering awarded to Mr. Garvin from \$10 million to \$1.5 million. But the cases are very different. Mr. Garvin was alive and cancer free at the time of his trial, whereas Mr. Seay suffered unrelenting pain until his mesothelioma killed him. Mr. Garvin was four years older at the time of trial than Mr. Seay was at his death, and Mr. Garvin's life expectancy was a number of years shorter. Mr. Garvin suffered from a testicular form of mesothelioma, while Mr. Seay suffered from pleural mesothelioma that caused his death by suffocation.

Id. at *35.

Justice Hill also affirmed the jury's award of \$5,000,000 for loss of consortium damages to Mr. Seay's widow because she "suffered extreme hardship and loss" because of her husband's

mesothelioma. *Id.* at *36. Justice Hill noted how much time Mr. and Mrs. Seay spent together and the fact that Mrs. Seay took care of her husband when he was sick because he “always wanted her right beside him.” *Id.* at *36. Justice Hill noted that the loss of consortium award was supported by the trial evidence and was not unduly liberal. *Id.* at *37. Justice Hill acknowledged that, same as in *Garvin*, there was no compelling reason to disturb the loss of consortium verdict.

Justice Hill also affirmed the award of \$5,000,000 to the wrongful death claim noting that Mr. Seay would have had a life expectancy of 13 years had he not developed mesothelioma.

Finally, Justice Hill declined to remit the jury’s punitive verdict, finding of \$2,000,000 in total, or in the alternative to \$50,000. *Id.* at *43. Justice Hill walked through all of the evidence that had been presented to the jury about how long Celanese had known about asbestos causing disease, how long Celanese had known that the asbestos on its premise exposed people to high enough levels of asbestos to cause disease, and that Celanese had knowingly and consciously disregarded the rights and safety of Mr. Seay and other workers on its premise and never warned anyone of asbestos hazards. Justice Hill wrote that:

...evidence included Celanese’s decision to continue using asbestos products when there were available alternatives, and deliberately concealing the nature of the danger from contract workers like Mr. Seay. This was not isolated conduct, but continued for almost a decade...

Id. at *45.

3. Michael Perry and Lonnie Long

The evidence shows that Mr. Perry’s injuries are very different from Mr. Garvin’s. Mr. Perry was 53 years old at the time of his diagnosis in 2023, more than 20 years younger than Mr. Garvin at the time of his trial. Mr. Perry has pleural mesothelioma and, as the jury heard from Dr. Haber, is facing a resurgence of his disease. He has no other severe medical conditions aside from his pleural mesothelioma and was in good physical health before his cancer diagnosis.

Mr. Perry is more similar to Mr. Seay. Mr. Perry, like Mr. Seay, has pleural mesothelioma. He has suffered extreme chest and lung pain. He has had extensive medical treatments, including but not limited to chemotherapy, radiation, and a six-to-eight surgery during which his back muscle was cut in half, his cancer-ridden lung lining was peeled off like an orange rind, his rib was removed, and his diaphragm was removed and reconstructed with mesh. The jury heard from Dr. Gibney that Mr. Perry's mesothelioma will recur, will be aggressive, and that when that happens Mr. Perry will suffocate to death with a sensation of "drowning."

Relevant to both *Garvin* and *Seay* prior orders, Mr. Perry's loss of life expectancy was approximately 26 years. Mr. Perry had \$510,620.05 in medical bills, an amount that was stipulated to as fair and reasonable by J&J. The record also shows that Mr. Perry had an economic loss of \$2,819,353, an amount also stipulated to by J&J as fair and reasonable. Therefore, Mr. Perry had a total economic loss of \$3,329,973.05, an amount that J&J stipulated to which was then presented to the jury. This is contrasted with Mr. Garvin's economic loss of \$149,000.

Evidence supports the fact that Mr. Long has felt the loss of his husband, and will continue to feel it long after Mr. Perry dies. The jury heard evidence that his husband gives him strength, and his entire life revolves around his relationship with Mr. Perry. The jury heard that Mr. Long takes Mr. Perry to every single doctor's appointment without fail, and loves his husband so much he could not even watch him testify at trial because it would be too painful to watch Mr. Perry be cross-examined.

As Justice Hill noted in his prior post-trial order in *Garvin*, "While the jury did decide on a large award, the Court has no reason to conclude it was the result of any improper motive or outside consideration. Placing a value on pain and suffering is inherently subjective." *Order*

Denying in Part and Granting in Part Defendant Crane Co. 's Motion for Post-Trial Relief, Garvin v. AGCO Corporation, at *32 (Nov. 10, 2014)).

However, the Court does find the verdict should be reduced because it is “merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). The verdict to Mr. Perry of \$23,037,500 shall be reduced by \$4,000,000 thereby leaving a verdict of \$19,037,500.

The Court finds the loss of consortium award shall be reduced because it is “merely excessive although not motivated by considerations such as passion, caprice or prejudice.” *Id.* The verdict to Mr. Long of \$9,618,750 shall be reduced by \$3,000,000 thereby leaving a verdict of \$6,618,750.

B. Punitive Damages

A-I-I also argues that the punitive damages award of \$760,000 against it should be reduced. Again A-I-I ignores that, as a matter of law, its conduct was found to be willful, wanton, and/or reckless, which is the predicate for punitive damages. The jury was instructed about this fact. The jury awarded \$760,000 in punitive damages against A-I-I. Defendant A-I-I, as a matter of law, admitted the allegations of the complaint, which fully support the imposition of punitive damages.

In *Gamble v. Stevenson*, the South Carolina Supreme Court directed:

[T]o ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review and may consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) as noted in *Haslip*, “other factors” deemed appropriate.

Gamble v. Stevenson, 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991). However, in *Mitchell, Jr. v. Fortis Insurance Co.*, the supreme court held “that *Gamble* remains relevant to the post-

judgment due process analysis, but only insofar as it adds substance to the *Gore* guideposts.” 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009). Thus, in *Mitchell*, the court considered reprehensibility, ratio, and comparative penalty awards.

1. Reprehensibility

A number of the *Gamble* factors are relevant to reprehensibility and will be addressed below. While the jury did not see the allegations in the complaint, they are available and relevant to the Court’s review. As noted above, Plaintiffs alleged Defendants’ knowledge of the risk of talcum powder products that they marketed as safe for daily use. Original Complaint at ¶ 148. Plaintiffs alleged Defendants’ knowledge of carcinogens, including asbestos, in talc. *Id.* at ¶ 150. Plaintiffs alleged that Defendants “have represented to various news media outlets and the public at large that their products are ‘asbestos-free,’ when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods.” *Id.* at ¶ 183. Again, there are nearly 20 pages of allegations concerning Defendants’ knowledge and bad acts with respect to the hazards of asbestos in their products. *See id.* at pp. 67-86. A-I-I’s conduct, as admitted by its default, demonstrates a high degree of culpability.

A-I-I’s conduct, as alleged in the complaint, went on for decades. Plaintiffs alleged that “For decades, defendants manufactured products composed of talc that were sold and marketed as safe for daily use by consumers on their person....” Complaint at ¶ 148. Plaintiffs also alleged that “Defendants and CTFA, for decades before Plaintiff Michael L. Perry was born, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos, in talc and that demonstrated the existence of health hazards to those exposed to asbestos-containing talcum powder products.” *Id.* at ¶ 150. Plaintiffs alleged that “Defendants ... have long

known that the deposits in the earth that are associated with talc are also associated with the formation of asbestos.” *Id.* at ¶ 152.

The crux of the conduct alleged, as shown above, is that Defendants, including A-I-I, knew of the dangers of their products but did not warn, instead marketing their products as safe and trying to conceal the hazards. The alleged awareness and concealment of the danger, which A-I-I admitted through its default, demonstrates the reprehensibility of A-I-I’s conduct.

Plaintiffs alleged that Defendants engaged in the same conduct with awareness of the risks for decades before Michael Perry was born, showing that they engaged in similar past conduct as well. Complaint at ¶¶ 148, 150, 152. Because these allegations support the finding of willful, wanton, and reckless conduct, they support the punitive damages award in this case.

2. Ratio

“The second and perhaps most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996) (citing *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 459 (1993); *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23 (1991)). The punitive damages award must bear a “reasonable relationship” to the compensatory damages award. *Id.* “Scholars have identified a number of early English statutes authorizing the award of multiple damages for particular wrongs. Some 65 different enactments during the period between 1275 and 1753 provided for double, treble, or quadruple damages.” *Id.* at 580–81. “In *Haslip*, [the Supreme Court] concluded that even though a punitive damages award of ‘more than 4 times the amount of compensatory damages’ might be ‘close to the line,’ it did not ‘cross the line into the area of constitutional impropriety.’” *Gore*, 517 U.S. at 581 (quoting *Haslip*, 499 U.S. at 23–24). In *Campbell*, the Supreme Court returned to the 4:1 ratio as instructive:

Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. In *Haslip*, in upholding a punitive damages award, we concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety. We cited that 4-to-1 ratio again in *Gore*. The Court further referenced a long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish. While these ratios are not binding, they are instructive. They demonstrate what should be obvious: Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution, than awards with ratios in range of 500 to 1 or, in this case, of 145 to 1.

538 U.S. at 425. Here, where the jury awarded punitive damages of little more than 2% of the actual damages, the ratio tends to show that the punitive damages award is not excessive.

3. Comparative penalty awards

As to comparative penalty awards, the South Carolina Supreme Court has directed:

Third, the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. When identifying “comparable cases” a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant’s conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.

Mitchell, 385 S.C. at 588–89, 686 S.E.2d at 186.

There appear to be no civil penalties that clearly apply to the facts of this case. In a case against cigarette manufacturer Phillip Morris, the Oregon Supreme Court noted that, rather than a civil penalty, Philip Morris’s conduct in hiding the cancer risks of its product and misleading the public “would constitute at least second-degree manslaughter, a Class B felony.” *Williams v. Philip Morris Inc.*, 340 Or. 35, 59, 127 P.3d 1165, 1179 (2006), *vacated on other grounds sub nom. Philip Morris USA v. Williams*, 549 U.S. 346 (2007), *and adhered to on reconsideration*, 344 Or. 45, 176 P.3d 1255 (2008). In South Carolina involuntary manslaughter involves “criminal negligence,”

which is “the reckless disregard of the safety of others.” S.C. Code § 16-3-60. It is punishable by up to five years in prison, however, and not by fine. *Id.*

In *Mitchell*, the court also could not find examples of civil penalties in equivalent circumstances but looked to punitive damage awards that had previously been upheld in similar circumstances. 385 S.C. at 592–93, 686 S.E.2d at 187–88. Certainly, larger punitive damages awards have been upheld in asbestos cases where, like here, the plaintiff alleged that the manufacturer knew and did not warn of the hazard of its product. *See, e.g., Keene v. CNA Holdings, LLC*, 426 S.C. 357, 384–85, 827 S.E.2d 183, 198 (Ct. App. 2019), *aff’d*, 436 S.C. 1, 870 S.E.2d 156 (2021) (upholding awards of \$12 million in compensatory damages and \$2 million in punitive damages against premises owner in asbestos exposure case).

Consequently, this Court will not invade the province of the jury in determining damages, and the jury’s awards to Michael Perry and Lonnie Long will stand.

A-I-I’s request for *nisi remittitur* as to Plaintiffs’ compensatory awards is GRANTED and A-I-I’s request for *nisi remittitur* as to the punitive damages award is DENIED.

XII. A-I-I’s ADOPTED ARGUMENTS ARE ALSO DENIED

A-I-I adopts certain arguments made by J&J:³

- Section IV.B.1.: This Court Erred By Denying J&J Defendants’ Motion to Sever and Compelling J&J Defendants to Try Their Case Along With American International Industries (A-I-I) Without a Proper Limiting Instruction.
- Section IV.C.: J&J Defendants Are Entitled to a New Trial Because Of The Cumulative Impact Of This Court’s Errors.
- Section IV.D.: The Court Should Grant A New Trial Absolute Under The “Thirteenth Juror” Doctrine Because The Evidence Did Not Justify The Verdict.
- Section IV.E.: A New Trial Must be Ordered Because the Verdict Shocks The Conscience and Because the Punitive Damages Award is Unconstitutional and Shockingly Excessive.

³ These are arguments made in J&J’s post trial motions and briefings.

- Section V.: Failing All of the Above, The Court Should Grant a New Trial *Nisi Remittitur*.

To the extent J&J Defendants' motions apply to A-I-I, they are DENIED for the same reasons put forth in the Court's Order on Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc.; and Kenvue, Inc.'s Motions for JNOV, New Trial Absolute Based on Errors of Law, and New Trial Absolute Based on the Thirteenth Juror Doctrine, excepting that

I GRANT J&J's motion for New Trial *Nisi Remittitur*, which grant of such motion directed to Plaintiffs' actual damages also applies to A-I-I by virtue of joint and several liability for an indivisible injury.

Plaintiffs' verdict of \$19,037,500 for Mr. Perry's past and future total loss, \$6,618,750 for Mr. Long's loss of consortium shall be set off by the fair and reasonable setoff of \$11,255,000, resulting in a compensatory judgment of \$14,401,250. The total punitive judgment is \$760,000. Therefore, the total judgment to be entered against A-I-I is \$15,161,250.

XIII. RULING ON STAY OF EXECUTION FOR JUDGMENT AND BOND

A-I-I requests a stay of judgment pursuant to Rule 62, SCRCP. The Court agrees that A-I-I is entitled to a ten-day automatic stay of judgment pursuant to Rule 62(a).

There is no automatic stay of execution of a money judgment during the pendency of appeal. S.C. Code § 18-9-130(A)(1); *see also* Rule 241(b)(1), SCACR (providing that money judgments are an exception to the general rule that service of a notice of appeal automatically stays matters decided in the judgment). Rather, a stay of execution is within the trial court's discretion: "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution." S.C. Code § 18-9-130(A)(1). Rule 62(d) provides that a stay of execution of judgment is predicated on posting a supersedeas bond.

The Court exercises its discretion to deny A-I-I's request for a stay order without the requirement of an appeal bond. In the event of an appeal, the Court orders that A-I-I post a supersedeas bond in the full amount of the judgment, pursuant to SCRCP 62(d).

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-12-10 16:43:15 page 44 of 44

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	ORDER GRANTING DEFAULT
INDUSTRIES, et al.	)	AGAINST AMERICAN
	)	INTERNATIONAL INDUSTRIES
Defendants.	)	

This matter comes before the Court by way of Plaintiffs' Motion for Default Judgment as to American International Industries pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. The Complaint alleged injury relating to asbestos exposure to Michael L. Perry by American International Industries.

A sworn affidavit by counsel for Plaintiffs indicate Plaintiffs properly served Defendant American International Industries through its authorized representative Terri Cooper at 2220 Gaspar Avenue, Los Angeles, California, 90040, by personal process service on August 9, 2023. No answer has been filed by American International Industries as of September 25, 2023.

I THEREFORE FIND AND CONCLUDE:

1. That Defendant American International Industries failed to timely answer the Complaint that was properly served on August 9, 2023.
2. The Plaintiffs are entitled to a default judgment against American International Industries.

3. That a damages hearing will be scheduled upon request by Plaintiffs' counsel and Plaintiff's counsel shall provide notice of the hearing to American International Industries pursuant to Rule 55(b)(2).

AND IT SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Entry of Default

So Ordered

Jean H. Toal

Electronically signed on 2023-10-03 11:45:04 page 3 of 3

0047

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.	)	
	)	
Defendants.	)	

ORDER DENYING AII/CLUBMAN’S MOTION TO LIFT DEFAULT

Michael Perry (“Perry” or “Plaintiff”) filed this lawsuit on August 4, 2023. On August 10, 2023, service was obtained on American International Industries (“AII”) at 2220 Gaspar Avenue, Los Angeles, CA 90040 by serving AII’s Executive Vice President, Terri Cooper. An affidavit of good service was signed and returned by the process server.

AII’s answer was due on September 11, 2023. AII did not file an answer or an appearance in the case, nor had AII reached out to Plaintiffs’ counsel seeking an extension to answer. Several other Defendants had requested such an extension and each and every time the request was granted.

On September 26, 2023, Plaintiffs filed the instant Motion for Default as a result of AII’s failure to answer the complaint. On September 29, 2023, AII filed an answer to Plaintiffs’ Original Complaint that was served on August 10, 2023.

On October 10, 2023, two weeks following the filing of the Default Motion, AII filed a Motion to Lift Default. In its motion AII contends, among other things¹, that “Plaintiffs served an individual who was not authorized to accept service.” The Court disagrees.

APPLICABLE LAW

South Carolina Rule of Civil Procedure 4(d)(3) provides that service shall be made

Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

SCRCP 4(d)(3). As set forth above, Terri Cooper is the Executive Vice President of AII. Rule 4 provides that a summons and complaint served on a corporate officer is valid. Thus, AII’s complaint about valid service necessarily fails. Moreover, AII has previously accepted service via service at the exact same address in a Connecticut matter in which they have answered and are defending.

The decision about whether to set aside a default is within the sound discretion of the trial judge. *Richardson v. P.V.*, 383 S.C. 610 (2006). AII contends that Terri Cooper was not authorized to accept service for AII arguing that because she was not listed as an officer of AII at the California Secretary of State’s office, Ms. Cooper is not really an officer. Of course, SCRCP 4(d)(3) does not mandate that an officer be identified at a government office. Clearly, an Executive Vice President is an officer of the corporation.

¹ The other contentions made via affidavit in the first Motion to Lift Default focus on attacking plaintiff’s counsel for AII’s failure to answer the complaint. A supplemental motion to lift default and the accompanying affidavits materially change the allegations made by AII. AII concedes that any complaints they had about plaintiffs’ counsel conduct occurred after the company was already in default. Plaintiffs’ counsel vigorously disputes those allegations. Because I find the issues raised in the affidavits occurred after the default was already in place, I do not consider, in any way, the affidavits submitted by AII.

In *Richardson*, the South Carolina Supreme Court wrote that: “apparent authority is when . . . the principal holds the agent out as possessing such authority.” *Id.* at 615. Thus, even if AII did not expressly authorize Cooper to accept service, by virtue of Cooper’s title, AII provided all the apparent authority Cooper needed to accept service under the South Carolina rules.

Next, as AII acknowledges in its motion, its national lawyers received the complaint and turned the complaint over to AII’s insurer prior to the time to answer. Yet no one sought an extension to answer until after the Plaintiffs sought default. These two facts clearly demonstrate that AII had notice that the complaint had been served and that an answer would be due. “In South Carolina, negligence on the part of an attorney is imputable to the client and will not be the basis for finding good cause to set aside entry of default.” *Limehouse v. Hulsey*, 397 S.C. 49 (Ct. App. 2010). The *Limehouse* court went on to find “that negligence on the part of an insurance company or attorney will be imputed to a defaulting litigant and negligence does not constitute good cause to relieve an appellant from entry of default.” *Id.* at 72.

As AII notes in on pages 4-5 of their Amended Motion to Lift Default:

The decision to set aside an entry of default judgment lies within the sound discretion of the trial judge. *Robertson v. S. Fin. Of S.C., Inc.*, 365 S.C. 6,9 (2005). The standard for granting relief from an entry of default under Rule 55(c) is merely “good cause.” *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465 (Ct.App. 1989). “This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for default and give reasons why vacation of the default entry would serve the interests of justice.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607 (2009) Thereafter, “once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Id.* at 607-608).

Here, AII has not put forth a satisfactory explanation for the default. Terri Cooper was an officer of the company and therefore was an appropriate person to serve under SCRCP 4(d)(3). AII admits that the Complaint was given to its national counsel the day after service. AII further

admits that the Complaint was then passed on to the Insurer. AII gives no reason, much less a satisfactory explanation for the default. Therefore, the Court does not need to reach the *Wham* factors.

CONCLUSION

Plaintiffs indisputably served AII's corporate officer. Even if she did not possess actual authority, her title alone confers apparent authority. Rule 4 further confirms that service on Cooper was proper. Therefore, the Court DENIES AII's Motion to Lift Default.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-11-02 15:35:12 page 5 of 5

0052

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.,	)	
	)	
Defendants.	)	

This matter comes before the Court upon Plaintiffs' Motion for Leave to Amend Plaintiffs' Summons and Complaint to add additional parties. *South Carolina Rules of Civil Procedure*, Rule 15, provides that "[l]eave [to amend the pleadings] shall be freely given where justice so requires and does not prejudice any other party." The addition of a defendant responsible in part for Plaintiffs' damages does not prejudice any current Defendant, but rather acts to divide and share the liability amongst additional responsible parties.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion to Amend Complaint is GRANTED.

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Leave to Amend

So Ordered

Jean H. Toal

Electronically signed on 2023-11-21 09:05:09 page 2 of 2

0054

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.	)	
	)	
Defendants.	)	

This matter comes before the Court upon Plaintiffs' Motion for Leave to Amend Plaintiffs' Summons and Complaint to add additional parties. *South Carolina Rules of Civil Procedure*, Rule 15, provides that "[l]eave [to amend the pleadings] shall be freely given where justice so requires and does not prejudice any other party." The addition of a defendant responsible in part for Plaintiffs' damages does not prejudice any current Defendant, but rather acts to divide and share the liability amongst additional responsible parties.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion to Amend Complaint is GRANTED.

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Leave to Amend

So Ordered

Jean H. Toal

Electronically signed on 2024-02-01 10:04:04 page 2 of 2

0056

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	In Re:
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.,	)	
	)	
Defendants.	)	

**ORDER GRANTING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER FROM
AMERICAN INTERNATIONAL INDUSTRIES' EXPERT DISCOVERY**

On May 22, 2023, Plaintiffs moved before this Court for a protective order to prohibit Defendant American International Industries from participating in any expert and liability discovery in this case. *See* Pls' Mot. for Protective Order. The Court, because it previously issued an Order Granting Default Against American International Industries ("AII" or "Defendant") on October 3, 2023¹, agreed to limit any discovery to damages. As such, the only issue in this case in which Defendant American International Industries may participate in is the issue of damages. The Court instructed the Plaintiffs to draft an order reflecting the Court's ruling and in addition, allowed any comments and responses by Defendant AII before entering its Order. Defendant AII submitted its Response in Opposition to Plaintiffs' Motion for Protective Order and Proposed Order Granting Plaintiffs' Motion for Protective Order on May 24, 2023 ("Defendant's Response in Opposition"). For the following reasons, the Court grants Plaintiffs' Motion for Protective Order for the in-default Defendant AII.

¹ The Court issued its Order Denying AII's Motion to Lift Default on November 2, 2024. Defendant AII did not move this Court for reconsideration of its Order.

AII is in default in the above-entitled matter. This Court has already heard oral argument on the issue of default and already issued a ruling. *See* Order Denying AII/Clubman's Mot. to Lift Default, Nov. 2, 2023. Despite this Court's ruling, Defendant persists in attempting to litigate this action as if it were not in default. In just the past weeks, Defendant has both issued a subpoena to Mr. Perry's employer *over Plaintiffs' objection*, has tendered an expert for deposition, and indicated that it intends to file a motion to compel discovery regarding Plaintiffs' identification of Clubman products and related issues.

Defendant has put forth a novel theory that it is an "active defendant" in the above captioned case because Plaintiffs filed an amended complaint adding defendants to the case. Specifically, Defendant argues AII's default was cured by its timely answer to Plaintiffs' First Amended Complaint and Second Amended Complaint because the first Complaint is moot and inoperative. *See* Def.'s Resp. in Opp'n, 4. Defendant's argument that answering an amended complaint, which did not change any of the allegations or causes of action against them, defeats the default is unavailing. Plaintiffs' amended complaint simply added additional defendants to the case. It did not change the claims, substantive or otherwise, against AII in any way. Defendant has gone beyond the issues of damages and Defendant has failed to timely contest the default and failed to timely file any motion seeking further relief. Defendant has thereby forfeited its own Motion for Protective Order since it is in default. The Court also denies adopting cited federal authority for the proposition that an amended complaint moots a prior entry of default as argued by AII. *See* Def.'s Resp. in Opp'n, 9. This matter is controlled by South Carolina statutes and rules regarding default in South Carolina.

SCRCP 5(a) provides: "No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served

upon them in the manner provided for serving summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.” Importantly, the substantive claims against Defendant have never been amended since Plaintiffs’ Original Complaint—the one for which it is in default. In fact, Plaintiffs’ complaint has only been amended to add new defendants. The claims against Defendant remain the same since the very inception of this lawsuit.

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge.” *Sundown Operating Co., v. Intedger Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). “The trial court’s decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion.” *Id.* Defendant has filed no motion pursuant to SCRCP 55(c) seeking relief from this Court to lift the default. Defendant filed such a motion at the beginning of this case, which was denied.

Therefore, Defendant’s participation in this case is limited to that of damages only. Defendant is prohibited from attempting to cross-examine the Plaintiffs’ experts on liability issues such as asbestos content of its products, testing, and talc content. Further, Defendant is prohibited from any discovery that is unrelated to damages.

IT IS SO ORDERED.

[JUDGE’S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al

Case Number: 2023CP4004072

Type: Order/Protective Order

So Ordered

Jean H. Toal

Electronically signed on 2024-05-29 11:20:07 page 4 of 4

0060

The Supreme Court of South Carolina

Michael L. Perry and Lonnie L. Long, Respondents,

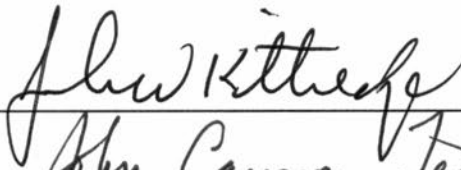
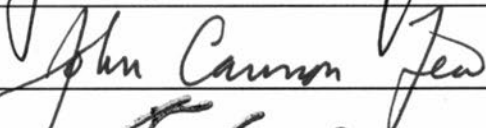
v.

American International Industries; Atlas Turner Inc.; Avon Products, Inc.; Barretts Minerals, Inc.; BlockDrug Company, Inc.; Brenntag North America, Inc.; Brenntag Specialties, LLC; Bristol-Myers Squibb Company, Buy-Low General Merchandise, Inc.; C&S Wholesale Grocers, LLC; Calvin Klein Inc.; Chanel In.; Charles B. Chrystal Company, Inc.; Chattem, Inc.; Colgate-Palmolive Company; Color Techniques, Inc.; Cosmetic Specialties, Inc.; Coty Inc.; CVS Health Corporation; CVS Pharmacy Inc.; EDC Drug Stores, Inc.; Esee Lauder Inc.; Estee Lauder International, Inc.; The Estee Lauder Companies Inc.; Food Lion, LLC; Genuine Parts Company, Glamour Industries Co.; Himmell Management Co. LLC; Himmel Media LLC; Honeywell International, Inc.; Idelle Labs, Ltd.; IMI Fabi (Diana) LLC; IMI Fabi (USA) Inc.; IMI Fabi, LLC; Janssen Pharmaceutical, Inc.; Johnson & Johnson; Johnson & Johnson Holdco (NO) Inc.; Kenvue Inc.; L'Oreal USA, Inc.; L'Oreal USA Products, Inc.; LLT Management LLC; Long's Drugstores of South Carolina, Inc.; LTL Management LLC; Minerals Technologies, Inc; The Neslemur Company; Piggly Wiggly, LLC; Pneumo Abex LLC; Presperse Corporation; The Proctor & Gamble Company; PTI Royston, LLC; PTI Union LLC; Ralph Lauren Corporation/ Rite Aid of South Carolina, Inc.; Shulton, Inc.; Specialty Minerals, Inc.; Sumitomo Corporation of Americas; Union Carbide Corporation ViJon, LLC; Walgreen Co.; Walmart Inc., Defendants,

Of Which American International Industries is the Petitioner.

ORDER

American International Industries has filed a petition for a writ of certiorari in our original jurisdiction to review an order of the circuit court granting Respondents' motion for a protective order. The petition is denied.

	C.J.
	J.
	J.
D. Franklin	J.
	J.

Columbia, South Carolina
August 13, 2024

cc:
Stephanie G. Flynn
Nicolas John Cherry
Charles William Branham, III
Theile Branham McVey
Rachel Gross

) IN THE COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

) C/A No. 2023-CP-40-04072

)

)

)

)

)

JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

2024 AUG 19 AM 9:05

RICHLAND COUNTY
FILED

NEGLIGENCE

- ☒ Yes

 No

- ✓ Yes

 No

 Yes

No



4. We, the jury, find that Defendant American International Industries (AII) is strictly liable for selling defective products that was a proximate cause of Plaintiff Michael Perry's injuries:

☒ Yes

☐ No

FRAUDULENT MISREPRESENTATION

5. We, the jury, find that Defendant the Johnson & Johnson entities engaged in fraudulent misrepresentation in selling its products and that fraudulent misrepresentation was a proximate cause of Plaintiff Michael Perry's injuries:

☐ Yes

☒ No

6. We, the jury, find that Defendant American International Industries (AII) engaged in fraudulent misrepresentation in selling its products and that fraudulent misrepresentation was a proximate cause of Plaintiff Michael Perry's injuries:

☒ Yes

☐ No

DAMAGES

7. If you answered "Yes" to any of Questions 1-6, please state the amount of actual damages that have been proven by the greater weight of the evidence:

Michael Perry's economic loss (past & future) \$ 3,800,000

Michael Perry's other damages (past & future) \$ 19,237,500

Lonnie Long's loss of consortium damages (past & future) \$ 9,618,750

WILLFUL, WANTON OR RECKLESS CONDUCT

8. If you answered "Yes" to Questions 1, 2, 5, or 6, please answer this question as to any Defendant for which you answered "Yes." We, the jury, find by clear and convincing evidence that the conduct of the following Defendants was willful, wanton, or reckless:

Johnson & Johnson

☒ Yes

☐ No

American International Industries (AII)

☒ Yes

☐ No

Foreperson _____

August 15, 2024
Date

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael L Perry and Lonnie L Long,

Plaintiffs,

v.

American International Industries et al,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

) C/A No. 2023-CP-40-04072

PLAINTIFFS' REQUESTED
JURY CHARGES

JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

2024 AUG 19 AM 9:00

RICHLAND COUNTY
FILED

PUNITIVE DAMAGES VERDICT FORM

1. As to Plaintiff Michael Perry's claims against Defendant Johnson & Johnson entities for punitive damages, we, the jury, by unanimous consent, find:

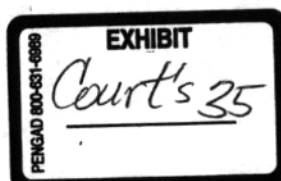
✓ for Michael Perry in the amount of \$ 30,000,000 punitive damages
(\$30 Million)

3. As to Plaintiff Michael Perry's claims against Defendant American International Industries for punitive damages, we, the jury, by unanimous consent, find:

✓ for Michael Perry in the amount of \$ 700,000 punitive damages

Foreperson

August 15, 2024
Date



0066

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL L. PERRY and
LONNIE L. LONG,

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES

AMERICAN INTERNATIONAL
INDUSTRIES, INC.

ATLAS TURNER INC.

AVON PRODUCTS, INC.

BARRETT'S MINERALS INC.

BLOCK DRUG COMPANY, INC.

BRENNTAG NORTH AMERICA, INC.

BRENNTAG SPECIALTIES, LLC

BRISTOL-MYERS SQUIBB COMPANY

C&S WHOLESALE GROCERS, LLC

CALVIN KLEIN INC.

CHANEL INC.

CHARLES B. CHRYSTAL COMPANY, INC.

CHATTEM, INC.

COLGATE-PALMOLIVE COMPANY

COLOR TECHNIQUES, INC.

COTY INC.

C/A NO. 2023-CP-40-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

(Jury Trial Demanded)

CVS HEALTH CORPORATION	)
	)
CVS PHARMACY, INC.	)
	)
EDC DRUG STORES, INC.	)
	)
ESTÉE LAUDER INC.	)
	)
ESTÉE LAUDER INTERNATIONAL, INC.	)
	)
THE ESTÉE LAUDER COMPANIES INC.	)
	)
FOOD LION, LLC	)
	)
GENUINE PARTS COMPANY	)
	)
GLAMOUR INDUSTRIES CO.	)
	)
HAWTHORNE PHARMACY, INC.	)
	)
HIMMEL MANAGEMENT CO. LLC	)
	)
HIMMEL MEDIA LLC	)
	)
HONEYWELL INTERNATIONAL, INC.	)
	)
IDELLE LABS, LTD.	)
	)
IMI FABI (DIANA) LLC	)
	)
IMI FABI (USA) INC.	)
	)
IMI FABI, LLC	)
	)
JANSSEN PHARMACEUTICALS, INC.	)
	)
JOHNSON & JOHNSON	)
	)
JOHNSON & JOHNSON HOLDCO (NA) INC.	)
	)
KENVUE INC.	)
	)
L'ORÉAL USA, INC.	)
	)
L'ORÉAL USA PRODUCTS, INC.	)
	)
LTL MANAGEMENT LLC	)

MINERALS TECHNOLOGIES INC.
THE NESLEMUR COMPANY
PFIZER INC.
PIGGLY WIGGLY, LLC
PNEUMO ABEX LLC
PRESPERSE CORPORATION
THE PROCTER & GAMBLE COMPANY
PTI ROYSTON, LLC
PTI UNION LLC
RALPH LAUREN CORPORATION
RITE AID OF SOUTH CAROLINA, INC.
SHULTON, INC.
SPECIALTY MINERALS INC.
SUMITOMO CORPORATION OF
AMERICAS
TRUE PHARMACY
UNION CARBIDE CORPORATION
VI-JON, LLC
WALGREEN CO.
WALMART INC.
Defendants.

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiffs' counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

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jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Rachel A. Gross (TX Bar 24073608)

(To Be Admitted *Pro Hac Vice*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, TX 75202

T: 214-722-5990

F: 214-722-5991

rgross@dobslegal.com

Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

August 3, 2023

Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL L. PERRY and
LONNIE L. LONG

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES, individually and as successor-
in-interest to PINAUD, INC., BARBARA
ALICE, INC., ED. PINAUD, INC. d/b/a ED.
PINAUD, and NESTLE-LE MUR COMPANY,
all for the CLUBMAN line of products

AMERICAN INTERNATIONAL
INDUSTRIES, INC., individually and as
successor-in-interest to PINAUD, INC.,
BARBARA ALICE, INC., ED. PINAUD, INC.
d/b/a ED. PINAUD, and NESTLE-LE MUR
COMPANY, all for the CLUBMAN line of
products

ATLAS TURNER INC.
f/k/a ATLAS ASBESTOS COMPANY LTD.

AVON PRODUCTS, INC.

BARRETTS MINERALS INC.

BLOCK DRUG COMPANY, INC.
individually and as successor to THE GOLD
BOND STERILIZING POWDER CO. a/k/a
THE GOLD BOND CO.

BRENNTAG NORTH AMERICA, INC.
individually and as successor-in-interest to
MINERAL AND PIGMENT SOLUTIONS,
INC., as successor-in-interest to WHITTAKER,
CLARK & DANIELS, INC.

BRENNTAG SPECIALTIES, LLC
f/k/a BRENNTAG SPECIALTIES, INC.
f/k/a MINERAL AND PIGMENT

C/A NO. 2023-CP-40-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Mesothelioma

COMPLAINT

(Jury Trial Demanded)

SOLUTIONS, INC., as successor-in-interest to)
 WHITTAKER, CLARK & DANIELS, INC.)
)
BRISTOL-MYERS SQUIBB COMPANY)
)
C&S WHOLESALE GROCERS, LLC)
 f/k/a C&S WHOLESALE GROCERS, INC.)
 individually and as successor-in-interest to)
 FLEMING COMPANIES, INC., successor-in-)
 interest to PIGGLY WIGGLY COMPANY)
)
CALVIN KLEIN INC.)
)
CHANEL INC.)
)
CHARLES B. CHRYSTAL COMPANY,)
INC.)
)
CHATTEM, INC.)
 individually and as successor to MARTIN)
 HIMMEL, INC., successor to BLOCK DRUG)
 COMPANY INC., successor to THE GOLD)
 BOND STERILIZING POWDER COMPANY)
 a/k/a THE GOLD BOND COMPANY,)
 successor to GOLD BOND)
 PHARMACEUTICAL CORPORATION)
)
COLGATE-PALMOLIVE COMPANY)
 individually and as successor-in-interest to)
 THE MENNEN COMPANY)
)
COLOR TECHNIQUES, INC.)
)
COTY INC.)
)
CVS HEALTH CORPORATION)
)
CVS PHARMACY, INC.)
)
EDC DRUG STORES, INC.)
 f/k/a KERR DRUG STORES, INC.)
)
ESTÉE LAUDER INC.)
)
ESTÉE LAUDER INTERNATIONAL, INC.)
)
THE ESTÉE LAUDER COMPANIES INC.)

FOOD LION, LLC

GENUINE PARTS COMPANY

d/b/a NATIONAL AUTOMOTIVE PARTS
ASSOCIATION (NAPA)

GLAMOUR INDUSTRIES CO.

individually and as an S-corporation of
AMERICAN INTERNATIONAL
INDUSTRIES successor-in-interest to PINAUD,
INC., BARBARA ALICE, INC., ED. PINAUD,
INC. d/b/a ED. PINAUD, and NESTLE-LE
MUR COMPANY, all for the CLUBMAN line
of products

HAWTHORNE PHARMACY, INC.

HIMMEL MANAGEMENT CO. LLC

a/k/a HIMMEL GROUP, formerly d/b/a
MARTIN HIMMEL INC., individually and as
successor to BLOCK DRUG COMPANY INC.,
successor to THE GOLD BOND STERILIZING
POWDER CO. a/k/a THE GOLD BOND CO.

HIMMEL MEDIA LLC

individually and as successor to BLOCK DRUG
COMPANY INC., successor to THE GOLD
BOND STERILIZING POWDER CO. a/k/a
THE GOLD BOND CO.

HONEYWELL INTERNATIONAL, INC.

individually and as successor-in-interest to
ALLIED SIGNAL, INC., as successor to
BENDIX CORPORATION

IDELLE LABS, LTD.

IMI FABI (DIANA) LLC

IMI FABI (USA) INC.

IMI FABI, LLC

JANSSEN PHARMACEUTICALS, INC.

individually and as successor-in-interest to
Johnson & Johnson subsidiaries named

JOHNSON & JOHNSON CONSUMER INC.,)
 both prior to and after its 2021 restructurings)
 and colloquially known as “Old JJCI” and “New)
 JJCI”)
)
JOHNSON & JOHNSON)
)
JOHNSON & JOHNSON HOLDCO (NA))
INC., f/k/a JOHNSON & JOHNSON)
 CONSUMER INC., individually and as)
 successor-in-interest to Johnson & Johnson)
 subsidiary “Old JJCI”)
)
KENVUE INC.)
 individually and as successor-in-interest to)
 JOHNSON & JOHNSON CONSUMER INC.)
)
L’ORÉAL USA, INC.)
)
L’ORÉAL USA PRODUCTS, INC.)
)
LTL MANAGEMENT LLC)
)
MINERALS TECHNOLOGIES INC.)
)
THE NESLEMUR COMPANY)
 f/k/a THE NESTLE-LEMUR COMPANY)
)
PFIZER INC.)
)
PIGGLY WIGGLY, LLC)
 a subsidiary of C&S WHOLESALE GROCERS,)
 INC. sued individually and as successor-in-)
 interest to FLEMING COMPANIES, INC.,)
 successor-in-interest to PIGGLY WIGGLY)
 COMPANY)
)
PNEUMO ABEX LLC)
 individually and as successor-in-interest to)
 ABEX CORPORATION)
)
PRESERSE CORPORATION)
)
THE PROCTER & GAMBLE COMPANY)
 individually and as successor-in-interest to)
 SHULTON, INC.)
)

PTI ROYSTON, LLC	)
d/b/a PHARMA TECH INDUSTRIES	)
f/k/a PHARMA TECH INDUSTRIES, INC.	)
f/k/a BLACK CREEK CORPORATION	)
	)
PTI UNION LLC	)
d/b/a PHARMA TECH INDUSTRIES	)
individually and as successor-in-interest to	)
PHARMA TECH INDUSTRIES, INC. f/k/a	)
BLACK CREEK CORPORATION, as	)
successor-in-interest to DIRECT	)
PHARMACEUTICAL CORPORATION and as	)
successor-in interest to ENVI DIVERSIFIED,	)
INC. f/k/a PHARMA-TECH INDUSTRIES,	)
INC.	)
	)
RALPH LAUREN CORPORATION	)
	)
RITE AID OF SOUTH CAROLINA, INC.	)
	)
SHULTON, INC.	)
a subsidiary of THE PROCTER & GAMBLE	)
COMPANY	)
	)
SPECIALTY MINERALS INC.	)
	)
SUMITOMO CORPORATION OF	)
AMERICAS	)
	)
TRUE PHARMACY	)
	)
UNION CARBIDE CORPORATION	)
	)
VI-JON, LLC	)
f/k/a VI-JON, INC. f/k/a CUMBERLAND	)
SWAN	)
	)
WALGREEN CO.	)
	)
WALMART INC.	)
	)
Defendants.	)
	)

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, MICHAEL L. PERRY and LONNIE L. LONG (hereinafter "Plaintiffs"), sue the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff Michael L. Perry has been diagnosed with mesothelioma caused by asbestos dust and fibers.

2. This Court has personal jurisdiction over Defendants because Plaintiffs' claims arise from Defendants' conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State;
- (e) Entering into a contract to be performed in whole or in part by either party in this State; and/or
- (f) Exposing Plaintiff to asbestos dust, fibers and/or particles generated from the ordinary and foreseeable use of the asbestos-containing products it sold, supplied, distributed, incorporated, and/or otherwise placed in the stream of commerce in the State of South Carolina and/or other states at times relevant to this action.

3. Every Defendant that has obtained a certificate of authority to transact business in South Carolina has thereby agreed that it is amenable to suit in this State. This Court may exercise general jurisdiction over such foreign corporations consistent with due process.

4. At all times material hereto, Defendants acted through their agents, servants or employees who were acting within the scope of their employment on the business of the Defendants.

5. The Defendants are corporations, companies or other business entities which, during all times material hereto, and for a long time prior thereto have been, and/or are now engaged, directly or indirectly, in the manufacturing, producing, selling, merchandising, supplying, distributing, installing, removing, and/or otherwise placing in the stream of commerce, asbestos-containing products. Courts of the State of South Carolina have personal jurisdiction over all Defendants.

6. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products, raw asbestos materials, raw asbestos talc, and/or asbestos-containing talc products for use in South Carolina, and other states, at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products, raw asbestos, raw asbestos talc, and/or asbestos-containing talc materials.

7. Plaintiffs' claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an

established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

8. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff Michael L. Perry to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

9. Plaintiff Michael L. Perry was exposed to asbestos and/or asbestos-containing body talc products from his birth until approximately 2018 through his personal use, and his family's use, of asbestos-containing body talc products throughout his life, his use and his family's use of asbestos-containing body talc products. These asbestos-containing talcum products were designed, advertised, marketed, and sold as being appropriate for use in the ordinary course by Defendants identified above. It was foreseeable Defendants' asbestos-containing talcum products would be sold for personal use by individuals like Plaintiff Michael L. Perry on himself. Plaintiff Michael L. Perry was thereby exposed to defendants' asbestos-containing talcum products in the State of South Carolina.

10. Plaintiff was further exposed to asbestos through his employment at various hotel locations where asbestos and asbestos-containing products were removed, replaced, and present in certain facilities.

11. Plaintiff was also exposed to asbestos-containing products at various times throughout his life from his non-occupation work maintaining his vehicles working with asbestos-containing friction products.

12. Plaintiff Michael L. Perry has suffered personal injuries as a proximate result of his regular and prolonged use of, inhalation, ingestion, absorption, and exposure to a variety of asbestos-containing products¹ where asbestos-containing talc was a constituent ingredient.

13. Plaintiff, Michael L. Perry, was exposed to asbestos through his personal daily use, and his family's use, of a variety of talc-based body products including, but not limited to, Ammens body powders, Avon body powders, Calvin Klein talc powder, Cashmere Bouquet talc powders, Chanel talc products, Clubman talc products, Coty talc products, Drakkar Noir talc powder, Estee Lauder talc products, Gold Bond body powders, Johnson and Johnson Baby Powder, Shower to Shower body powder, Mennen talc products, Old Spice talc products, Pinaud talc products, Polo talc powder, Stetson talc products, Walgreens body powders, Walmart body powders, and White Linen talcum powder, ("Talc Powder Products") throughout his life. These products were manufactured, marketed, sold and/or distributed by Defendants.

14. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in his complaint that provided asbestos-containing talc as a constituent ingredient to the Powder Products he used.

15. Each use of the Powder Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the products.

16. Plaintiff Michael L. Perry's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

¹ As used throughout this complaint, the term "asbestos" shall be interpreted in the broadest sense and included, without limitation, non-regulated and non-commercial forms of asbestos (including non-fibrous asbestos), cleavage fragments, and transition/transitional fibers, without limitation as to fiber size, dimension, or ratio.

17. Plaintiffs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

18. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an “alternate entity” as hereinafter defined. Defendants are liable for the acts of their “alternate entity” and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiffs’ remedy against each such “alternate entity”; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such “alternate entity”; such “alternate entities” have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiffs’ remedy against each such “alternate entity”; each such Defendant has the ability to assume the risk-spreading role of each such “alternate entity;” and that each such defendant enjoys the goodwill originally attached to each “alternate entity.”

DEFENDANT	ALTERNATE ENTITY
AMERICAN INTERNATIONAL INDUSTRIES	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LE MUR COMPANY, and CLUBMAN
AMERICAN INTERNATIONAL INDUSTRIES, INC.	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LE MUR COMPANY, and CLUBMAN
ATLAS TURNER INC.	ATLAS ASBESTOS COMPANY LTD.
BLOCK DRUG COMPANY, INC.	THE GOLD BOND STERILIZING POWDER CO. and THE GOLD BOND CO.
BRENNTAG NORTH AMERICA, INC.	MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC.

DEFENDANT	ALTERNATE ENTITY
BRENNTAG SPECIALTIES, LLC	BRENNTAG SPECIALTIES, INC., MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC
C&S WHOLESALE GROCERS, LLC	C&S WHOLESALE GROCERS, INC., FLEMING COMPANIES, INC. and PIGGLY WIGGLY COMPANY
CHATTEM, INC.	MARTIN HIMMEL, INC., BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER COMPANY, THE GOLD BOND COMPANY, and GOLD BOND PHARMACEUTICAL CORPORATION
COLGATE-PALMOLIVE COMPANY	THE MENNEN COMPANY
EDC DRUG STORES, INC.	KERR DRUG STORES, INC.
GENUINE PARTS COMPANY	NATIONAL AUTOMOTIVE PARTS ASSOCIATION (NAPA)
GLAMOUR INDUSTRIES CO.	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LE MUR COMPANY, and CLUBMAN
HIMMEL MANAGEMENT CO. LLC	HIMMEL GROUP, MARTIN HIMMEL INC., BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER CO., and THE GOLD BOND CO.
HIMMEL MEDIA LLC	BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER CO., and THE GOLD BOND CO.
HONEYWELL INTERNATIONAL, INC	ALLIED SIGNAL, INC. and BENDIX CORPORATION
JANSSEN PHARMACEUTICALS, INC.	JOHNSON & JOHNSON CONSUMER INC.
JOHNSON & JOHNSON HOLDCO (NA) INC.	JOHNSON & JOHNSON CONSUMER INC.

DEFENDANT	ALTERNATE ENTITY
KENVUE INC.	JOHNSON & JOHNSON CONSUMER INC.
LTL MANAGEMENT LLC	JOHNSON & JOHNSON CONSUMER INC.
THE NESLEMUR COMPANY	THE NESTLE-LEMUR COMPANY
PIGGLY WIGGLY, LLC	C&S WHOLESALE GROCERS, INC., FLEMING COMPANIES, INC. and PIGGLY WIGGLY COMPANY
PNEUMO ABEX LLC	ABEX CORPORATION
THE PROCTER & GAMBLE COMPANY	SHULTON, INC.
PTI ROYSTON, LLC	PHARMA TECH INDUSTRIES, PHARMA TECH INDUSTRIES, INC. and BLACK CREEK CORPORATION
PTI UNION LLC	PHARMA TECH INDUSTRIES, PHARMA TECH INDUSTRIES, INC., BLACK CREEK CORPORATION, DIRECT PHARMACEUTICAL CORPORATION, ENVI DIVERSIFIED, INC., and PHARMA-TECH INDUSTRIES, INC.
SHULTON, INC.	THE PROCTER & GAMBLE COMPANY
VI-JON, LLC	VI-JON, INC. and CUMBERLAND SWAN

19. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other

state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

20. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, certain Defendants are subject to the following facts relating to their successor liability status, as stated below:

- (a) The Declaration of John K. Kim in Support of First Day Pleadings in LTL's second Bankruptcy filing on April 4, 2023 ("**Kim LTL Decl.**"), *In re: LTL Management LLC*, Case No.: 23-12825, United States Bankruptcy Court District of New Jersey ("**LTL 2**"), summarizes J&J's and its affiliates' corporate history that is pertinent to the claims alleged herein against the Defendants as follows:
 - (i) "J&J, a New Jersey company incorporated in 1887, first began selling JOHNSON'S® Baby Powder in 1894, launching its baby care line of products."
 - (ii) "In 1972, J&J established a formal operating division for its baby products business, which included JOHNSON'S® Baby Powder.... J&J transferred all its assets and liabilities associated with the baby products division to J&J Baby Products."
 - (iii) "In 1981, J&J Baby Products transferred all its assets, except those assets allocated to its diaper programs, to Omni Education Corporation ("Omni"), a wholly owned subsidiary of J&J Baby Products. In turn, Omni assumed all liabilities of J&J Baby Products except those liabilities related to its diaper program. Immediately following the transaction, J&J Baby Products merged into another subsidiary of J&J and was renamed Personal Products Company, and Omni changed its name to Johnson & Johnson Baby Products Company."
 - (iv) "In 1988, Johnson & Johnson Baby Products Company transferred all its assets in respect of its baby products business to Johnson & Johnson Dental Products Company, which assumed all of its liabilities and was renamed Johnson & Johnson Consumer Products, Inc."
 - (v) "In 1997, Johnson & Johnson Consumer Products, Inc. changed its name to Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer Companies")."

- (vi) “In 2015, J&J Consumer Companies merged with and into an affiliate, which then merged into McNeil-PPC, Inc. The resulting entity was renamed Johnson & Johnson Consumer Inc. (including all former names and historical forms, “Old JJCI”).”
- (vii) “Old JJCI became responsible for all claims alleging that JOHNSON’S® Baby Powder and other talc-containing products cause cancer or other diseases.... Old JJCI also became responsible for all claims alleging that Shower to Shower products, which contained talc, cause cancer or other diseases.”
- (b) J&J and its subsidiary, “Johnson & Johnson Consumer, Inc.,” both in the form of “Old JJCI” and “New JJCI” (which is identified and described below), were at all times material responsible for the design, labeling, marketing, distribution, and sale of J&J’s body powder product lines, including the iconic Johnson & Johnson Baby Powder product line.
- (c) Each and every one of the J&J’s corporate entities, including itself and its affiliated companies involved or associated with talc business and PRODUCTS, were at all times material to this case aware that raw talc ingredient and/or resulting talc-based PRODUCTS contained asbestos, and each and all collectively actively concealed such fact from the public for decades.
- (d) Prior to the implementation of J&J’s multifaceted restructuring of its consumer product subsidiaries in 2021, Old JJCI and its predecessors milled, manufactured, labeled, sold, supplied, distributed, and/or marketed asbestos-containing PRODUCTS to which Plaintiff was exposed.
- (e) In an effort to avoid or eliminate J&J and Old JJCI’s respective responsibility and liability for injuries and harm caused by Johnson & Johnson Baby Powder, as well as other talc PRODUCTS, in or about October 2021, Old JJCI underwent a series of corporate restructuring transactions under Texas state corporation and business law in which it split itself into two separate entities through a device referred to as a “divisive merger,” more commonly known as the “Texas Two Step.”
- (f) The corporate restructuring was designed and undertaken with the intent to isolate the talc liabilities of Old JJCI into a newly invented company created by J&J called “LTL Management LLC” (“LTL”). “LTL” is an acronym for “Legacy Talc Liability.”
- (g) LTL was immediately thereafter put into a Chapter 11 Bankruptcy wherein LTL and other J&J entities sought the protection of the Bankruptcy Code’s processes and machinery to obtain a stay of all pending litigation and construct an aggregate resolution of its outstanding present and future

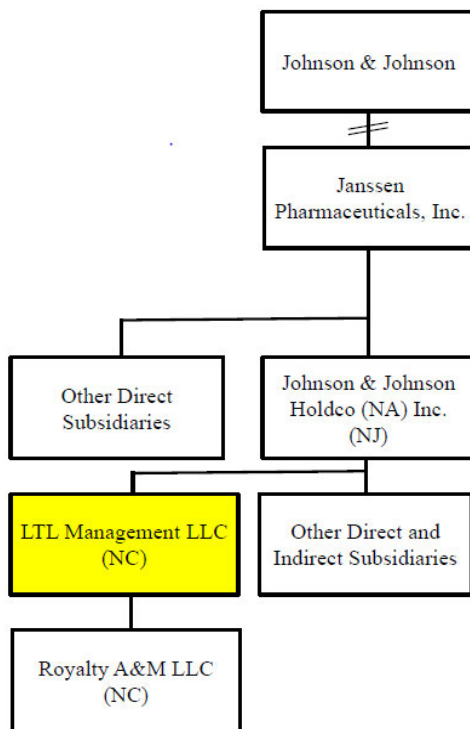
asbestos liabilities that would foreclose jury trials and reduce the compensation they would owe to those harmed by its PRODUCTS and their families, given that J&J and its subsidiaries were increasingly being held liable by juries in lawsuits brought by talc asbestos claimants and were being ordered to pay compensatory and exemplary damages.

- (h) As part of J&J's liability avoidance/limiting corporate restructuring, all of the productive assets of Old JJCI, including those used to manufacture and market J&J Baby Powder, were transferred to a newly minted corporate entity named "Johnson & Johnson Consumer Inc." ("New JJCI"). New JJCI upon receipt of the Old JJCI's operating assets continued to sell J&J Baby Powder, as had Old JJCI previously before when J&J itself directly marketed the product line through an internal division.
- (i) Over the objection of tens of thousands of personal injury and wrongful death tort plaintiffs, the Bankruptcy Court presiding over LTL's 2021 bankruptcy case stayed and enjoined prosecution of all litigation against not only the Debtor LTL but all cosmetic talc injury related litigation involving J&J and New JJCI.
- (j) During LTL's bankruptcy proceedings, representatives of the affected personal injury and wrongful death tort victims challenged J&J's Texas Two Step scheme before the Bankruptcy Court. After losing their challenges before the Bankruptcy Court, they were ultimately successful on appeal before the United States Court of Appeals for the Third Circuit, which on January 30, 2023, ruled that the Bankruptcy filing by LTL was not proper and ordered that LTL's 2021 Bankruptcy case be dismissed. In re: LTL Management, LLC, No. 22-0007, 2023 WL 2760479 (3d Cir., decided Jan. 30, 2023; opinion entered Mar. 31, 2023).
- (k) LTL's efforts to obtain re-argument before the Third Circuit panel hearing its appeal or an en banc hearing were denied, and the Appeals Court's mandate to the Bankruptcy Court was issued by the Third Circuit Clerk on March 31, 2023, thereby triggering the lower court's duty to enter an order dismissing the case.
- (l) Within hours of the LTL Bankruptcy Court issuing its ensuing dismissal order on April 4, 2023, LTL filed a second Chapter 11 petition for bankruptcy protection in the same court seeking the same relief as in the dismissed case, claiming its funding sources and arrangements had been replaced and reconfigured in such way that purportedly overcomes the Third Circuit's reasons for ordering the earlier bankruptcy case be dismissed.
- (m) Unbeknownst to Plaintiff, during the time the Third Circuit Court of Appeals was considering the propriety of LTL's bankruptcy filing, New JJCI began the process of moving its assets and business to yet another J&J

subsidiary, Defendant Kenvue, Inc., by transfers through JJCI's direct parent, Janssen Pharmaceuticals, Inc.

- (n) According to the Kim Declaration, as part of J&J's further corporate restructuring, New JJCI changed its name to "Johnson & Johnson Holdco (NA) Inc." ("Holdco"), a New Jersey corporation. His declaration before the Bankruptcy Court additionally revealed that "in early January 2023, [New JJCI] transferred its Consumer Business assets to its parent entity." See Kim LTL Decl. at ¶ 26.
- (o) While Mr. Kim's declaration does not expressly state who the parent entity is, a careful examination of the affidavit demonstrates that Janssen Pharmaceuticals, Inc. is the parent entity of Defendant New JJCI. *Id.* Figure 1 below is from an Exhibit to Mr. Kim's Declaration and shows that Janssen is the parent that received all of the JJCI assets used to manufacture, market, and sell J&J Baby Powder.

Figure 1



- (p) Accordingly, under South Carolina law, both Holdco and Janssen are successors to Old JJCI and responsible for the contractual undertakings and tortious conduct of Old JJCI.

- (q) The information gleaned from Mr. Kim’s Declaration and a J&J subsidiary’s SEC filings shows that J&J is in the process once again of manipulating assets and responsibilities related to the sale of J&J’s Baby Powder.
- (r) On January 4, 2023, Defendant Kenvue, another J&J subsidiary, submitted its first filing with the Securities and Exchange Commission (“SEC”), an S-1 registration of securities form. Kenvue Inc. Form S-1 Registration Statement Under the Securities Act of 1933 (Jan. 4, 2023). Figure 2 below reproduces a portion of the filing’s cover page.

Figure 2

As filed with the Securities and Exchange Commission on January 4, 2023.			Registration No. 333-
UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549 FORM S-1 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 Kenvue Inc. (Exact name of registrant as specified in its charter) 2844 (Primary Standard Industrial Classification Code Number) 199 Grandview Road Skillman, NJ 08558 (732) 524-0400 (Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)			
Delaware (State or other jurisdiction of incorporation or organization)		88-1032011 (I.P.S. Employer Identification Number)	

- (s) In its SEC registration filing, Kenvue sets forth the products that it claims to manufacture and sell in the United States. In this regard, Kenvue represented to the SEC and the public: “A number of our products marketed in the United States, including many of our products in our Skin Health and Beauty segment, are considered cosmetics regulated by the FDA through the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. Our cosmetic products include Aveeno Restorative Skin Therapy Oat Repairing Cream, Aveeno Restorative Skin Therapy Sulfate-Free Body Wash, Johnson’s Baby Powder and certain of our Listerine mouthwash products.” *Id.* (emphasis added).
- (t) Kenvue acknowledged in its SEC S-1 filing that it may be held accountable for the harm caused by the talc-based PRODUCTS it is responsible for: “It is also possible that various parties will seek to bring **and will be successful** in bringing claims against us, including by raising allegations that we are liable for the Talc-Related Liabilities” *Id.* (emphasis added).
- (u) Kenvue further acknowledges itself as the company responsible for the manufacture of Johnson’s Baby Powder indicating that it “may be subject to additional claims . . . related to the sale of talc-based Johnson’s Baby Powder in markets where we have discontinued this product (such as in the United States and Canada), including potential governmental inquiries,

investigations, claims and consumer protection cases from state attorneys general.” Id. (emphasis added).

- (v) Kenvue also acknowledges that it is “responsible for all liabilities on account of or relating to harm arising out of, based upon, or resulting from, directly or indirectly, the presence of or exposure to talc or talc-containing products sold outside the United States or Canada.” Id.
- (w) As such, Kenvue is responsible individually and as successor to all predecessor entities involved in the manufacturing, marketing, and sale of the asbestos-containing talc PRODUCTS to which the Plaintiff was exposed.

21. For purposes of clarity and avoidance of doubt, this Complaint is not asserting and does not assert claims against, or seek any relief from Imerys Talc Vermont, Inc., or any of its affiliates (collectively, “Imerys”), and not relief obtained by Plaintiff pursuant to this Complaint will be used by the Plaintiff against Imerys in any manner.

22. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

23. As a direct and proximate result of the conduct as alleged within, Plaintiff Michael L. Perry suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

24. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Michael L. Perry incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to

Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Michael L. Perry's medical treatment is ascertained.

25. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff Michael L. Perry incurred, and will continue to incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs pray leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

THE PARTIES

26. Plaintiffs, Michael L. Perry and Lonnie L. Long, are currently residents of the State of South Carolina. Plaintiff Michael L. Perry was exposed to asbestos during the course of his career at various job sites, including but not limited to, locations in South Carolina and Illinois.

27. Plaintiff Michael L. Perry was also exposed to asbestos from his personal use, and his family's use, of asbestos-containing talc-based powder products throughout his life in his Illinois, Florida and South Carolina homes beginning in the 1960s. The dust and fibers from the asbestos-containing talc products permeated his person and clothes. As a direct and proximate result of Michael L. Perry's inhalation and ingestion of dust particles and fibers, he was diagnosed with Mesothelioma on or about July 7, 2023.

28. Defendant, **AMERICAN INTERNATIONAL INDUSTRIES**, individually and as successor-in-interest to PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC. d/b/a ED. PINAUD, and NESTLE-LE MUR COMPANY, all for the CLUBMAN line of products, was and is a California General Partnership with its principal place of business in California. At all times material hereto, AMERICAN INTERNATIONAL INDUSTRIES was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding,

supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products and Pinaud talc products used by Plaintiff and others living in the same household with Plaintiff. AMERICAN INTERNATIONAL INDUSTRIES is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

29. Defendant, **AMERICAN INTERNATIONAL INDUSTRIES INC.**, individually and as successor-in-interest to PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC. d/b/a ED. PINAUD, and NESTLE-LE MUR COMPANY, all for the CLUBMAN line of products, was and is a Nevada corporation with its principal place of business in Nevada. At all times material hereto, AMERICAN INTERNATIONAL INDUSTRIES INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products and Pinaud talc products used by Plaintiff and others living in the same household with Plaintiff. AMERICAN INTERNATIONAL INDUSTRIES INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

30. Defendant, **ATLAS TURNER INC.**, f/k/a ATLAS ASBESTOS COMPANY LTD., was and is a Canadian corporation with its principal place of business in Canada. At all times material hereto, ATLAS TURNER INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos, asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, raw asbestos fibers sold to various manufacturers of asbestos products including, but not limited to, asbestos friction, drywall, fireproofing, and insulation products. ATLAS TURNER INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

31. Defendant, **AVON PRODUCTS, INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, AVON PRODUCTS, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Avon talc products used by Plaintiff and others living in the same household with Plaintiff. AVON PRODUCTS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this

Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

32. Defendant, **BARRETT'S MINERALS INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BARRETT'S MINERALS INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products used by Plaintiff and others living in the same household with Plaintiff. BARRETT'S MINERALS INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

33. Defendant, **BLOCK DRUG COMPANY, INC.**, individually and as successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a New Jersey corporation with its principal place of business in Pennsylvania. At all times material hereto, BLOCK DRUG COMPANY, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Gold Bond talc products used by Plaintiff and others living in the same household with Plaintiff. BLOCK DRUG COMPANY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the

State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

34. Defendant, **BRENNTAG NORTH AMERICA, INC.**, individually and as successor-in-interest to MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, BRENNTAG NORTH AMERICA, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson, Cashmere Bouquet talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. BRENNTAG NORTH AMERICA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

35. Defendant, **BRENNTAG SPECIALTIES, LLC** f/k/a BRENNTAG SPECIALTIES, INC. f/k/a MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware limited liability company with its principal place of business in New Jersey. At all times material hereto, BRENNTAG SPECIALTIES, LLC was authorized to do business in the State of South Carolina

and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson, Cashmere Bouquet talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. BRENNTAG SPECIALTIES, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

36. Defendant, **BRISTOL-MYERS SQUIBB COMPANY**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BRISTOL-MYERS SQUIBB COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. BRISTOL-MYERS SQUIBB COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

37. Defendant, **C&S WHOLESALE GROCERS, LLC** f/k/a C&S WHOLESALE GROCERS, INC., individually and as successor-in-interest to FLEMING COMPANIES, INC. successor-in-interest to PIGGLY WIGGLY COMPANY, was and is a Delaware limited liability company with its principal place of business in New Hampshire. At all times material hereto, C&S WHOLESALE GROCERS, LLC was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. C&S WHOLESALE GROCERS, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

38. Defendant, **CALVIN KLEIN INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, CALVIN KLEIN INC. was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Calvin Klein talc powder, used by others living in the same household with Plaintiff. CALVIN KLEIN INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective

products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

39. Defendant, **CHANEL INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, CHANEL INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Chanel talc products, including but not limited to Chanel No. 5 perfumed talc powder, used by others living in the same household with Plaintiff. CHANEL INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

40. Defendant, **CHARLES B. CHRYSTAL COMPANY, INC.**, was and is a New York corporation with its principal place of business in Connecticut. At all times material hereto, CHARLES B. CHRYSTAL COMPANY, INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by Plaintiff and others living in the same household with Plaintiff. CHARLES B. CHRYSTAL COMPANY, INC. is sued as a Product Defendant. Furthermore, this Defendant has

done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

41. Defendant, **CHATTEM, INC.**, individually and as successor to MARTIN HIMMEL, INC., successor to BLOCK DRUG COMPANY INC., successor to THE GOLD BOND STERILIZING POWDER COMPANY a/k/a THE GOLD BOND COMPANY, successor to GOLD BOND PHARMACEUTICAL CORPORATION, was and is a Tennessee corporation with its principal place of business in New Jersey. At all times material hereto, CHATTEM, INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products used by Plaintiff and others living in the same household with Plaintiff. CHATTEM, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

42. Defendant, **COLGATE-PALMOLIVE COMPANY**, individually and as successor-in-interest to THE MENNEN COMPANY, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COLGATE-PALMOLIVE COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting,

compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Cashmere Bouquet talc products and Mennen talc products, used by others living in the same household with Plaintiff. COLGATE-PALMOLIVE COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

43. Defendant, **COLOR TECHNIQUES, INC.**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, COLOR TECHNIQUES, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Cashmere Bouquet talc products, Estee Lauder talc products and Coty talc products, used by Plaintiff and others living in the same household with Plaintiff. COLOR TECHNIQUES, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

44. Defendant, **COTY INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COTY INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining,

designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Stetson talc products, used by Plaintiff and others living in the same household with Plaintiff. COTY INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

45. Defendant, **CVS HEALTH CORPORATION**, was and is a Delaware corporation with its principal place of business in Rhode Island. At all times material hereto, CVS HEALTH CORPORATION was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. CVS HEALTH CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

46. Defendant, **CVS PHARMACY, INC.**, was and is a Rhode Island corporation with its principal place of business in Rhode Island. At all times material hereto, CVS PHARMACY, INC. was authorized to do business in the State of South Carolina and Florida while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing,

converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. CVS PHARMACY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

47. Defendant, **EDC DRUG STORES, INC.**, f/k/a KERR DRUG STORES, INC., was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, EDC DRUG STORES, INC. was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. EDC DRUG STORES, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

48. Defendant, **ESTÉE LAUDER INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting,

compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. ESTÉE LAUDER INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

49. Defendant, **ESTÉE LAUDER INTERNATIONAL, INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INTERNATIONAL INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. ESTÉE LAUDER INTERNATIONAL INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

50. Defendant, **THE ESTÉE LAUDER COMPANIES INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, THE ESTÉE LAUDER COMPANIES INC. was

authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. THE ESTÉE LAUDER COMPANIES INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

51. Defendant, **FOOD LION, LLC**, was and is a North Carolina limited liability company with its principal place of business in North Carolina. At all times material hereto, FOOD LION, LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. FOOD LION, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

52. Defendant, **GENUINE PARTS COMPANY**, d/b/a NATIONAL AUTOMOTIVE PARTS ASSOCIATION (NAPA), was and is a Georgia corporation with its principal place of

business in Georgia. At all times material hereto, GENUINE PARTS COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing products, materials, or equipment including, but not limited to, asbestos-containing friction products, including but not limited to NAPA and Raylock brakes, and NAPA gaskets purchased and used by Plaintiff on his personal and family vehicles. GENUINE PARTS COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

53. Defendant, **GLAMOUR INDUSTRIES CO.**, individually and as an S-corporation of AMERICAN INTERNATIONAL INDUSTRIES successor-in-interest to PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC. d/b/a ED. PINAUD, and NESTLE-LE MUR COMPANY, all for the CLUBMAN line of products, was and is a California corporation with its principal place of business in California. At all times material hereto, GLAMOUR INDUSTRIES CO. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Clubman talc products used by Plaintiff and others living in the same household with Plaintiff. GLAMOUR INDUSTRIES CO. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and

distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

54. Defendant, **HAWTHORNE PHARMACY, INC.**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, HAWTHORNE PHARMACY, INC. was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. HAWTHORNE PHARMACY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

55. Defendant, **HIMMEL MANAGEMENT CO. LLC** a/k/a HIMMEL GROUP, formerly d/b/a MARTIN HIMMEL INC., individually and as successor to BLOCK DRUG COMPANY INC., successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a Florida limited liability company with its principal place of business in New York. At all times material hereto, HIMMEL MANAGEMENT CO. LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not

limited to, asbestos-containing Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. HIMMEL MANAGEMENT CO. LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

56. Defendant, **HIMMEL MEDIA LLC.**, individually and as successor to BLOCK DRUG COMPANY INC., successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a Delaware limited liability company with its principal place of business in New York. At all times material hereto, HIMMEL MEDIA LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. HIMMEL MEDIA LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

57. Defendant, **HONEYWELL INTERNATIONAL, INC.**, individually and as successor-in-interest to ALLIED SIGNAL, INC., as successor to BENDIX CORPORATION, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, HONEYWELL INTERNATIONAL, INC. was authorized to do business in the

State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing products, materials, or equipment including, but not limited to, asbestos-containing friction products, including but not limited to Bendix brakes, purchased and used by Plaintiff on his personal and family vehicles. HONEYWELL INTERNATIONAL, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

58. Defendant, **IDELLE LABS, LTD.**, was and is a Texas corporation with its principal place of business in Texas. At all times material hereto, IDELLE LABS, LTD. was authorized to do business in the State of South Carolina and Florida while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. IDELLE LABS, LTD. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

59. Defendant, **IMI FABI (DIANA) LLC**, was a North Carolina limited liability company with its principal place of business in West Virginia. At all times material hereto, IMI

FABI (DIANA) LLC was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to Estee Lauder talc products, used by others living in the same household with Plaintiff. IMI FABI (DIANA) LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

60. Defendant, **IMI FABI (USA) INC.**, was and is a Delaware corporation with its principal place of business in West Virginia. At all times material hereto, IMI FABI (USA) INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to Estee Lauder talc products, used by others living in the same household with Plaintiff. IMI FABI (USA) INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

61. Defendant, **IMI FABI, LLC**, was and is a West Virginia limited liability company with its principal place of business in West Virginia. At all times material hereto, IMI FABI, LLC

was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to Estee Lauder talc products, used by others living in the same household with Plaintiff. IMI FABI, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

62. Defendant, **JANSSEN PHARMACEUTICALS, INC.**, individually and as successor-in-interest to Johnson & Johnson subsidiaries named JOHNSON & JOHNSON CONSUMER INC., both prior to and after its 2021 restructurings and colloquially known as "Old JJCI" and "New JJCI", was and is a Pennsylvania corporation with its principal place of business in New Jersey. At all times material hereto, JANSSEN PHARMACEUTICALS, INC. was authorized to do business in the State of South Carolina, Florida and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. JANSSEN PHARMACEUTICALS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this

Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

63. Defendant, **JOHNSON & JOHNSON**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, JOHNSON & JOHNSON was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. JOHNSON & JOHNSON is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

64. Defendant, **JOHNSON & JOHNSON HOLDCO (NA) INC.**, f/k/a JOHNSON & JOHNSON CONSUMER INC., individually and as successor-in-interest to Johnson & Johnson subsidiary "Old JJCI", was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, JOHNSON & JOHNSON HOLDCO (NA) INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower

talc products, used by Plaintiff and others living in the same household with Plaintiff. JOHNSON & JOHNSON HOLDCO (NA) INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

65. Defendant, **KENVUE INC.**, individually and as successor-in-interest to JOHNSON & JOHNSON CONSUMER INC., was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, KENVUE INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. KENVUE INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

66. Defendant, **L'ORÉAL USA, INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA, INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting,

compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Drakkar Noir talc powder, used by Plaintiff and others living in the same household with Plaintiff. L'ORÉAL USA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

67. Defendant, **L'ORÉAL USA PRODUCTS, INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA PRODUCTS, INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Drakkar Noir talc powder, used by Plaintiff and others living in the same household with Plaintiff. L'ORÉAL USA PRODUCTS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

68. Defendant, **LTL MANAGEMENT, LLC**, is a North Carolina limited liability company with its principal place of business and headquarters in the State of New Jersey. Although other Defendants in this Complaint have acquired the assets and continued the business operations pertaining to Products, LTL MANAGEMENT, LLC is sued herein as the other Defendants have

each asserted as between themselves that LTL MANAGEMENT, LLC has also assumed the liabilities for those Products and claim that LTL MANAGEMENT, LLC is a party responsible and liable to Plaintiff for their injuries as it relates to Johnson & Johnson Baby Powder, Shower to Shower and possibly other talc products used by Plaintiff in the State of South Carolina, Florida and Illinois. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

69. Defendant, **MINERALS TECHNOLOGIES INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, MINERALS TECHNOLOGIES INC. was authorized to do business in the State of South Carolina Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied to Clubman talc products and Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. MINERALS TECHNOLOGIES INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

70. Defendant, **THE NESLEMUR COMPANY**, f/k/a THE NESTLE-LEMUR COMPANY, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, THE NESLEMUR COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing,

replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing talc fiber supplied to Clubman talc products, used by Plaintiff and others living in the same household with Plaintiff. THE NESLEMUR COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

71. Defendant, **PFIZER INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing talc fiber supplied to Coty talc products, including but not limited to Stetson talc products, used by Plaintiff and others living in the same household with Plaintiff. PFIZER INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

72. Defendant, **PIGGLY WIGGLY, LLC**, a subsidiary of C&S WHOLESALE GROCERS, LLC., individually and as successor-in-interest to FLEMING COMPANIES, INC. successor-in-interest to PIGGLY WIGGLY COMPANY, was and is a New Hampshire limited liability company with its principal place of business in New Hampshire. At all times material

hereto, PIGGLY WIGGLY, LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens and Gold Bond talc products, purchased and used by Plaintiff. PIGGLY WIGGLY, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

73. Defendant, **PNEUMO ABEX LLC**, individually and as successor-in-interest to ABEX CORPORATION, was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, PNEUMO ABEX LLC was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing products, materials, or equipment including, but not limited to, asbestos-containing friction products, including but not limited to Abex/Raylock brakes, purchased and used by Plaintiff on his personal and family vehicles. PNEUMO ABEX LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

74. Defendant, **PRESERSE CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, PRESERSE CORPORATION was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied to Avon, Chanel, Coty and Estee Lauder for use in their talc products used by Plaintiff and others living in the same household with Plaintiff. PRESERSE CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

75. Defendant, **THE PROCTER & GAMBLE COMPANY**, individually and as successor-in-interest to SHULTON INC., was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE PROCTER & GAMBLE COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Old Spice talc products and Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. THE PROCTER & GAMBLE COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its

dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

76. Defendant, **PTI ROYSTON, LLC** d/b/a PHARMA TECH INDUSTRIES f/k/a PHARMA TECH INDUSTRIES, INC. f/k/a BLACK CREEK CORPORATION, was and is a Delaware limited liability company with its principal place of business in Georgia. At all times material hereto, PTI ROYSTON, LLC was authorized to do business in the State of South Carolina Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. PTI ROYSTON, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

77. Defendant, **PTI UNION LLC** d/b/a PHARMA TECH INDUSTRIES, individually and as successor-in-interest to PHARMA TECH INDUSTRIES, INC. f/k/a BLACK CREEK CORPORATION, as successor-in-interest to DIRECT PHARMACEUTICAL CORPORATION and as successor-in interest to ENVI DIVERSIFIED, INC. f/k/a PHARMA-TECH INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, PTI UNION LLC was authorized to do business in the State of South Carolina, Florida and Illinois while engaged, directly or indirectly, in the business of

mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing talc fiber supplied, distributed and/or manufactured for Gold Bond talc products and Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. PTI UNION LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

78. Defendant, **RALPH LAUREN CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, RALPH LAUREN CORPORATION was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Polo talc powder, used by Plaintiff and others living in the same household with Plaintiff. RALPH LAUREN CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

79. Defendant, **RITE AID OF SOUTH CAROLINA, INC.**, was and is a South Carolina corporation with its principal place of business in Pennsylvania. At all times material

hereto, RITE AID OF SOUTH CAROLINA, INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. RITE AID OF SOUTH CAROLINA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

80. Defendant, **SHULTON INC.**, was and is an New Jersey corporation with its principal place of business in Ohio. At all times material hereto, SHULTON INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Old Spice talc products used by Plaintiff and others living in the same household with Plaintiff. SHULTON INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

81. Defendant, **SPECIALTY MINERALS INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, SPECIALTY MINERALS INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied, distributed and/or manufactured for to Gold Bond, Clubman and Coty talc products used by Plaintiff and others living in the same household with Plaintiff. SPECIALTY MINERALS INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

82. Defendant, **SUMITOMO CORPORATION OF AMERICAS**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, SUMITOMO CORPORATION OF AMERICAS was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied to Avon, Chanel, Coty and Estee Lauder for use in their talc products used by Plaintiff and others living in the same household with Plaintiff. SUMITOMO CORPORATION OF AMERICAS is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its

dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

83. Defendant, **TRUE PHARMACY**, was and is a South Carolina company with its principal place of business in South Carolina. At all times material hereto, TRUE PHARMACY was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. TRUE PHARMACY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

84. Defendant, **UNION CARBIDE CORPORATION**, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, UNION CARBIDE CORPORATION was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, Calidria asbestos fibers sold to US Gypsum, National Gypsum, Gold Bond, Georgia Pacific, Kelly Moore and others, for use in drywall joint compounds and other construction materials. UNION CARBIDE CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of

South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

85. Defendant, **VI-JON, LLC** f/k/a VI-JON, INC. f/k/a CUMBERLAND SWAN, was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, VI-JON, LLC was authorized to do business in the State of South Carolina Florida and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc sold and bottled for Walgreens and other retailers of talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. VI-JON, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

86. Defendant, **WALGREEN CO.**, was and is an Illinois corporation with its principal place of business in Illinois. At all times material hereto, WALGREEN CO. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. WALGREEN CO. is sued as a

Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

87. Defendant, **WALMART INC.**, was and is a Delaware corporation with its principal place of business in Arkansas. At all times material hereto, WALMART INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. WALMART INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

BACKGROUND FACTS

88. Plaintiff Michael L. Perry brings this action for monetary damages as a result of contracting an asbestos-related disease.

89. Plaintiff Michael L. Perry was diagnosed with Mesothelioma on or about July 7, 2023.

90. Plaintiff Michael L. Perry's mesothelioma was caused by his exposure to asbestos through his personal use, and his family's use, of asbestos-containing Talc Powder Products where asbestos-containing talc was a constituent ingredient throughout his life.

91. During his work history, Plaintiff was exposed to Defendants' asbestos-containing construction materials removed and replaced as a bystander to construction work and remodel performed in some of the hotels where he worked in various capacities of employment and management from approximately mid 1980s to approximately 1998 and in the early 2000s. These facilities were located in South Carolina and Illinois.

92. Plaintiff also was exposed to Defendants' asbestos-containing friction products during various times throughout his life while performing maintenance and changing the brakes on his personal vehicles and his family's vehicles from approximately 1984-1987. These activities exposed Plaintiff to asbestos, asbestos dust and fibers.

93. Plaintiff Michael L. Perry used, or had used on him by his parents and grandparents, the Talc Powder Products from 1969 continuously until approximately 2018, but does not know the precise date he stopped. He frequently and regularly dusted the Talc Powder Products on various parts of his body which at varying times may have included amongst other areas: neck, shoulders, collarbones, chest, arms, armpits, legs, genital area, and feet. During this time he repeatedly inhaled, ingested, and was regularly exposed to asbestos dust emanating from the asbestos laden talc within the Talc Powder Products permeating his person and clothes in his Illinois, Florida and South Carolina homes. All of these activities exposed Plaintiff to asbestos, asbestos dust and fibers.

94. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in his complaint that provided asbestos-containing talc as a constituent ingredient to the Talc Powder Products that he used.

95. Each use of the Talc Powder Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the product. It was foreseeable Defendants' asbestos-containing talc products would be sold for personal use by individuals like

Plaintiff Michael L. Perry on himself. Plaintiff was thereby exposed to defendants' asbestos-containing Talc Powder Products in the State of South Carolina and other states at times relevant to this action.

96. Plaintiff Michael L. Perry's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff Michael L. Perry's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

97. Plaintiff Michael L. Perry was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury and/or disease.

98. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

99. As a direct and proximate result of the conduct as alleged within, Plaintiff Michael L. Perry suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

100. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Michael L. Perry incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Michael L. Perry's medical treatment is ascertained.

101. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiffs incurred loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs request leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiffs Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

102. Plaintiffs incorporate herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

103. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos-containing talc products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry on himself. Plaintiff was thereby exposed to Defendants’ asbestos-containing talc products in the State of South Carolina.

104. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn

of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, distributed, bought, offered for sale, supplied, sold, inspected, marketed, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos-containing talc products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, in that said products caused personal injuries to Plaintiff Michael L. Perry and others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

105. The asbestos and asbestos-containing talc products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing talc products from causing Plaintiff Michael L. Perry’s mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing talc products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Plaintiff Michael L. Perry. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

106. Defendants, and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing talc products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for personal use by individuals like Plaintiff Michael L. Perry on himself, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff Michael L. Perry, would use or be in proximity to and exposed to said asbestos fibers.

107. At all times relevant, Defendants and/or their “alternate entities” were aware of their asbestos and asbestos-containing talc products’ defect but failed to adequately warn Plaintiff Michael L. Perry, Plaintiff’s family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

108. Plaintiff Michael L. Perry, Plaintiff’s family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff’s exposure to asbestos and asbestos-containing talc products occurred at various locations as set forth in this Complaint.

109. Plaintiff Michael L. Perry suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff Michael L. Perry was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury or disease.

110. Defendants' conduct and defective products as described in this cause of action were a direct cause of Plaintiff Michael L. Perry's injuries, and all damages thereby sustained by Plaintiff Michael L. Perry. Plaintiffs therefore seek all compensatory damages in order to make them whole, according to proof.

111. Furthermore, the conduct of Defendants and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff Michael L. Perry and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff and others similarly situated.

112. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, Defendants and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing talc products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

113. Defendants and their "alternate entities" were aware that members of the general public and other "exposed persons," who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-

containing talc products, or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, could cause injury, and Defendants, and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, would assume, and in fact did assume, that exposure to asbestos-containing talc products was safe, when in fact said exposure was extremely hazardous to health and human life.

114. The above-referenced conduct of Defendants, and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, distribution, purchase, offer for sale, supply, sale, inspection, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos-containing talc products and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos-containing talc products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to use and be exposed thereto, including Plaintiff Michael L. Perry.

115. Plaintiff Michael L. Perry and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff. The dangers inherent in the use of these products were not readily recognizable by Plaintiff Michael L. Perry or other exposed persons. Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

116. Defendants and/or their “alternate entities” are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

117. The herein-described conduct of Defendants and their “alternate entities,” was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiffs, for the sake of example and by way of punishing said Defendants, seek punitive damages according to proof against all defendants.

FOR A SECOND CAUSE OF ACTION

(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiffs Complain of Defendants, and Allege as Follows:

118. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

119. Plaintiff Michael L. Perry suffered from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing talc products and products manufactured for foreseeable personal use by individuals like Plaintiff. Plaintiff Michael L. Perry was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury and/or disease.

120. The Products Defendants’ conduct and defective products as described above were a direct cause of Plaintiff Michael L. Perry’s injuries, and the injuries and damages thereby sustained by Plaintiffs.

121. Furthermore, the Defendants’ conduct and that of their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff Michael L. Perry and the public without adequate warnings or proper use instructions, was done in a conscious

disregard and indifference to the safety and health of Plaintiff Michael L. Perry and others similarly situated.

122. Defendants and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for personal use by individuals like Plaintiff Michael L. Perry, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, “exposed persons,” including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

123. Plaintiff Michael L. Perry, Plaintiff’s family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, referred to herein in a manner that was reasonably foreseeable. Plaintiff Michael L. Perry’s exposure to asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry occurred at various locations as set forth in this Complaint.

124. Defendants and/or their “alternate entities” knew and intended that the above-referenced asbestos and asbestos-containing talc products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

125. The asbestos and asbestos-containing talc products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos, asbestos-containing talc

products, and products manufactured for foreseeable personal use by individuals from causing Plaintiff Michael L. Perry's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing talc products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing talc products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

126. The defect existed in the said products at the time they left the possession of defendants and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed persons," including Plaintiff Michael L. Perry herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

127. Plaintiff Michael L. Perry and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing talc products, or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Said Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff Michael L. Perry and others similarly situated were exposed.

128. Defendants' defective products as described above were a direct cause of Plaintiff Michael L. Perry's injuries, and the damages thereby sustained.

129. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, Defendants and/or their "alternate entities," and each of them, did so with conscious disregard for the safety of Plaintiff and other exposed persons who came in contact with the asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

130. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing talc products, had no knowledge or information indicating that asbestos or asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry could cause injury. Defendants and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry would assume, and in fact did assume, that

exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

131. The above-referenced conduct of Defendants and/or their “alternate entities” motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, distribution, purchase, offer for sale, supply, sale, inspection, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry. Defendants and/or their “alternate entities” consciously disregarded the safety of “exposed persons” in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff Michael L. Perry and other exposed persons and induced persons to use, be exposed to, and thereby injured by asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry.

132. Defendants are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their “alternate entities” as set forth herein.

133. The conduct of said defendants, their “alternate entities,” and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiffs, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

134. At all times herein mentioned, each of the named Defendants, and/or their “alternate entities,” was an entity and/or the successor, successor in business, successor in product

line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely products containing asbestos and talc products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry.

FOR A THIRD CAUSE OF ACTION
(Negligence Per Se)

As a Third Distinct Cause of Action for Negligence Per Se, Plaintiffs Complain of Defendants, and Allege as Follows:

135. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

136. The actions of Defendants also constituted negligence per se.

137. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Plaintiff Michael L. Perry. Plaintiffs are not making any claims under federal law; instead, Plaintiffs are simply using the violation of federal standards as proof of liability on their state-law theories. Further, the reference to Federal regulations does not create a federal question. See Merrell Dow Pharms., Inc. v. Thompson, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

138. The negligence per se of Defendants was a proximate cause of Plaintiff Michael L. Perry’s injuries.

FOR A FOURTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)

As a Fourth Distinct Cause Of Action for Breach of Implied Warranties, Plaintiffs Complain of Defendants and Allege as Follows:

139. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

140. Each of the Defendants and/or their “alternate entities” impliedly warranted that their asbestos materials or asbestos-containing talc products were of good and merchantable quality and fit for their intended use.

141. The implied warranty made by the Defendants and/or their “alternate entities” that the asbestos and asbestos-containing talc products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff Michael L. Perry used the talc products and was inhaled by Plaintiff Michael L. Perry.

142. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff Michael L. Perry was exposed to Defendants’ asbestos, asbestos-containing talc products, and/or products manufactured for personal use by individuals like Plaintiff Michael L. Perry and consequently developed mesothelioma, causing Plaintiffs to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Fifth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiffs Complain of Defendants, and Allege as Follows:

143. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

144. That during, before and after Plaintiff Michael L. Perry’s exposure to asbestos products manufactured by Defendants and/or their “alternate entities”, the Defendants and/or their

“alternate entities” falsely represented facts, including the dangers of asbestos exposure to Plaintiff Michael L. Perry in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff Michael L. Perry. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

145. The foregoing representations were material conditions precedent to Plaintiff Michael L. Perry’s continued exposure to asbestos-containing talc products. Defendants and/or their “alternate entities” each intended that Plaintiff Michael L. Perry act upon the representations by continuing his personal use of, and thereby exposure to, the asbestos-containing talc products. Plaintiff Michael L. Perry was ignorant of the falsity of Defendants’ representations and rightfully relied upon the representations.

146. As a direct and proximate result, Plaintiff Michael L. Perry’s reliance upon Defendants’ false representations, Plaintiff has suffered injury and damages as described herein.

FOR A SIXTH CAUSE OF ACTION

(Fraudulent Misrepresentation and Conspiracy/Concert Action as to Talc Manufacturers, Miners, Millers, Sellers, Compounders, and Distributors)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation and Conspiracy/Concert Action, Plaintiffs Complain of Talc Defendants, and Allege as Follows:

147. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

148. For decades, defendants manufactured products composed of talc that were sold and marketed as safe for daily use by consumers on their person to give off a pleasant smell, mask odors, prevent chaffing and/or absorb moisture. Defendants’ products were advertised as healthful for babies, children and adults and to be applied regularly to maintain freshness, keep skin soft, mask odors with a floral fragrance, prevent chaffing and/or absorb moisture.

149. Defendants and the Cosmetic, Toiletry & Fragrance Association (n/k/a Personal Care Products Council) (“CTFA”) made false statements to plaintiff, the general public, news media and government agencies that exercise regulatory authority over the cosmetic industry, including, but not limited to, the U.S. Food & Drug Administration (“FDA”), the National Institute of Occupational Health and Safety (“OSHA”), the National Institute for Occupational Safety and Health (“NIOSH”), the Mine Health and Safety Administration (“MHS”), and the National Toxicology Program (“NTP”), which, in turn, proximately caused plaintiff’s harm through intentional efforts to deceive the general public as to the safety of and presence of carcinogens, including asbestos, in talc-containing products.

150. Defendants and CTFA, for decades before Plaintiff Michael L. Perry was born, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos, in talc and that demonstrated the existence of health hazards to those exposed to asbestos-containing talcum powder products.

151. Talc is a hydrous magnesium silicate, inorganic material that is mined from the earth. It is used in the manufacture of goods, such as paper, plastic, paint and coatings, rubber, food, electric cable, ceramics, and cosmetics. In its loose form and as used in defendants’ products, talc is known as “talcum powder.”

152. Geologists, Defendants and CTFA—and their suppliers, experts, agents and advisors—have long known that the deposits in the earth that are associated with talc are also associated with the formation of asbestos. “Asbestos” is a commercial and legal term, rather than a geologic or scientific term, referring to six now-regulated magnesium silicate minerals that occur in fibrous form, including the serpentine mineral chrysotile, and amphibole minerals such as actinolite, anthophyllite, tremolite, amosite and crocidolite. The United States Geological Survey on Commercial Talc production in 1965, as well as those dating back to the 1800s, note the

presence of tremolite, anthophyllite and chrysotile commonly among those minerals found within talc deposits.

153. Defendants, some of which have been and still are the largest talc producers and/or talc-containing product manufactures in the world, admit that they have long employed and/or consulted with doctors, scientists, geologists, mineralogists and toxicologists, and that they have long maintained extensive medical and scientific libraries and archives containing materials relating to the health hazards of talc and the presence of carcinogens, including asbestos, in talc and talc deposits.

154. Beginning in the 1930s, medical and scientific literature emerged indicating talc was commonly, if not invariably, contaminated with substances known or suspected of being carcinogenic, such as asbestos, silica, quartz, nickel and arsenic. Within the next several decades, an ever-growing body of medical and scientific literature demonstrated that direct and secondary exposure to talc, including asbestos-containing talc, was hazardous to exposed persons' health in that it could cause lung disease, cancer and death.

155. Defendants and their affiliates, employees, agents and/or suppliers were members of the National Safety Council. In March of 1933, Waldemar C. Dreesen of the United States Public Health Service reported 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% talc and 45% 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 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.”

156. In 1936, the National Safety Council published an article entitled “Lesser Known Facts About Occupational Diseases” that found “exposure to asbestos fibers, present in the weaving and grinding of dry asbestos material, offers another type of dust which may cause fatalities among workers.” In 1958, The New York Department of Labor published Industrial Code Rule No. 12 establishing regulations applying to all employees and employers relating to dangerous air contaminants and listing both asbestos and talc as such substances.

157. In 1968, a study presented at the American Industrial Hygiene Conference & Exposition 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.” L. J. Cralley, et al., Fibrous and Mineral Content of Cosmetic Talcum Products, 29 Am. Ind. Hyg. Assoc. J. 350-354 (1968). Defendants were aware of these findings.

158. In 1968, a scientific study of store-bought, commercially available talcum powders conducted by the Occupational Health Program, National Center for Urban Industrial Health, was published and presented by the American Industrial Hygiene Association. Defendants were aware of this study. The study revealed that, contrary to popular belief, talcum powders were not entirely

pure, but rather contained various fibrous minerals, including tremolite, anthophyllite and chrysotile. The study explained that such fibrous content was not unexpected because these types of fibers are often present in fibrous talc mineral deposits. Available documents indicate that during the same year and in the years following, at least one company began testing store-bought talcum powders for asbestos content. Despite tests showing some talcum powders contained asbestos, there is no evidence that positive results or the brand names of contaminated products were communicated to any governmental agency, the media or the public.

159. A 1976 follow-up study conducted by researchers at Mount Sinai Hospital in New York concluded that “[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc...We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products.” Rohl A.N., et al., Consumer Talcums and Powders: Mineral and Chemical Characterization, 2 J. Toxicol. Environ. Health 255-284 (1976). The Mount Sinai study results were published by various newspapers, including the New York Times and the Washington Post, and Defendants were aware of same.

160. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on talc-containing products. Defendants and CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers (including asbestos hazards) associated with cosmetic talcum powder products, such as Defendants’ products.

161. In 1971, the New York City of Environmental Protection Administration Air Resources Board conducted a study of two “leading” brands of talcum powder using transmission

electron microscopy (“TEM”) and X-ray diffraction (“XRD”) analysis, and found them to contain 5-25% tremolite and anthophyllite asbestos.

162. Soon thereafter, a symposium was held in August of 1971 at the FDA to discuss the issue of asbestos content of talcum powders with the talc industry, government officials, and doctors and scientists from Mt. Sinai Hospital, which was then the epicenter of the medical and scientific study of asbestos. Among other statements, participants and attendees heard: that asbestos should be banned in talcum powders; models should be set up to measure the levels exposure to asbestos experienced by persons using talcum powder containing asbestos at the lowest level of microscopic detection; and that finding asbestos in talc and talcum powder is extremely difficult, and the only truly reliable way to determine the asbestos content of talc and talcum powder is through TEM and electron diffraction. Defendants and CTFA, aware of the foregoing and citing costs as well as their fear of the public learning talc was contaminated with asbestos, ignored and completely rejected any measures to meaningfully test talc products to make sure they were free from asbestos and other carcinogens.

163. After this 1971 symposium, Dr. Weissler of the FDA hired Dr. Seymour Z. Lewin to test commercially available talcum powders for asbestos. Dr. Lewin tested 195 samples and found asbestos of varying amounts in 43. Many of Dr. Lewin’s positive results were eventually corroborated by Pfizer Inc. The results, however, were uncorroborated by two other laboratories, leading the FDA to the conclusion that XRD, optical and electron microscopy, and electron diffraction must be used to detect asbestos in talc and talcum powders.

164. Dr. Lewin of New York University disclosed twice in 1972 that asbestos had been found in cosmetic talc. In a report to the FDA on August 3, 1972, Dr. Lewin reported that of 195 talc products, 20 had tremolite, 7 had chrysotile, 9 had both tremolite and chrysotile, and 7 had substantial percentages of one of both. XRD had been used as the first step in analysis and the

presence of asbestos and was verified by the use of optical microscopy to disclose the presence of significant numbers of fibers. Shortly thereafter, Dr. Lewin reported to Whittaker, Clark & Daniels Inc. on September 30, 1972, that Italian talc 1615 contained about 2% tremolite and 0.5% chrysotile as determined with XRD and detailed microscopic exam. In a July 31, 1973, review of Dr. Lewin's testing of 195 talc samples, the FDA found "good semi-quantitative agreement" for tremolite on selected samples re-analyzed using optical microscope analysis by FDA and XRD by Pfizer. Agreement was not as good for chrysotile, but the review did warn that optical microscopy could "completely miss the presence of chrysotile if the fibers are submicroscopic, which may well be the case in finely-milled talc." In 1972, ES Laboratories reported that "1615" talc contained 1% chrysotile and that "4615" talc contained 3% chrysotile and 3% anthophyllite. An August 23, 1973, report by Johns-Manville on TEM analysis of commercial talcs reported that nine of fourteen samples contained chrysotile. Only five samples did not have detectable levels of chrysotile. Pages from the laboratory notebook of Colgate-Palmolive Co. scientist Paul Briscese from March 7, 1976, show that Old Regal (North Carolina) talc tested positive for tremolite, New Montana talc tested positive for anthophyllite and tremolite, and Italian talc tested positive for tremolite.

165. A December 10, 1973, report of the CTFA's Talc Subcommittee disclosed that optical microscope analyses of talcs from the Italian, Montana I & II, Alabama, Vermont, and North Carolina mines had failed the proposed FDA's method because of elevated chrysotile concentrations. This December 10, 1973, CTFA report also showed that several laboratories had reported chrysotile in many of the talc samples sent by the CTFA for evaluation of analytical methods as well as the several identifications of asbestos in talc mentioned.

166. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, including many of the

Defendants herein, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers associated with cosmetic talcum powder products, such as Defendants' products. On September 3, 1973, the FDA sent CTFA a letter regarding various means of measuring asbestos in talc, stating that "conventional methods employing X-ray diffraction or differential thermal analysis are not sufficiently reliable to produce quantitative results of the desired precision." The FDA further advised CTFA that it "has been exploring refractory optical microscopy as a means of measuring asbestos in talc." CTFA responded to the FDA's public notice on its proposed optical microscopy method on December 26, 1973. CTFA contended that the proposed method was not "reliable" for the detection of asbestos in talc, recommended a "collaborative effort between FDA and industry to develop such a method," and urged deferment of the proposed rule. Minutes of CTFA's Talc Subcommittee meeting on March 15, 1976, indicate that the FDA's "Dr. Shaffner suggested the possibility of having industry report periodically on the results of its analysis to the FDA." Dr. Estrin of CTFA responded that "the subcommittee would give serious consideration to this suggestion."

167. Contemporaneously, evidence began to emerge from testing conducted by various regulatory agencies revealing that asbestos was being found in food, beer and drugs, including intravenously injected medicines. In 1972, and later in 1973, the FDA filed notices of proposed rulemaking requiring talc used in food, food packing and drugs to be completely free of asbestos. These were some of the same "grades" of talc used by Defendants.

168. The talc industry's response, including that of the defendants, was swift and well-coordinated through CTFA, with which the defendants conspired and worked in concert to purposely create a flawed, voluntary testing and surveillance methodology for detecting asbestos in talc and block efforts to label and warn consumers regarding the dangers associated with the talc products, including defendants' products.

169. Regarding the FDA's proposed 1972 rule-making, the FDA Director of Product Development and Cosmetics, Dr. Schaffner, invited representatives of the talc industry to a meeting in August of 1972 to discuss the results of Dr. Lewin's study and inform them that the FDA was preparing to release a "Proposed Statement of Policy On Asbestos in Cosmetics Containing Talc." Dr. Schaffner explained that he was duty-bound and must publicize the brand names of the talcum powders that contained asbestos. CTFA's president, Dr. Merritt, strongly objected to the FDA alerting the general public and publishing the brand names of the talcum powders, as it would cause the manufactures "economic hardship." Dr. Merritt also threatened to sue the FDA to prevent the disclosure of the brand names. As a result, the FDA, defendants and CTFA never revealed or publicized the brand names of the talcum powders that contained asbestos, much to the detriment of the plaintiff and the general public.

170. In 1973, CTFA created a talc subcommittee and the Scientific Advisory Committee to develop a testing methodology for detecting asbestos in talc. Initially, CTFA designated a group of its members to tests talc grades used in talcum powder utilizing the methodology proposed by the FDA in its notice of rulemaking. Six samples of talc used in commercially available talcum powders, plus one talc sample purposely spiked with tremolite and chrysotile, were circulated among the members, including representatives of defendants. Of the eight participating members, four found asbestos in every sample, three did not find asbestos in any sample (including the spiked sample), and one found asbestos only in the spiked sample. In conclusion, all members agreed that the best and most reliable method of detecting asbestos in talc is not optical microscopy, but rather TEM and electron diffraction. The same members, however, dispensed with this analytical method, claiming TEM and electron diffraction equipment was too expensive, despite defendants then owning or having unfettered access to same.

171. From there, the difference between what defendants and CTFA knew diverged from what they were representing to the FDA. Defendants, CTFA and others in the industry knew that there was no such thing as asbestos-free talc—only talc in which asbestos could not be detected using the prevailing, most economic analytical methodology, XRD, which at the time could not accurately identify chrysotile asbestos in talc, nor detect tremolite asbestos contamination levels below 2-5%.

172. Defendants and the CTFA also did not disclose to the FDA that the overwhelming majority of talcum powder manufacturers and sellers were not testing their products for asbestos, and even if they were testing, it was done so superficially: only four or so grams per 20 tons of pre-shipment and pre-processed talc, as an example. Defendants and CTFA also failed to inform the FDA that they were not testing off-the-shelf talc powder products, but rather old samples that were never from the end products themselves. They also failed to inform the FDA that they were limiting their testing of talc to only one type of asbestos fiber to the exclusion of all other fiber types that are commonly found in talc deposits. What is more, to the extent defendants found asbestos in their samples, these positive results were not reported to the FDA. Instead, on their behalf, CTFA sent letters to the FDA in March of 1976 fraudulently claiming that industry testing had shown all talcum powder products to be completely free of asbestos.

173. Beginning in 1975 and 1976, researchers at New York Air Resources Board, Mt. Sinai School of Medicine, and the FDA became increasingly concerned that CTFA, defendants and the cosmetic industries were slow to address the issue of asbestos in talc and talcum powders. Defendants had not issued any recalls, provided consumer warnings, informed the FDA of any effort to ensure that talcum powders on the market did not contain asbestos, or developed a reliable methodology or protocol for ensuring that talc and talcum powder did not contain asbestos.

174. Taking matters into their own hands, Mt. Sinai Hospital researchers published a follow-up article to Dr. Lewin's 1971 study that demonstrated that some of defendants' talcum powders contained over 20% asbestos. The researchers concluded that "[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc...We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products." The results of the Mount Sinai study were known to the defendants and published the same year by the New York Times and the Washington Post.

175. Defendants and CTFA responded to these developments by falsely claiming that the industry was doing "everything" it could to solve the problem; issuing press releases falsely claiming that chrysotile had never been found in talcum powders; and intentionally suppressing data that showed tremolite was commonly found in talc and talcum powder.

176. CTFA subsequently began in earnest to produce a voluntary protocol and methodology that would provide defendants cover from both lawsuits and regulation. Egregiously, as concerned media members, citizens and regulators began asking more questions about which other brands of talcum powder contained asbestos, defendants and CTFA falsely represented that talcum powders have never contained asbestos.

177. Defendants and third parties collectively met with and corresponded with CTFA, as well as collectively met with the FDA and other government agencies, to individually and collectively advocate for the use of "voluntary" XRD testing of miniscule portions of the tons of talc to be used in consumer products. Defendants' "voluntary" method—that was developed collectively by defendants and CTFA and advocated to the FDA in lieu of regulations requiring asbestos labeling or warnings on talcum powder products—was inadequate because levels of asbestos contamination in talc commonly fell below the detection limit of the testing methods.

Defendants and CTFA also knew that asbestos contamination was not uniformly distributed, such that the miniscule amounts tested would not reveal the true level of contamination in talc products, such as those to which Plaintiff Michael L. Perry was exposed.

178. In support of its voluntary XRD methodology, which was finally published in 1977, CTFA produced letters to the FDA written by its members, including defendants, identifying tests conducted showing talcum powder products did not contain asbestos. CTFA, defendants and other talc product producers, however, never informed the FDA of the hundreds of positive tests showing talc and talcum powders contained asbestos and other carcinogens.

179. CTFA “Method J4-1,” published on October 7, 1976, states that TEM-SAED “offers greater sensitivity, but is not presented since it is unsuitable for normal quality control applications.” The published method, rather, relies on XRD with “the level of detection of amphibole by this method [being] 0.5% and above.” CTFA met with and corresponded with defendants and third parties, to individually and collectively advocate to the FDA for the use of inadequate XRD testing on miniscule portions of the tons of talc obtained from the mining sources to be used in the consumer products, followed by fewer “periodic” tests by TEM. This voluntary method was developed by CTFA and defendants, and was advocated to the FDA by CTFA and defendants in lieu of regulations requiring labeling and warnings on talcum powder products, even though CTFA and defendants knew that the J4-1 method would not reveal the true level of asbestos in the talc that reached consumers. In fact, the first “round robin” tests, which analyzed a “CTFA Tremolite-Spiked Talc,” resulted in 6 of 7 participating laboratories failing to detect the tremolite. In other words, 84% of the industry’s laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA’s own J4-1 method. There is no evidence that CTFA or defendants ever shared this remarkable failure with the FDA or the public.

180. Minutes of CTFA's Talc Subcommittee from February 24, 1975, stated "It was agreed, however, that chrysotile is never found in cosmetic talcs, based on numerous analyses by several investigators..." When referring to the challenge of chrysotile detection, an article entitled "Talc" in the January/March 1976 CTFA Cosmetic Journal, states that "The only known backup method for a positive identification in this event, is [TEM] with selected area diffraction." However, "despite many efforts, the committee had been unable to find a sample of cosmetic talc containing naturally occurring asbestos...it was asked, 'Why should we test for chrysotile if there isn't any?'" CTFA's Specification for Cosmetic Talc, revised on October 7, 1976, falsely represented that no fibrous asbestos was detected in cosmetic talc. Even after 1976, CTFA and defendants continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos and other carcinogens in the talc being used to manufacture cosmetic products. However, CFTA and defendants continued to represent that no asbestos was detected in cosmetic talc. These material representations adversely and directly impacted the FDA's attempt to adequately test consumer talc for asbestos and regulate cosmetics. The most sensitive method of identifying or detecting asbestos in cosmetic talc, TEM-SAED, was not used because CTFA represented that its "ultra-sensitivity could be a problem" and that it was too expensive to use. Instead, its J4-1 method relied on XRD alone for detection of asbestos at greater concentrations than 0.5%, a concentration that could allow more than a billion asbestos fibers per gram of talc to be passed off as "asbestos-free."

181. Defendants and CTFA made and published such representations, claiming that their testing method was adequate, that they were ensuring that talcum powder products were safe, and that the talc reaching consumers was "safe," despite having substantial knowledge and evidence to the contrary. Defendants intentionally and knowingly did so to avoid FDA regulations that may

have required them to place warnings regarding the asbestos content of their products, and thereby inform the public, including plaintiff, that talc-containing products contained asbestos.

182. CTFA then published an article in 1979 stating it conducted over three thousand tests of talcum powders and none of them found chrysotile. The article and report failed to disclose whether the talcum powders tested contained tremolite, anthophyllite or any other form of asbestos. This publication of half-truths was conveyed to the FDA and the public with the purpose of preventing regulations of cosmetic products. Thereafter CTFA's methodology became the standard by which nearly all talc was analyzed by the entire industry, including talc used in cosmetic and hygiene products today.

183. CTFA and defendants have represented to various news media outlets and the public at large that their products are "asbestos-free," when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods. "No asbestos detected" does not mean the product does not contain asbestos, but due to defendants' repeated conflation of the terms, the public has been led to erroneously believe talc products are safe. Furthermore, since defendants and CTFA did not have sufficient testing protocols in place to support the claims that talc products were safe or asbestos-free, such statements were recklessly made, as they had no reason to believe them.

184. Between 1970 and the 1990s, tests conducted by and on behalf of defendants and the talc industry continued to show that talc and talcum powder products contained asbestos. None of these positive tests have ever been produced or made known to any regulatory agency, and knowledge of their existence is only because of civil litigation.

185. Defendants and CTFA's failure to disclose these positive results and the inadequacies of their testing protocols continued through the 1980s, 1990s and 2000s, even when

various government agencies raised concerns about the safety of talc, including the issue of asbestos content.

186. To this day, many talc-containing products presently on the market contain asbestos. Instead of publicizing this fact, defendants and CTFA continue to deny all the above to protect their pecuniary interests, to the severe detriment of the public, including Plaintiff.

187. Since at least 1979, defendants have conducted a campaign to convince the public that their products are regulated by the FDA, that their tests are conducted pursuant to FDA regulations, and that talcum powder products are, therefore, safe. Nothing could be further from the truth: the FDA has never been assigned a budget by Congress to regulate cosmetics, including asbestos and other carcinogens in talcum powders. Defendants' concerns for the safety of their products have always been voluntary and under the auspices of CTFA, a private industry group, that in its 40 years has only banned the use of 11 ingredients in all cosmetics ever sold in the United States. Indeed, as of today, asbestos-containing talc in cosmetics has not been banned or otherwise regulated by CTFA or the FDA.

188. Defendants (and other entities in the talc industry and cosmetic industries, including the CTFA), individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in both their finished products as well as talc shipments from Talc Supplier Defendants and other sources that were used to produce finished products.

189. Defendants, and even the outside laboratories, including McCrone Associates, sent letters to CTFA, to be and which were forwarded to the FDA, stating that results of testing of talc used by them after 1972 had not revealed the presence of amphibole or chrysotile asbestos, when in fact all of these entities had received or performed tests indicating the contrary when such false representations were made.

190. After 1976, defendants and CTFA continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos in talc.

191. Defendants failed to place any warning on their talc and talcum powder products or ever disclose the fact that these products contained carcinogens, including asbestos, at any point, up to and including the present, despite the clear hazard and direct information that their products did and continue to contain such carcinogens.

192. Defendants and CTFA, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, distribution and use of talcum powder products, and controlled the level of knowledge and information available to the public, including Plaintiff, regarding the hazards of exposure to carcinogens, including asbestos, from talc and talc-containing products.

193. Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including Plaintiff, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos in their talc and talc-containing products.

194. Defendants and CTFA, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder products, including those to which Plaintiff Michael L. Perry was exposed.

195. Defendants and CTFA, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data and embarked upon a plan of deception intended to deprive the public at large, including plaintiff, of alarming medical and

scientific findings, many of which remained in their exclusive possession and under their exclusive control.

196. Defendants and CTFA conspired and/or acted in concert with each other and/or with other entities through agreement and consciously parallel behavior:

- (a) to withhold from users of their products—and from persons who they knew and should have known would be exposed thereto—information regarding the health risks of inhaling and/or ingesting asbestos and other carcinogens contained in talc and talcum powder products;
- (b) to eliminate, suppress or prevent investigation into the health hazards of exposure to asbestos and other carcinogens in talc and talcum powder products;
- (c) to ensure that asbestos-containing talc and talcum powder products became widely used in commerce, irrespective of the potential and actual risk of harm to the users and consumers from the asbestos and other carcinogens therein; and
- (d) to falsely represent that talc and talcum powder products, including those of defendants, were safe and healthful for use by consumers.

197. Plaintiff reasonably and in good faith relied upon the false and fraudulent representations made by defendants and CTFA regarding the hazards of talc and talcum powder products that contained asbestos and other carcinogens, and he was, therefore, deprived of an opportunity to make informed decisions concerning use of, exposure to and contact with said products.

198. CTFA, as well as defendants and other entities in the talc industry and cosmetic industries, individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in defendants' and other CTFA members' finished products as well as talc shipments from talc suppliers and other sources that were used to produce finished products. Instead, CTFA sent letters to the FDA stating that results of testing of talc used by the industry after 1972 had not revealed the presence of amphiboles or

chrysotile, when in fact all of these entities had received or performed tests indicating the contrary by 1976, when such intentionally false misrepresentations were made. CTFA and defendants made and published such representations claiming that their collective testing method was adequate, they were ensuring that talcum powder products were safe, and that their testing of talc reaching consumers was “safe,” despite knowing the contrary.

199. The FDA, and ultimately Plaintiff, directly and/or indirectly relied upon CTFA’s and defendants’ false representations regarding the safety of cosmetic talc. In fact, an FDA letter dated January 11, 1979, states: “In cooperation with scientists from industry, our scientists have been making progress in the development of such regulatory methods.” The continuing lack of FDA awareness regarding CTFA’s and defendants’ misrepresentations was obvious seven years later. In a response to a citizen petition to require an asbestos warning label on cosmetic talc, on July 11, 1986, the FDA states that an “analytical methodology was sufficiently developed” to ensure that “such talc [is] free of fibrous amphibole...” CTFA’s J4-1 method has continued for the past four decades to be the cosmetic talc industry’s method for “ensuring” “asbestos-free” talc. The use of TEM, recognized by the CTFA as offering “greater sensitivity” for asbestos, continued to increase over the following decades as its advantages were applied to more matrices. In 1990, Kremer and Millette published a TEM method for analysis of asbestos in talc with a theoretical detection limit of about 0.00005%. Despite such improvements in analytical techniques, the cosmetic talc industry, including defendants, continues, four decades later, to use and promote its antiquated and wholly inadequate J4-1 method.

200. CTFA and defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, marketing, distribution and use of asbestos-containing talcum powder products, and controlled the

level of knowledge and information available to the public regarding the hazards of exposure to asbestos and other carcinogens from talc and talc-containing products.

201. CTFA and defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including plaintiff and their family members, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos from their talc and talc-containing products.

202. CTFA and defendants, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder, and specifically talc and talcum powder used in the production of products to which Plaintiff Michael L. Perry was exposed.

203. CTFA and defendants, through agreement and consciously parallel behavior, suppressed, altered, changed, destroyed and/or revised reports, data, tests, studies and other documents regarding the potential presence of asbestos and other carcinogens in talc and talc-containing products, including defendants' products to which Plaintiff Michael L. Perry was exposed.

204. As recently as 2016, Defendants made material misrepresentations to the FDA regarding asbestos in its talcum powder products.

205. For additional details regarding and supporting plaintiff's claim, see Bird T., et al., "A Review of the Talc Industry's Influence on Federal Regulation and Scientific Standards for Asbestos In Talc," New Solut., 2021 Aug; 31(2): 152-169.

206. Defendants, both acting individually and in concert with others, including the CTFA, violated the common law duty of care owed to plaintiff or otherwise engaged in intentionally culpable activity that caused Plaintiff to suffer severe injuries and damages.

207. As a direct and proximate consequence of the foregoing acts and omissions, Plaintiff Michael L. Perry (i) relied on defendants' false assurances that their talc-containing products were free from asbestos and safe, (ii) used or was otherwise exposed to defendants' talc-containing products; (iii) and inhaled and/or ingested asbestos resulting from the ordinary and foreseeable use thereof.

208. The actions and omissions of defendants, independently and collectively, constitute a pattern or practice of intentionally wrongful conduct and/or malice resulting in injuries to Plaintiff as described in this complaint.

209. As a direct and proximate consequence of the foregoing acts and omissions by the defendants, Plaintiff Michael L. Perry used or was otherwise exposed to defendants' products and inhaled and/or ingested asbestos resulting from the ordinary and foreseeable use thereof.

FOR A SEVENTH CAUSE OF ACTION

**(Fraud as to Defendants Johnson & Johnson,
Johnson & Johnson Holdco (NA) Inc., Janssen Pharmaceuticals Inc., Kenvue Inc., and
LTL Management LLC)**

For a Seventh Distinct Cause of Action for Fraud, Plaintiffs Complain of Defendants, and Allege as Follows:

210. Defendants JOHNSON & JOHNSON, JOHNSON & JOHNSON HOLDCO (NA) INC., f/k/a Johnson & Johnson Consumer Inc., individually and successor-in-interest to Johnson & Johnson subsidiary "Old JJCI", JANSSEN PHARMACEUTICALS INC., individually and as successor-in-interest to Johnson & Johnson subsidiaries named Johnson & Johnson Consumer Inc., both prior to and after its 2021 restructurings and colloquially known as "Old JJCI" and "New JJCI", KENVUE INC., individually and as successor-in-interest to Johnson & Johnson Consumer

Inc., and LTL MANAGEMENT LLC (collectively “J&J”) made false representations regarding the asbestos content of their talc products, including Johnson’s Baby Powder and Shower to Shower used by Plaintiff Michael L. Perry, misrepresentations that Plaintiff relied on to his detriment and which caused the development of his mesothelioma. J&J’s misrepresentations were deliberate and were effectuated through a campaign to hide and destroy laboratory testing detecting asbestos in Johnson’s Baby Powder and Shower to Shower, to manipulate the protocols for such testing to falsely suggest no asbestos was found in Johnson’s Baby Powder and Shower to Shower, and to repeatedly assert to the public and federal regulatory agencies that Johnson’s Baby Powder and Shower to Shower were safe.

211. Johnson’s Baby Powder was a critical cornerstone product for J&J, referenced as the company’s “golden egg” and “sacred cow.” See Exhibit 1 (04/28/1997 The Johnson & Johnson Advantage: Emotional Trust); see also Exhibit 2 (08/18/1997 Mother-Baby Strategic Mission); see also Exhibit 3 (08/20/1997 Johnson & Johnson "Golden Egg" Advertising Strategy); see also Exhibit 4 (excerpt of 08/04/1999 Johnson & Johnson Baby Camp PowerPoint); see also Exhibit 5 (excerpt of 08/10/1999 Johnson & Johnson Baby Camp PowerPoint with Koffman (Golden Egg presentation)).

212. J&J knew that its cosmetic talc products, including Johnson’s Baby Powder and Shower to Shower, contained asbestos fibers, knew those asbestos fibers could cause cancer, and knew that it was not safe to be selling such products to the public for use on babies, children, and adults. In a memorandum dated April 9, 1969, J&J internally expressed concern that the presence of tremolite asbestos in its talc products would cause pulmonary diseases and cancer and increased the risk that the company would be drawn into litigation. J&J acknowledged that trace amounts of tremolite were unavoidable, and that efforts should be made to keep the amount of tremolite to a minimum.

213. In a memorandum dated July 30, 1971, J&J was informed that there is no place for asbestos in talc, trace amounts were not acceptable, and any talc with asbestos should be removed from the market. J&J was informed that no level of asbestos in talc is acceptable for cosmetic use.

214. In a memorandum dated October 16, 1997, J&J acknowledged that there is no doubt that “mesothelioma can be caused by non-occupational exposure to mineral fibers” and that “mesothelioma may occur after brief or indirect exposure to asbestos.” This memorandum further stated that tremolite is considered one of “the most potent mesothelioma producers” and that scientists contend that trace amounts of tremolite in other minerals is responsible for mesotheliomas.

215. In its memorandum of October 16, 1997, J&J acknowledged that “in several mesothelioma patients studied, both talc fibers and tremolite were detected. In fact, the majority of asbestos bodies isolated from the lungs of women in the general population have tremolite or anthophyllite and because tremolite and anthophyllite are known contaminants of talc, this data suggests that rare cases of mesothelioma among women with no other identifiable exposure might be related to exposure to cosmetic talc.” Further, an environmental factor that must be given “major consideration in the incidence of Mesothelioma” includes “tremolite asbestos” which “is a known contaminant [of] some deposits of talc.”

216. J&J’s corporate representative has acknowledged in litigation that it has known for years that the talc used in Johnson’s Baby Powder could be inhaled and reach deep into the lung. For decades, J&J has known about the dangers of talc powder inhalation during the normal use of its talc-based cosmetic products, especially to babies.

217. The relationship between asbestos exposure and mesothelioma has been well understood since the 1960s and numerous studies confirm that causal relationship. J&J was aware of this causal relationship through its knowledge of the scientific literature and its membership in trade organizations through which such knowledge was distributed.

218. Beginning at least in the 1950s, J&J tested its talc for impurities or comineral, including “asbestos” and “tremolite,” because the company knew they are deleterious minerals that could be harmful to a person’s health and thus should not be found in talc-based cosmetic products. At all relevant times, J&J understood the dangers posed by asbestos exposure and that asbestos was a known impurity of talc.

219. J&J, internally and through hired testing laboratories such as the Battelle Memorial Institute, McCrone Associates, and the Colorado School of Mines Research Institute, tested for asbestos impurities in the source talc ore, processed ore, and finished products used to manufacture J&J cosmetic talc products. All of these testing laboratories found asbestos minerals in J&J source talc ore or cosmetic talc products. Independent labs have also found asbestos in the talc used in J&J cosmetic talc products.

220. The existence of laboratory tests finding asbestos in J&J cosmetic talc products and source talc used in those products has been verified by J&J under cross examination in recent litigation. J&J knew about these positive test results all along. In 1972, J&J executives acknowledged internally that the results of testing demonstrating the presence of asbestos in J&J’s cosmetic talc products and the source ore used to make these products. At that time, J&J confirmed that McCrone found trace tremolite and that these findings are “not new.”

221. In May 1973, Roger Miller, the President of J&J’s mining company, Windsor Minerals, informed J&J that “the ore body contains actinolite.” This talc ore body was actively used to produce J&J’s cosmetic talc products. One week later, J&J’s records note that “[t]he first showing of actinolite we know about is October 1972.”

222. J&J consistently lied about these positive test results for decades. In response to consumer inquiries, J&J has assured consumers that “asbestos has never been found in Johnson’s Baby Powder and it never will.” In print advertisements as late as December 19, 2018, J&J told the public

that “Baby Powder does not contain asbestos and never will. We test every single lot to ensure it.” The Johnson’s Baby Powder product label says it was the “Purest Protection” and it was advertised as “the best you can buy” and “the purest.”

223. J&J has acknowledged that the intent of these representations to consumers has always been to “to reassure them they could feel safe and comfortable using Johnson’s Baby Powder because it does not contain asbestos” and to convey that in using Johnson’s Baby Powder, there was “zero chance” of exposing their families to asbestos. The statements that Johnson’s Baby Powder and Shower to Shower does not contain asbestos, that there was “zero chance” consumers were exposing their families to asbestos were false when they were made, and J&J knew they were false when they made those statements. As a direct result of J&J’s false representations that Johnson’s Baby Powder and Shower to Shower never contained asbestos, millions of people, including babies, were unwittingly and needlessly exposed to asbestos.

224. J&J has never placed warnings on its talc-based powder products about the potential hazards presented by the product being aerosolized in normal application. J&J never placed warnings on its powder products about the risk of asbestos exposure or cancer.

225. Instead, J&J represented to the public that Johnson’s Baby Powder was safe. J&J withheld from their spokespeople whose job it was to communicate the “no evidence of asbestos” message any reports indicating there was in fact evidence of asbestos in Johnson’s Baby Powder. J&J’s misrepresentations and omissions regarding the safety of Johnson’s Baby Powder and Shower to Shower has resulted in consumer use of this and other cosmetic talc products in a potentially lethal way without any knowledge of the danger.

226. Since the early 1970s the FDA has repeatedly asked J&J whether there was any evidence of any amount of asbestos in any J&J cosmetic talc product. J&J’s answer to the FDA’s inquiries was always the same: there is no evidence of any amount of asbestos in any J&J cosmetic

talc product. Over the course of more than four decades, J&J represented to the FDA over and over again that there is not a single instance or report of asbestos – including chrysotile asbestos – in its products.

227. In a letter dated September 21, 1971, J&J represented to the FDA that its data “conclusively proves that Johnson’s Baby Powder is free of asbestos.” J&J has represented to the FDA that “no amphibole materials have been detected” in the company’s talc-based products. Documentation of a meeting between J&J and the FDA in 1972 shows that, when pressed, J&J went so far as to represent to the FDA that “there wasn’t a shred of evidence to support the idea that either our Johnson’s Baby Powder or Shower to Shower contained any chrysotile asbestos.”

228. Although aware of repeated McCrone reports over the course of years to the contrary, J&J falsely represented to the FDA that its consultant McCrone never found asbestos in the talc ore that was used to make Johnson’s Baby Powder and Shower to Shower. In 1976, J&J rejected the FDA’s request to provide the results of its respective periodic monitoring for asbestos.

229. J&J also submitted false and misleading statements through its trade association, the Cosmetic, Toiletry & Fragrance Association (“CTFA”) (n/k/a Personal Care Products Council) (“PCPC”). The CTFA made false statements to Plaintiff, the general public, news media, and government agencies, including, but not limited to the FDA, the National Institute of Occupational Health and Safety (“OSHA”), the National Institute for Occupational Safety and Health (“NIOSH”), the Mine Health and Safety Administration (“MHSA”), and the National Toxicology Program (“NTP”), which, in turn, proximately caused Plaintiff’s harm through intentional efforts to deceive the general public and regulatory authorities as to the safety of and presence of carcinogens in Johnson’s Baby Powder and Shower to Shower.

230. J&J used the CTFA to communicate false information about the purity of its talc and lack of asbestos content, as evidenced by a letter dated March 15, 1976. This false information was

then transmitted by the CTFA to the FDA to “give assurance as to the freedom from contamination by asbestos form materials of cosmetic talc products.” This was done after J&J was aware of over 50 reports about asbestos minerals and fibers in the talc it used for cosmetic talc products. Two weeks after relaying this false information, J&J met privately in Hillside, New Jersey and congratulated themselves on the “success” of the “presentations” to the FDA and agreed that they should not bind themselves to having to further update the FDA.

231. J&J and other industry members agreed to do testing on their respective cosmetic talc products in a “round robin” format. The testing was done using a table that identified the manufacturer of the samples that were tested. Multiple samples contained asbestos. In a letter dated March 1, 1978, the Chairman of the CTFA Task Force on Round Robin Testing and then current employee of J&J instructed the CTFA to “destroy your copy of the table” containing the results finding asbestos in cosmetic talcs.

232. Although possessing test results indicating that the talc used in its talc-based products contained tremolite and chrysotile asbestos — reportable as asbestos under federal regulations — J&J represented to the NTP that there was never any evidence of asbestos in the talc used in Johnson’s Baby Powder and Shower to Shower. And decades after asbestos was first reported, J&J continued to represent to the FDA that it had confirmed “the absence of asbestiform minerals” in its finished talc-based products. It did so in the CTFA’s Comments in Response to a Citizens Petition dated June 27, 1995.

233. As recently as 2016, in a document dated March 17, 2016, J&J represented to the FDA that no asbestos structures have ever been found in its talc-based products in any testing anywhere in the world. This statement made to the FDA was false.

234. In an advertisement to the public dated December 19, 2018, J&J falsely claimed that it has cooperated fully and openly with the FDA and other regulators. In fact, J&J did not provide

the FDA with positive asbestos tests from its hired consultants, including McCrone, and the Colorado School of Mines. J&J did not tell the FDA that it possessed test results finding asbestos in the mine ore and the finished talc product nor did it give those results to the FDA.

235. J&J also used its consultants as vehicles to intentionally mislead the FDA. A letter dated October 12, 1971, evidences that J&J knew that its standby consultant McCrone purposely omitted findings of asbestos in its talc-based products because it “would only tend to confuse the issue perhaps with the FDA” and that McCrone offered that if J&J “decide[d] to use these reports with the FDA” to “please call us.”

236. As a part of its testing protocol for J&J’s talc products, McCrone would segregate any test results that were positive for the presence of asbestos in talc ore or cosmetic talc products from those that allegedly found “no quantifiable” asbestos. For instance, on April 29, 1986, under McCrone Project No. ME-2275 and Purchase Order WS-0503, McCrone authored two separate reports of test results for Windsor Minerals. The first was for 11 talc samples in which “no quantifiable” amounts of asbestiform were found. The second was for the three talc samples (noticeably extracted from the numbering sequence) in which traces of chrysotile were found.

237. McCrone and J&J worked together to manipulate the asbestos testing results of J&J products done by outside laboratories and reported those manipulated findings to the FDA as negative results. For example, in a report dated October 27, 1972, McCrone found tremolite asbestos in J&J talc products but a handwritten note was written in large print on the front of the report stating: “DO NOT USE THIS REPORT.” The report was revised to remove the quantification of asbestos found.

238. Similar asbestos findings by other J&J consultants were also hidden from the FDA. J&J submitted to the FDA testing performed by Professor Hutchinson from the Minnesota Space Center only in excerpts that removed all references to his “incontrovertible” findings of chrysotile asbestos. J&J did not submit a March 1974 test results from Professor Reynolds at Dartmouth College

that “Actinolite is the dominant fiberform amphibole in the ore and talc product provided by Windsor Minerals.” Instead, J&J submitted test results to the FDA from Dartmouth claiming that no amphiboles were found in the company’s talc products.

239. J&J had its consultants use purposefully misleading laboratory tests to support its false claims that its talc ore and talc products were free of any asbestos. Since at least 1971, J&J has known that transmission electron microscopy (“TEM” or electron microscopy) is the superior microscope to detect asbestos in talc and was its consultants’ recommended testing method. In fact, the positive asbestos results obtained by Professor Hutchinson utilized the TEM method. But J&J convinced the FDA that lesser test methods were effective, knowing that those lesser methods had failed to detect asbestos that was verified to be present in J&J’s cosmetic talc products. J&J routinely submitted test reports to the FDA as proof that its talc was asbestos free knowing that the methods used would not detect asbestos at low levels and thus were not reliable to rule out the presence of asbestos. For example, a McCrone report dated April 24, 1974, noted that lesser methods failed to find asbestos in over a dozen samples where the asbestos was confirmed when using the correct tool – TEM.

240. Despite J&J’s knowledge that other testing methods missed verified asbestos in its talc, J&J advocated an industry standard using one of the weaker/lesser methods and claimed it would ensure the talc was asbestos free. This method is known as J4-1. The J4-1 testing method utilized x-ray diffraction (“XRD”) as the initial screen to determine if any further testing was necessary. The limit of detection was between .5% and 5% and ensured that millions to trillions of asbestos fibers in a gram of talc could escape detection. Using the J4-1 method, if the XRD test result was negative, no more testing would occur, and the sample would be reported as “none detected.” This process virtually guaranteed that low levels of asbestos would never be found. J&J also knew that XRD could not detect chrysotile at levels below two percent of the talc product and was also incapable of detecting low levels of tremolite. In the unlikely event an XRD test result was positive, J&J’s second step

utilized polarized light microscopy (“PLM”), also a lesser testing method, and J&J instructed the PLM analyst not to count all of the fibers he or she would actually see under the microscope. Short fibers, below a defined size, recognized as carcinogenic, were excluded from any reporting.

241. The CTFA’s December 10, 1973 report confirmed that multiple talc sources, including Italian and Vermont talc, failed the proposed FDA’s method because of elevated chrysotile concentrations. Thereafter, the CTFA proposed J4-1 knowing it was a “unreliable” testing method for asbestos in talc. The first “round robin” tests, which analyzed a “CTFA Tremolite-Spiked Talc,” resulted in six of seven participating laboratories failing to detect the tremolite. In other words, 84% of the industry’s laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA’s J4-1 method. There is no evidence that CTFA or J&J ever shared this remarkable failure with the FDA or the public.

242. J&J also knew that the “concentration method” of sample preparation was most able to detect the presence of asbestos in its talc and thus provide more accurate results. Internal memorandums from 1973 show that J&J understood that the concentration method was “much more sensitive than our proposed specifications” and when used found traces of tremolite which the J&J testing methods would fail to expose. J&J’s stated concern with using a concentration method, set forth in a memorandum dated May 16, 1973, was that it was too good at detecting asbestos – it was too sensitive. Correspondence dated February 18, 1975 indicates that J&J rejected the concentration method because the effective and sensitive testing was not “in the worldwide company interest.” Indeed, many of J&J’s consultants — including the Colorado School of Mines, Professor Pooley of Cardiff University, Professor Reynolds of Dartmouth College, and Professor Alice Blount of Rutgers University — found asbestos in J&J’s talc-based cosmetic products using the concentration method. J&J did not provide any of those test results to the FDA, however.

243. When J&J finally decided to use TEM on a limited basis in 1995, it implemented a TEM reporting methodology designed to yield negative, rather than accurate results. J&J called its method TM7024. According to this method, a lab would report the test results as negative and “not quantifiable” unless the scientist counted 5 or more asbestos fibers of the same variety in an incredibly small sample (it varied but was well under 50 milligrams). Thus, even if the examiner identified, counted and quantified as many as 16 asbestos fibers (four fibers of tremolite, four fibers of actinolite, four fibers of anthophyllite, and four fibers of chrysotile) the finding of asbestos was not to be reported. This method instructed labs who confirm the presence of asbestos in incredibly small samples to “couch” the results in specific and deceptive language that the lab “did not find any quantifiable amount of asbestosforms minerals.” J&J’s position about the scientific propriety of its TM7024 testing protocol was and remains inconsistent with EPA protocols for counting asbestos fibers.

244. Even though J&J tested miniscule amounts of product, and utilized methods specifically designed to yield negative results, asbestos was still found in J&J’s cosmetic talc. J&J never produced these test results to the public until 2017. In editing information for its website in about 2016, J&J acknowledged internally that it “cannot say our talc-based consumer products have always been asbestos free.”

245. J&J represented to the FDA that the most sensitive testing was not needed because “substantial asbestos can be allowed safely in baby powder.” J&J also claimed that “extensive” animal studies of its Vermont and Italian talc revealed no cancer risk from their talc. J&J now admits that only one study was done of its Vermont talc and only one study of its Italian talc as it relates to the risk of cancer from talc. The FDA was not told tests were conducted on a special lot of “extremely clean” talc. This information was first disclosed in litigation from J&J internal records, first produced no earlier than 2017.

246. J&J knew that it had liability to persons who developed asbestos-related diseases as a result of exposure to its cosmetic talc products. In an internal communication dated April 15, 1969, the Medical Director for J&J wrote to advise the company of danger relative to “inhalation” of the “needle-like” crystals of tremolite asbestos in J&J’s talc. J&J was cautioned that “since the usage of these products is so widespread, and the existence of pulmonary disease is increasing, it is not inconceivable that [J&J] could become involved in litigation in which pulmonary fibrosis or other changes might be rightfully or wrongfully attributed to inhalation of our powder formulations.” To that end, Dr. Thompson recommended that “someone in the Law Department should be consulted with regard to the defensibility of our position in the event that such a situation could ever arise.” The medical director further forewarned J&J that the company could confront a situation where the company would be more or less compelled to remove its talc products “if it became known that our talc formulations contained any significant amount of Tremolite.” This prediction of litigation came to fruition shortly thereafter. J&J has reported that during the 1970s alone, the company was sued in talc-based cases in 1971, 1972, 1973 1974, 1976, 1977, 1978, and 1979.

247. Due to the litigation process, J&J has been forced to identify documents from as early as 1971 (and every year thereafter) relating to “ongoing,” “pending,” and “anticipated” litigation regarding Johnson’s Baby Powder. Since at least 1971, J&J has known that information in the company’s possession relevant to or produced in any particular talc-based lawsuit would be relevant to discovery in future talc-based cases. Although J&J was legally obligated to retain the evidence, it does not know where the documents and evidence related to these cases are located or whether they even exist. Entries on J&J’s privilege log indicate that samples of talcum powder used in litigation existed at the time the litigation in the 1970s was pending but are no longer available.

248. Despite being involved in litigation for decades, J&J never produced a single asbestos test in any case prior to 2017, even when specifically requested. J&J was repeatedly asked in litigation

whether the talc used in any of its talc-based cosmetic products contained any amount of asbestos. J&J represented to plaintiffs' counsel that "there was no evidence" of asbestos in its cosmetic talc. These representations exemplified J&J's pattern and practice in defending talc-injury litigation, which was to conceal evidence of asbestos in its cosmetic talc products and represent that no such evidence ever existed. Many of the same J&J executives who were involved in discussions with the FDA about the company's talc-based cosmetic products were involved in defending J&J in litigation alleging asbestos-related injuries from talc-based cosmetic products.

249. J&J routinely provided sworn affidavits from company executives falsely asserting that there was no evidence of asbestos in the talc used for J&J cosmetic products. In addition to submitting false affidavits, J&J repeatedly certified answers to interrogatories stating that there was never any evidence of asbestos in any J&J cosmetic talc product when it knew the truth to be otherwise. J&J knew there was tremolite in Johnson's Baby Powder when responding to discovery requests in the Krushinski case. J&J has been forced to admit that these interrogatories, which were answered in conjunction with the company's lawyers, were false.

250. J&J concealed and refused to produce in response to plaintiffs' discovery requests any documents evidencing or relating to tests, studies, investigations, and analyses of Johnson's Baby Powder and Shower to Shower for the presence of asbestos, despite its knowledge that relevant and material documents existed and were in its possession and that it had the duty to disclose them.

251. Although J&J by its own admission had an obligation to preserve evidence once litigation concerning the health effects of its talc products was foreseeable, it failed to do so. J&J knew that evidence adduced in litigation concerning the health effects of its talc products would be material and relevant to other anticipated cases. Yet J&J failed to preserve records from any of the lawsuits that alleged injuries as a result of Johnson's Baby Powder, Shower to Shower, talc, or asbestos, even though J&J knew that relevant and material documents existed and were in its possession.

252. J&J did not retain any samples of its talc ore and milled talc used in its talc-based cosmetic products, which it tested regularly for the presence of asbestos and asbestiform minerals at any time until 2017. Although litigation was pending and anticipated, the samples chosen by J&J specifically to create test results were not retained under the company's evidence retention schedules and were not subject to any litigation-hold. J&J also failed to retain all test results for the presence of asbestos and asbestiform minerals of the talc ore and milled talc used in its talc-based cosmetic products. The failure to institute a litigation hold made certain that the testing results were destroyed in accordance with its document retention policy. In 2008, nearly ten years after the first litigation hold, when asked about retention time for "information related to the CTFA ingredient surveys" J&J directed its employees to "PITCH them." Any test results that J&J has not yet produced are presumed to be destroyed, as the disposal of these results were mandated by the company's evidence retention scheduled absent a litigation hold, which J&J never issued.

253. The limited underlying scientific data that still exists of J&J's consultants confirms that the reports of "no detectable" asbestos are belied by the underlying scientific data, which shows evidence of asbestos. There are countless similar non-detect letters with no underlying data.

254. In 1989, after facing litigation related to its talc-based products for nearly two decades and anticipating further litigation, J&J destroyed records relating to its Hammondsville, Vermont mining operations.

255. J&J historically preserved no records from the majority of cases in which it has been sued for causing talc related injuries. For those cases where there is at least some documentation, J&J either lost or destroyed most of the material evidence related to historical litigation alleging asbestos-related disease from its talc products. Despite being involved in many cases dating back to 1971, J&J could only locate two sets of discovery responses for its corporate representative to review.

256. J&J once maintained a paper file documenting all of its telephone conversations with the FDA related to its talc-based cosmetic products dating to the early 1970s. The “FDA Call File” no longer exists.

**J&J is Fully Responsible for Conduct
Fraudulent Misrepresentation**

257. J&J intentionally and fraudulently continued to misrepresent to the public that Johnson’s Baby Powder and Shower to Shower were safe, concealing the dangers of asbestos exposure and evidence of asbestos in J&J’s talc product. J&J’s misrepresentations and omissions regarding the safety of Johnson’s Baby Powder and Shower to Shower have resulted in consumer use of cosmetic talc products in a potentially lethal way without any knowledge of the danger, thus denying Plaintiff the knowledge with which to avoid further exposure. Specifically, J&J’s intentional and fraudulent conduct included the following acts and omissions:

- (a) J&J made a material representation;
- (b) The representation was false;
- (c) J&J knew it was false when made or made it recklessly without knowing it was true as a material positive assertion;
- (d) J&J made the misrepresentation intending that Plaintiff act on the representation;
- (e) Plaintiff acted in reliance on it; and
- (f) Plaintiff, as a result, suffered damage.

**J&J is Fully Responsible for Conduct
Silent Fraud (a/k/a Fraudulent Concealment)**

258. J&J intentionally and fraudulently concealed the dangers of asbestos exposure and continued to represent to the public that Johnson’s Baby Powder and Shower to Shower were safe, concealing the evidence of asbestos in J&J’s talc product. J&J’s concealment and omissions regarding the safety of Johnson’s Baby Powder and Shower to Shower have resulted in consumer use of cosmetic talc products in a potentially lethal way without any knowledge of the danger, thus denying

Plaintiff the knowledge with which to avoid further exposure. Specifically, J&J's intentional and fraudulent conduct included the following acts and omissions:

- (a) J&J suppressed a material fact;
- (b) J&J had a duty to disclose the fact; and
- (c) J&J concealed the fact with the intent to defraud.

259. Plaintiff Michael L. Perry trusted Johnson's Baby Powder and Shower to Shower. He used it on himself, believing it to be safe. Plaintiff trusted that the talc products used on himself were safe and did not have any carcinogens. He relied on J&J to provide any safety information to him and his family and to make sure any life-threatening hazards were communicated to her. Had the Plaintiff known the true facts, he would never have purchased or used the products.

260. Plaintiff Michael L. Perry developed malignant mesothelioma, a fatal cancer, as a direct and proximate cause of the misrepresentations made by J&J regarding the safety of Johnson's Baby Powder and Shower to Shower and its concealment of evidence that its cosmetic talc products utilized talc that contained asbestos fibers that could cause cancer.

WHEREFORE, Plaintiffs demand judgment against defendants Johnson & Johnson, Johnson & Johnson Holdco (NA) Inc., Janssen Pharmaceuticals Inc., and Kenvue Inc. for a reasonable amount plus statutory interest and costs, and for such other relief as shall be deemed appropriate.

FOR AN EIGHTH CAUSE OF ACTION
(Loss of Consortium)

For an Eighth Distinct Cause of Action for Loss of Consortium, Plaintiff Lonnie L. Long Complains of Defendants, and Alleges as Follows:

261. Plaintiff incorporates by reference, the preceding paragraphs, where relevant.

262. Plaintiffs Michael L. Perry and Lonnie L. Long were married on June 20, 2009 and at all times relevant to their action were legally married.

263. Prior to his injuries as alleged, Plaintiff Michael L. Perry was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff Michael L. Perry has been unable to perform his spousal duties and the work and service usually performed in the care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Lonnie L. Long was deprived of the consortium of his spouse, including the performance of duties, all to Plaintiffs' damages, in an amount presently unknown to Plaintiffs but which will be proven at time of trial.

264. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Plaintiff Michael L. Perry as set forth herein, Plaintiff's spouse and co- Lonnie L. Long suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of his spouse, and has suffered severe mental and emotional distress and general nervousness. Plaintiffs pray judgment against Defendants, their "alternate entities" and each of them, as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiffs' actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For Plaintiffs' cost of suit herein;
6. For damages for breach of implied warranty according to proof;

7. For damages for fraudulent misrepresentation according to proof; and
8. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

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ATTORNEYS FOR PLAINTIFFS

August 3, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL L. PERRY and) C/A NO. 2023-CP-40-04072
LONNIE L. LONG,)

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES, et al.

Defendants.

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

NOTICE OF MOTION AND
MOTION FOR DEFAULT JUDGMENT
AS TO AMERICAN INTERNATIONAL
INDUSTRIES

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for Plaintiffs will move the Court as soon as counsel may be heard for a judgment by default and a hearing on damages, in accordance with Rule 55 of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

/s/ David C. Humen

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ATTORNEYS FOR PLAINTIFF

September 26, 2023
Dallas, Texas.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.	)	
	)	
Defendants.	)	

PERSONALLY, appeared before me, Theile B. McVey, who being duly sworn, deposes and says:

1. I am an attorney of record for the Plaintiffs in the above captioned action.
2. On August 9, 2023, service was obtained on American International Industries through its authorized representative Terri Cooper at 2220 Gaspar Avenue, Los Angeles, California, 90040 with the Plaintiffs' Original Summons and Complaint by personal process service. See **Exhibit A**, Return of Service. See also, **Exhibit B**, Plaintiffs' Summons and Original Complaint.
3. Defendant's Answer to Plaintiffs' Original Complaint was due on September 9, 2023. No Answer has been filed American International Industries. The Defendant is now in default.
4. At no time during the pendency of this action was Defendant a minor, incompetent person, or engaged in the military service of the United States of America as is contemplated under what is commonly known and designated as the Soldiers and Sailors Relief Act of 1940, and any amendments thereto.

Sworn to before me this

25th day of Sept., 2023

Elizabeth A. Moulton

Notary Public for the State of South Carolina

My Commission expires: 02/24/2020

Theile B. McVey

Theile B. McVey

Counsel for Plaintiffs

EXHIBIT A

C/A NO. 2023-CP-40-04072

MICHAEL L. PERRY and LONNIE L. LONG,	§	IN THE COURT OF COMMON PLEAS
	§	
Plaintiffs,	§	
vs.	§	FOR THE FIFTH JUDICIAL CIRCUIT
	§	
AMERICAN INTERNATIONAL INDUSTRIES, et al.,	§	
	§	
Defendants.	§	RICHLAND COUNTY, SOUTH CAROLINA
	§	

AFFIDAVIT OF SERVICE

Came to my hand on **Wednesday, August 9, 2023 at 2:33 PM,**
Executed at: **2220 GASPAR AVENUE, LOS ANGELES, CA 90040**
at **1:08 PM, on Thursday, August 10, 2023,** by delivering to the within named:

AMERICAN INTERNATIONAL INDUSTRIES

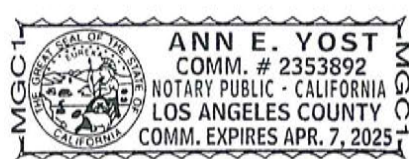
by delivering to its **Authorized Representative, TERRI COOPER**
a true copy of this

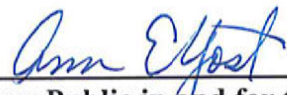
Summons, Original Complaint (w/5 Exhs & path rpt) and Motion to Expedite (w/Exh A)

BEFORE ME, the undersigned authority, on this day personally appeared JORGE RIVERA who after being duly sworn on oath states: "My name is JORGE RIVERA. I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am a resident of the State of California. I have personal knowledge of the facts and statements contained in this affidavit and aver that each is true and correct. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude."

By: 
JORGE RIVERA - Process Server

Subscribed and Sworn to by JORGE RIVERA, Before Me, the undersigned authority, on this
15 day of August, 2023.




Notary Public in and for the State of California

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL**

**MICHAEL L. PERRY and
LONNIE L. LONG**

C/A NO. 2023-CP-40-04072

Plaintiffs,

v.

**AMERICAN INTERNATIONAL
INDUSTRIES**, individually and as
successor-in-interest to Pinaud, Inc.,
Barbara Alice, Inc., Ed. Pinaud, Inc.
d/b/a/ Ed. Pinad, and Nestle-Le Mur
Company, all for the Clubman line of
products, et al.

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT AMERICAN
INTERNATIONAL INDUSTRIES TO PLAINTIFFS' COMPLAINT**

Defendant AMERICAN INTERNATIONAL INDUSTRIES, incorrectly sued as
“American International Industries, individually and as successor to Pinaud, Inc., Barbara
Alice, Inc., Ed. Pinaud, Inc. d/b/a Ed. Pindaud, and Nestle-Le Mur Company” (hereinafter “A-
I-I”), by its attorneys, Hawkins Parnell & Young LLP, submits its Answer and Affirmative
Defenses to Plaintiffs’ Complaint (“Complaint”). A-I-I denies each and every allegation in the
Complaint directed to it, except as expressly set forth herein, and avers as follows:

*Preliminary Note: all references to “Plaintiff” or “Plaintiffs,” contained herein, shall
mean and include both singular and plural, incorporating the party alleging actual exposure as
well as any party alleging any claim derivative of such alleged exposure under a theory of
“loss of consortium,” “survival,” or otherwise.*

AFFIRMATIVE DEFENSES

Defendant A-I-I alleges the following affirmative defenses to each alleged cause of
action and hereby reserves its right to amend this Answer to allege additional affirmative
defenses that may later be ascertained during discovery.

FIRST DEFENSE

Defendant A-I-I denies each and every material allegation of the Complaint directed towards it except as specifically admitted.

SECOND DEFENSE

The Complaint fails to state a claim against Defendant A-I-I upon which relief can be granted, and the same should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

THIRD DEFENSE

Each and every Count of the Complaint, to the extent the Count pertains to Defendant A-I-I, is preempted by the Federal Food, Drug, and Cosmetics Act ("FFDCA"), 21 U.S.C. §§ 301399(a) (2015), in that the FDA has primary and exclusive jurisdiction over the safety of cosmetic and pharmaceutical grade talc-containing and primary and exclusive jurisdiction to determine whether any warning must accompany such products. Each and every count of the Complaint, to the extent the count pertains to Defendant A-I-I, is also preempted, in whole or in part, by any other applicable state and/or federal statutes, rules, regulations, and/or other applicable standards such as those set forth by the United States Pharmacopeia and other bodies.

FOURTH DEFENSE

Each and every count of the Complaint, to the extent the count pertains to Defendant A-I-I's alleged manufacture and/or sale pharmaceutical and/or cosmetic grade talc-containing products, is subject to the FDA's primary jurisdiction. Consequently, each and every count of the Complaint, to the extent that it pertains to Defendant A-I-I, should be dismissed or stayed pending further FDA review of whether any warning must accompany, or other restrictions be placed upon the manufacture and sale of such products.

FIFTH DEFENSE

Each and every count of the Complaint, to the extent the count pertains to Defendant A-I-I's manufacture and/or sale of pharmaceutical and/or cosmetic grade talc-containing

products, is an unauthorized and improper attempt to enforce privately a claim under the Federal Food, Drug, and Cosmetic Act (“FFDCA”), 21 U.S.C. §§ 301-399(a) (2015).

SIXTH DEFENSE

Plaintiff has failed to join a party or parties necessary for a just adjudication of this matter against Defendant A-I-I and has further failed to state any reasons for such omission, and the Complaint should therefore be dismissed as against Defendant A-I-I pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

SEVENTH DEFENSE

Defendant A-I-I states that Plaintiffs’ claims against A-I-I are barred by the applicable statute(s) of limitations and repose and/or are otherwise time-barred.

EIGHTH DEFENSE

Defendant A-I-I states that Plaintiffs’ claims against A-I-I are barred by estoppel or waiver.

NINTH DEFENSE

Defendant A-I-I states that Plaintiff is guilty of laches in bringing this action against A-I-I and is therefore barred from recovery from A-I-I.

TENTH DEFENSE

If Plaintiff is unable to identify the manufacturer or manufacturers of the products that allegedly caused injury, or fails to establish that any material or product manufactured and/or sold by Defendant A-I-I was contaminated by asbestos, each and every count in the Complaint fails to state a claim upon which relief can be granted, for if relief were granted, such relief would constitute a taking of Defendant A-I-I’s property for a public use without just compensation and would constitute a violation of Defendant A-I-I’s rights under the state and federal constitutions.

ELEVENTH DEFENSE

Plaintiff's claims and causes of action are barred in whole or in part because none of the alleged acts or omissions of Defendant A-I-I was the proximate cause of the injuries and damages allegedly sustained by Plaintiff.

TWELFTH DEFENSE

Defendant A-I-I denies that any product manufactured or sold by A-I-I caused injury to Plaintiff.

THIRTEENTH DEFENSE

The injuries of which Plaintiff complains are wholly or partially caused by factors other than exposure to any material or product manufactured and/or sold by Defendant A-I-I.

FOURTEENTH DEFENSE

Plaintiff's injuries, if any, were the result of pre-existing medical conditions, lifestyles, exposures, accidents, and/or other causes that are completely unrelated to the alleged acts and/or omissions of Defendant A-I-I.

FIFTEENTH DEFENSE

If Plaintiff establishes that he was exposed to any asbestos-contaminated talc in any of the material or products manufactured or sold by Defendant A-I-I, such exposure was so minimal as to be insufficient to support any finding that the exposure caused Plaintiff's claimed injuries.

SIXTEENTH DEFENSE

Plaintiff's claims and causes of action, to the extent asserted against Defendant A-I-I, are barred in whole or in part because the product(s) manufactured or sold by Defendant A-I-I referred to in the Complaint complied with all applicable federal, state and local rules, regulations, specifications, and laws.

SEVENTEENTH DEFENSE

Plaintiff's claims and causes of action, to the extent asserted against Defendant A-I-I, are barred in whole or in part because the product(s) manufactured or sold by Defendant A-I-I referred to in the Complaint conformed with the then-existing industry standards and/or the "state of the art" with respect to design, manufacture and sale, including with respect to any warning requirement.

EIGHTEENTH DEFENSE

Defendant A-I-I's products were at all times of good and merchantable quality and fit for the ordinary purpose for which such products were used.

NINETEENTH DEFENSE

Defendant A-I-I states that, at all relevant times hereto, the state of medical and scientific knowledge and the state of art or the design and manufacture of talc-containing products was such that Defendant A-I-I neither knew nor should have known that its products presented a significant risk of harm to Plaintiff.

TWENTIETH DEFENSE

Defendant A-I-I had no duty to give instructions to Plaintiff or to warn Plaintiff of any hazards attendant to the contact with, use of or exposure to any material or product manufactured and/or sold by A-I-I.

TWENTY-FIRST DEFENSE

Plaintiff's recovery is barred, diminished or reduced to the extent that Plaintiff is attempting to assert that Defendant A-I-I is liable as an agent, servant, employee and/or joint venturer, or as successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, alter ego, subsidiary, whole or partial owner, wholly or partially owned entity, or member of any group engaged in funding, researching, processing, constructing, analyzing, merchandising, supplying, studying, testing, designing, labeling, manufacturing, distributing, marketing, warning, warranting, rebranding, leasing, buying, selling, inspecting, or servicing

of certain substances, the generic names of which are asbestos and/or products containing asbestos and talc and/or products containing talc.

A-I-I further alleges that it has no liability for the acts, omissions, or otherwise of any other defendant or any other entity because A-I-I did not become legally responsible for the acts, omissions, obligations, or products of any such defendant or entity given the facts and circumstances of the pertinent transactions and never was, nor is, a successor-in-interest, a successor-in-liability, or an alternate entity for any other user, manufacturer, supplier, seller, or distributor of talc or talc-containing products or of asbestos or asbestos-containing products. A-I-I further denies that it is or was at any time a successor-in-interest, a successor-in-liability, or an alternate entity of “PINAUD, INC., BARBARA ALICE, INC., ED PINAUD, INC. ED PINAUD, NESTLE-LEMUR COMPANY, AND CLUBMAN” as alleged in the Complaint. A-I-I denies liability for the acts, omissions, obligations, or products of any other defendant or entity and alleges that Plaintiffs’ successor-in-interest claims, if any, are barred.

TWENTY-SECOND DEFENSE

Plaintiff’s recovery against Defendant A-I-I is barred, diminished or reduced to the extent the Plaintiff received (or will receive) Workers’ Compensation payments for the injuries alleged in the Complaint. To the extent any such payments have been made, Defendant A-I-I is entitled to an offset in the amount of all such benefits against any damages awarded to Plaintiff.

TWENTY-THIRD DEFENSE

Venue is improper under the equitable doctrine of forum non conveniens.

TWENTY-FOURTH DEFENSE

Defendant A-I-I denies that any material or product it manufactured or sold was defective or negligently mined, processed, manufactured, designed, tested, investigated, fashioned, packaged, distributed, delivered, and/or sold. If, however, there was any defect or negligence on the part of A-I-I, it is nonetheless not liable because it justifiably relied upon the inspections of its

suppliers and certifications provided by those suppliers that the cosmetic and/or pharmaceutical grade talc furnished to A-I-I was free of asbestos contamination.

TWENTY-FIFTH DEFENSE

Any alleged negligence on the part of Defendant A-I-I was superseded by new and independent conduct by Plaintiff and/or other third parties. Such new and independent conduct included the negligence of third parties who owed a duty to Plaintiff and over whom Defendant A-I-I had no control. Defendant A-I-I also could neither anticipate nor reasonably foresee such superseding conduct, which was the actual cause of the injuries allegedly sustained by Plaintiff.

TWENTY-SIXTH DEFENSE

Defendant A-I-I cannot be held liable under principles of strict tort liability because products manufactured and/or products which left Defendant A-I-I's possession did so prior to the enactment of relevant law regarding strict liability.

TWENTY-SEVENTH DEFENSE

Defendant A-I-I denies that the doctrine of strict liability in tort applies to the claims alleged against it.

TWENTY-EIGHTH DEFENSE

Defendant A-I-I specifically denies that any talcum powder product that it manufactured or sold was defectively designed because the manufacturing specifications for Defendant A-I-I's talcum powder products did not include asbestos.

TWENTY-NINTH DEFENSE

Defendant A-I-I denies that it manufactured, designed and/or sold any products referred to in Plaintiff's Complaint which caused injury to Plaintiff. Notwithstanding, at all times and places mentioned in the Complaint, Plaintiff and/or other persons without Defendant A-I-I's knowledge and approval redesigned, modified, altered, and used Defendant A-I-I's products contrary to instruction and contrary to the custom and practice of the industry. This redesign, modification, alteration, and use so substantially changed the product's character that if there was a defect in the product, which Defendant A-I-I

specifically denies, such defect resulted solely from the redesign, modification, alteration, or other such treatment or change and not from any act or omission by this Defendant A-I-I. Therefore, said defect, if any, was created by Plaintiff and/or other persons, as the case may be, and was the direct and proximate cause of the injuries and damages, if any, that Plaintiff allegedly suffered.

THIRTIETH DEFENSE

Defendant A-I-I states that the utility of the products manufactured and sold by Defendant A-I-I outweigh the risk allegedly involved, and therefore, Plaintiff's claims are barred.

THIRTY-FIRST DEFENSE

Defendant A-I-I gave no special warranties, either express or implied, to Plaintiff or to anyone acting on Plaintiff's behalf. Further, to the extent that Plaintiff alleges any claim based upon a breach or breaches of express or implied warranties (allegations which Defendant A-I-I specifically denies), such claim is barred because at no time did Defendant A-I-I enter into any contract with Plaintiff and Plaintiff was not in privity of contract with Defendant A-I-I.

THIRTY-SECOND DEFENSE

Defendant A-I-I states that if there were implied warranties as alleged in the Complaint (allegations which A-I-I specifically denies), Plaintiff was not within the scope of any such alleged warranties.

THIRTY-THIRD DEFENSE

If Defendant A-I-I or its agents or servants made any warranties, express or implied (allegations which A-I-I specifically denies), then A-I-I denies that it breached any of the warranties.

THIRTY-FOURTH DEFENSE

If Defendant A-I-I or its servants or agents made any express warranties (allegations which A-I-I specifically denies), then Plaintiff did not rely on the express representations or warranties.

THIRTY-FIFTH DEFENSE

Defendant A-I-I states that Plaintiff failed to give notice of the alleged breach of warranties within a reasonable time as required by applicable statutes, resulting in delay and prejudice to A-I-I in this case, and, therefore, Plaintiff cannot recover.

THIRTY-SIXTH DEFENSE

Defendant A-I-I states that Plaintiff is not a third-party beneficiary with reference to any alleged warranties, either express or implied, and therefore Plaintiff cannot recover in this action for any such claim.

THIRTY-SEVENTH DEFENSE

If Defendant A-I-I were to be held liable for breach of any warranty, its liability in any event has been terminated by the intervening acts, omissions or negligence of others over whom Defendant A-I-I had neither control nor the right of control, and for whose conduct Defendant A-I-I is not legally responsible.

THIRTY-EIGHTH DEFENSE

Defendant A-I-I denies that Plaintiff is entitled to the damages claimed or to the relief demanded from A-I-I.

THIRTY-NINTH DEFENSE

Plaintiff's claims against Defendant A-I-I are barred in whole or in part by Plaintiff's contributory and/or comparative fault, because the damages, if any, were legally caused by and are the result, in whole or part, of his own carelessness, recklessness, negligent acts and/or omissions, or failure to act reasonably. Accordingly, any recovery by Plaintiff against Defendant A-I-I is barred, or in the alternative, is comparatively reduced by Plaintiff's percentage of fault.

FORTIETH DEFENSE

At all times and places mentioned in the Complaint, Plaintiff failed to make reasonable efforts to mitigate his injuries and damages, if any.

FORTY-FIRST DEFENSE

Defendant A-I-I states that if Plaintiff used tobacco products, such use contributed to any disease from which Plaintiff allegedly suffers. Further, the tobacco industry placed warnings in its products notifying the public of potential hazards associated with its use, which hazards Plaintiff knew or should have known may have adversely affected Plaintiff's health.

FORTY-SECOND DEFENSE

To the extent Plaintiff has released, settled, entered into an accord and satisfaction, or otherwise compromised his claims herein, said claims are barred by operation of law.

FORTY-THIRD DEFENSE

Defendant A-I-I is entitled to a credit or set off in the amount, if any, for which Plaintiff has settled, or should hereafter settle, or receives by way of judgment, whether in this action or any other, for any of Plaintiff's alleged injuries and damages.

FORTY-FOURTH DEFENSE

Any alleged injury or damage sustained as a result of the occupations of Plaintiff was an occupational injury and accordingly Defendant A-I-I is not liable or responsible for any occupational injury which was suffered or sustained by Plaintiff in the course of employment over a number of years.

FORTY-FIFTH DEFENSE

In the event Defendant A-I-I is held liable to Plaintiff, which liability is expressly denied herein, any other co-defendants are likewise held liable, Defendant A-I-I is entitled to percentage contribution of the total liability from said co-defendants in accordance with the principles of equitable indemnity and comparative contribution.

FORTY-SIXTH DEFENSE

Defendant A-I-I does not have and never has had a successor, successor-in-business, successor-in-product line or portion thereof, successor-in-interest, assignee, predecessor, predecessor-in-business, predecessor-in-product line or portion thereof, predecessor-in-interest, partner, subsidiary, whole or partial, or ownership or membership relationship with any entity or

product upon which Plaintiff bases the allegations of liability, and has no direct or derivative liability for the actions or omissions of those entities, including but not limited to the alleged alternate entities and alleged predecessors in interest identified in Plaintiff's Complaint.

FORTY-SEVENTH DEFENSE

Defendant A-I-I avails itself of and adopts such other defenses raised by any other defendants as may be applicable.

FORTY-EIGHTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent the loss or injury suffered by Plaintiff, if any, was caused by an idiosyncratic condition for which A-I-I could not have taken any steps to avoid.

FORTY-NINTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred as to any non-economic damages except those allocated to Defendant A-I-I in direct proportion to its percentage of fault, if any.

FIFTIETH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent Plaintiff consented to the acts and/or omissions of Defendant A-I-I as alleged in the Complaint.

FIFTY-FIRST DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced in that Plaintiff, and/or his agents, expressly or impliedly waived any rights he may have had by his acts, conduct and/or omissions.

FIFTY-SECOND DEFENSE

Plaintiff's claims against Defendant A-I-I are barred in whole or in part on the grounds that Plaintiff knew, or in the exercise of ordinary care should have known, the risk of the injuries or damages alleged in the Complaint, if any, and nevertheless did encounter the alleged known

danger, and this undertaking proximately caused and contributed to the losses, injuries or damages, if any, alleged by Plaintiff.

FIFTY-THIRD DEFENSE

Plaintiff is barred from recovery in that if he sustained any loss or damage, such loss or damage was not directly or proximately caused by the acts or omissions of Defendant A-I-I.

FIFTY-FOURTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced in that other person(s) and/or entity(ies), whose true names and/or capacities are unknown to Defendant A-I-I, are in some manner responsible for or at fault in proximately causing the damage allegedly sustained by Plaintiff, and therefore the damages, if any, should be apportioned in proportion to the relative fault, if any, of each other person or entity, including but not limited to codefendants, settling and dismissed co-defendants, third-party defendants, bankrupt or insolvent entities, settling and other non-parties, and other responsible persons or entities.

FIFTY-FIFTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent that his alleged damages were caused by unforeseeable acts or omissions, and Defendant A-I-I exercised due care with respect to foreseeable acts and omissions.

FIFTY-SIXTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent his damages were proximately caused by an act of God.

FIFTY-SEVENTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent that the dangers, if any, associated with the product(s) and/or equipment referenced in the Complaint constitute an unavoidably unsafe product or piece of equipment.

FIFTY-EIGHTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent that there is no possibility of an alternate safer design for the product(s) referenced in the Complaint, and that the risk of danger, if any, is inherent in said product(s).

FIFTY-NINTH DEFENSE

Defendant A-I-I denies the existence of the dangerous condition as set forth in the Complaint as to Defendant A-I-I. If, however, such dangerous condition did, in fact, exist, Defendant A-I-I had no knowledge or adequate knowledge of it, having exercised reasonable care in inspecting its product(s).

SIXTIETH DEFENSE

Plaintiff's recovery is barred, diminished or reduced because he never justifiably relied on any alleged misrepresentation of Defendant A-I-I, nor did Defendant A-I-I influence subsequent purchase of, or use of product(s) referred to in the Complaint.

SIXTY-FIRST DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent the Complaint seeks recovery under the theory of "enterprise," "industry-wide," "alternate" or "market share" (collectively referred to hereafter as "market share") liability, and furthermore, the essential elements of a cause of action premised on a market share theory of liability do not exist between Plaintiff and Defendant A-I-I.

SIXTY-SECOND DEFENSE

Plaintiff's recovery is barred, diminished or reduced to the extent that Plaintiff cannot show that any product made or sold by Defendant A-I-I in all reasonable medical probability, was a substantial factor in increasing the risk of bringing about the injuries or damages complained of by Plaintiff.

SIXTY-THIRD DEFENSE

Plaintiff's recovery is barred to the extent that Plaintiff's injuries occurred on a federal enclave or while working under the direction of a federal officer.

SIXTY-FOURTH DEFENSE

Plaintiff's claims are barred by the doctrines of res judicata and collateral estoppel, and by the rule against splitting a cause of action.

SIXTY-FIFTH DEFENSE

This Court lacks subject matter jurisdiction over each and every count contained in Plaintiff's Complaint.

SIXTY-SIXTH DEFENSE

Defendant A-I-I states that the alleged injury or damage sustained as a result of the occupation of Plaintiff was an occupational injury, and, accordingly, Defendant A-I-I is not liable or responsible for any occupational injury which was suffered or sustained by Plaintiff in the course of employment over a number of years.

SIXTY-SEVENTH DEFENSE

Plaintiff's claims are barred because he failed to preserve or otherwise spoliated the evidence.

SIXTY-EIGHTH DEFENSE

Defendant A-I-I reserves the right to assert any and/or all applicable affirmative defenses which investigation, discovery or further information may reveal to be appropriate, and further, to assert any applicable matters of law while this action is pending.

SIXTY-NINTH DEFENSE

Any award of punitive damages would violate the constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

SEVENTIETH DEFENSE

In the alternative, Defendant A-I-I requests trial bifurcation on the issues of actual damages and punitive damages, pursuant to S.C. Code Ann. § 15-32-520. Further, Defendant A-

I-I pleads all defenses, limitations on damages, and other privileges codified at S.C. Code Ann. §§ 15-32520 and 15-32-530.

SEVENTY-FIRST DEFENSE

Plaintiff is not entitled to recover punitive damages against Defendant A-I-I in any amount or in the amount sought in the Complaint.

SEVENTY-SECOND DEFENSE

Liability may not be imposed upon Defendant A-I-I based on a theory of enterprise or market share liability. To the extent Plaintiff's claims are based upon such theories, they are barred.

SEVENTY-THIRD DEFENSE

Due to the state of medical and industrial art existing during the time period in which Plaintiff was allegedly was exposed to products manufactured, supplied or distributed by Defendant A-I-I and others, there was no generally accepted knowledge of any inherently dangerous characteristics of pharmaceutical and/or cosmetic grade talc or talc-containing products or of any alleged unsafe nature of such products when employed in a manner consistent with their intended use. Defendant A-I-I manufactured its products in conformity with the then-existing state of medical and scientific knowledge, and Plaintiff is not entitled to recover from Defendant A-I-I.

SEVENTY-FOURTH DEFENSE

The Court lacks personal jurisdiction over Defendant A-I-I.

SEVENTY-FIFTH DEFENSE

There is an insufficiency of process as to Defendant A-I-I.

SEVENTY-SIXTH DEFENSE

There is an insufficiency of service of process as to Defendant A-I-I.

SEVENTY-SEVENTH DEFENSE

Plaintiff and/or other related persons misused or improperly used the products manufactured and/or sold by Defendant A-I-I, and such misuse or improper use proximately

caused or contributed to, in whole or in part, the alleged conditions described in the Complaint and the alleged damages Plaintiff claims were sustained. Therefore, Defendant A-I-I is not liable for any injuries or damages claimed by Plaintiff.

SEVENTY-EIGHTH DEFENSE

To the extent Plaintiff's Complaint asserts a demand for punitive damages, Defendant A-I-I specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

SEVENTY-NINTH DEFENSE

There has been no concert of action between Defendant A-I-I and any of the other named Defendants. The Defendants are not joint tortfeasors and, therefore, Defendant A-I-I may not be held jointly and severally liable with the other named Defendants.

EIGHTIETH DEFENSE

Plaintiff neither used nor was exposed to any product manufactured, sold, and/or supplied by Defendant A-I-I.

EIGHTY-FIRST DEFENSE

Plaintiff's Complaint should be dismissed for its failure to comply with the requirements of Section 44-135-10, et. seq., of the South Carolina Code, also known as the "Asbestos and Silica Claims Procedure Act of 2006" as Plaintiff has failed to make the prima facie showing required by the Act. In the alternative, the case should not be placed on any active trial docket and should not be the subject of any discovery until Plaintiff complies with the provisions of the Act.

EIGHTY-SECOND DEFENSE

Plaintiff does not have standing to bring this claim pursuant to Section 15-5-150 S.C. Code Ann., also referred to as South Carolina's Door Closing Statute.

EIGHTY-THIRD DEFENSE

Defendant A-I-I hereby notifies the Court and all parties that under traditional South Carolina choice of law principles, the substantive law governing this action is determined by the laws of another state. Defendant A-I-I asserts that the injury complained of occurred outside of the State of South Carolina and therefore, under the doctrine of *lex loci delicti*, the law of the state in which the injury occurred, applies.

EIGHTY-FOURTH DEFENSE

This Court lacks both general and specific personal jurisdiction over Defendant A-I-I. Plaintiff cannot meet the requirements of the South Carolina Long Arm Statute or the traditional due process requirements to meet the requirements of personal jurisdiction over Defendant A-I-I.

EIGHTY-FIFTH DEFENSE

Any award of punitive damages against this Defendant shall not exceed the limits set forth in Section 15-32-530 of the South Carolina Code of Laws.

GENERAL ALLEGATIONS

1. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 1 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.
2. Defendant A-I-I denies the allegations in Paragraph 2 of the Complaint including subparts (a) through (f) as they pertain to Defendant A-I-I.
3. Defendant A-I-I denies the allegations in Paragraph 3 of the Complaint as they pertain to Defendant A-I-I.
4. Defendant A-I-I denies the allegations in Paragraph 4 of the Complaint as they pertain to Defendant A-I-I.
5. Defendant A-I-I denies the allegations in Paragraph 5 of the Complaint as they pertain to Defendant A-I-I.

6. Defendant A-I-I denies the allegations in Paragraph 6 of the Complaint as they pertain to Defendant A-I-I.

7. Defendant A-I-I denies the allegations in Paragraph 7 of the Complaint as they pertain to Defendant A-I-I.

8. Defendant A-I-I denies the allegations contained in Paragraph 8 of the Complaint as they pertain to Defendant A-I-I.

9. Defendant A-I-I denies the allegations contained in Paragraph 9 of the Complaint as to they pertain to Defendant A-I-I.

10. Defendant A-I-I. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 10 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

11. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 11 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

12. Defendant A-I-I denies the allegations in Paragraph 12 of the Complaint as they pertain to Defendant A-I-I.

13. Defendant A-I-I denies the allegations in Paragraph 13 of the Complaint as they pertain to Defendant A-I-I.

14. Defendant A-I-I denies the allegations in Paragraph 14 of the Complaint as they pertain to Defendant A-I-I.

15. Defendant A-I-I denies the allegations in Paragraph 15 of the Complaint as they pertain to Defendant A-I-I.

16. Defendant A-I-I denies the allegations in Paragraph 16 of the Complaint as they pertain to Defendant A-I-I.

17. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 17 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

18. Defendant A-I-I denies the allegations in Paragraph 18 of the Complaint as they pertain to Defendant A-I-I and specifically denies that A-I-I is or was an “alternate entity” or “successor in interest” to Pinaud, Inc., Barbara Alice, Inc. ED. Pinaud, Neslte-Lemur Company, and Clubman” as alleged in the Complaint or to any other party or entity.

19. Defendant A-I-I denies the allegations in Paragraph 19 of the Complaint as they pertain to Defendant A-I-I.

20. Defendant A-I-I denies the allegations in Paragraph 20 of the Complaint including subparts (a) through (w) as they pertain to Defendant A-I-I.

21. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 21 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

22. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 22 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

23. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 23 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

24. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 24 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

25. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 25 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

THE PARTIES

26. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 26 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

27. Defendant A-I-I denies the allegations in Paragraph 27 of the Complaint including subparts (a) through (w) as they pertain to Defendant A-I-I.

28. Defendant A-I-I admits that it is a California General Partnership with its principal place of business in California, A-I-I denies each and every remaining allegation in Paragraph 28 of the Complaint as they pertain to Defendant A-I-I.

29. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 29 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

30. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 30 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

31. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 31 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

32. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 32 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

33. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 33 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

34. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 34 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

35. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 35 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

36. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 36 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

37. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 37 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

38. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 38 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

39. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 39 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

40. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 40 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

41. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 41 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

42. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 42 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

43. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 43 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

44. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 44 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

45. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 45 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

46. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 46 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

47. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 47 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

48. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 48 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

49. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 49 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

50. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 50 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

51. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 51 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

52. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 52 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

53. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 53 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

54. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 54 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

55. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 55 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

56. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 56 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

57. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 57 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

58. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 58 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

59. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 59 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

60. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 60 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

61. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 61 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

62. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 62 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

63. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 63 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

64. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 64 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

65. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 65 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

66. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 66 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

67. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 67 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

68. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 68 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

69. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 69 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

70. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 70 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

71. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 71 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

72. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 72 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

73. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 73 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

74. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 74 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

75. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 75 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

76. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 76 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

77. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 77 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

78. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 78 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

79. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 79 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

80. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 80 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

81. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 81 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

82. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 82 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

83. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 83 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

84. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 84 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

85. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 85 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

86. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 86 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

87. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 87 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

BACKGROUND FACTS

88. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 88 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

89. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 89 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

90. Defendant A-I-I denies as stated the allegations contained in Paragraph 90 of the Complaint as they pertain to Defendant A-I-I.

91. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 91 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

92. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 92 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

93. Defendant A-I-I denies as stated the allegations contained in Paragraph 93 of the Complaint as they pertain to Defendant A-I-I.

94. Defendant A-I-I denies the allegations contained in Paragraph 94 of the Complaint as they pertain to Defendant A-I-I.

95. Defendant A-I-I denies the allegations contained in Paragraph 95 of the Complaint as they pertain to Defendant A-I-I.

96. Defendant A-I-I denies the allegations contained in Paragraph 96 of the Complaint as they pertain to Defendant A-I-I.

97. Defendant A-I-I denies the allegations contained in Paragraph 97 of the Complaint as they pertain to Defendant A-I-I.

98. Defendant A-I-I denies the allegations contained in Paragraph 98 of the Complaint as they pertain to Defendant A-I-I.

99. Defendant A-I-I denies the allegations contained in Paragraph 99 of the Complaint as they pertain to Defendant A-I-I.

100. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 100 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

101. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 101 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

FOR A FIRST CAUSE OF ACTION

102. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 101 of the Complaint set forth above as if fully set forth herein.

103. Defendant A-I-I denies the allegations contained in Paragraph 103 of the Complaint as they pertain to Defendant A-I-I.

104. Defendant A-I-I denies the allegations contained in Paragraph 104 of the Complaint as they pertain to Defendant A-I-I.

105. Defendant A-I-I denies the allegations contained in Paragraph 105 of the Complaint as they pertain to Defendant A-I-I.

106. Defendant A-I-I denies the allegations contained in Paragraph 106 of the Complaint as they pertain to Defendant A-I-I.

107. Defendant A-I-I denies the allegations contained in Paragraph 107 of the Complaint as they pertain to Defendant A-I-I.

108. Defendant A-I-I denies the allegations contained in Paragraph 108 of the Complaint as they pertain to Defendant A-I-I.

109. Defendant A-I-I denies the allegations contained in Paragraph 109 of the Complaint as they pertain to Defendant A-I-I.

110. Defendant A-I-I denies the allegations contained in Paragraph 110 of the Complaint as they pertain to Defendant A-I-I.

111. Defendant A-I-I denies the allegations contained in Paragraph 111 of the Complaint as they pertain to Defendant A-I-I.

112. Defendant A-I-I denies the allegations contained in Paragraph 112 of the Complaint as they pertain to Defendant A-I-I.

113. Defendant A-I-I denies the allegations contained in Paragraph 113 of the Complaint as they pertain to Defendant A-I-I.

114. Defendant A-I-I denies the allegations contained in Paragraph 114 of the Complaint as they pertain to Defendant A-I-I.

115. Defendant A-I-I denies the allegations contained in Paragraph 115 of the Complaint as they pertain to Defendant A-I-I.

116. Defendant A-I-I denies the allegations contained in Paragraph 116 of the Complaint as they pertain to Defendant A-I-I.

117. Defendant A-I-I denies the allegations contained in Paragraph 117 of the Complaint as they pertain to Defendant A-I-I.

FOR A SECOND CAUSE OF ACTION

118. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 117 of the Complaint set forth above as if fully set forth herein.

119. Defendant A-I-I denies the allegations contained in Paragraph 119 of the Complaint as they pertain to Defendant A-I-I.

120. Defendant A-I-I denies the allegations contained in Paragraph 120 of the Complaint as they pertain to Defendant A-I-I.

121. Defendant A-I-I denies the allegations contained in Paragraph 121 of the Complaint as they pertain to Defendant A-I-I.

122. Defendant A-I-I denies the allegations contained in Paragraph 122 of the Complaint as they pertain to Defendant A-I-I.

123. Defendant A-I-I denies the allegations contained in Paragraph 123 of the Complaint as they pertain to Defendant A-I-I.

124. Defendant A-I-I denies the allegations contained in Paragraph 124 of the Complaint as they pertain to Defendant A-I-I.

125. Defendant A-I-I denies the allegations contained in Paragraph 125 of the Complaint as they pertain to Defendant A-I-I.

126. Defendant A-I-I denies the allegations contained in Paragraph 126 of the Complaint as they pertain to Defendant A-I-I.

127. Defendant A-I-I denies the allegations contained in Paragraph 127 of the Complaint as they pertain to Defendant A-I-I.

128. Defendant A-I-I denies the allegations contained in Paragraph 128 of the Complaint as they pertain to Defendant A-I-I.

129. Defendant A-I-I denies the allegations contained in Paragraph 129 of the Complaint as they pertain to Defendant A-I-I.

130. Defendant A-I-I denies the allegations contained in Paragraph 130 of the Complaint as they pertain to Defendant A-I-I.

131. Defendant A-I-I denies the allegations contained in Paragraph 131 of the Complaint as they pertain to Defendant A-I-I.

132. Defendant A-I-I denies the allegations contained in Paragraph 132 of the Complaint as they pertain to Defendant A-I-I.

133. Defendant A-I-I denies the allegations contained in Paragraph 133 of the Complaint as they pertain to Defendant A-I-I.

134. Defendant A-I-I denies the allegations contained in Paragraph 134 of the Complaint as they pertain to Defendant A-I-I.

FOR A THIRD CAUSE OF ACTION

135. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 134 of the Complaint set forth above as if fully set forth herein.

136. Defendant A-I-I denies the allegations contained in Paragraph 136 of the Complaint as they pertain to Defendant A-I-I.

137. Defendant A-I-I denies the allegations contained in Paragraph 137 of the Complaint as they pertain to Defendant A-I-I.

138. Defendant A-I-I denies the allegations contained in Paragraph 138 of the Complaint as they pertain to Defendant A-I-I.

FOR A FOURTH CAUSE OF ACTION

139. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 138 of the Complaint set forth above as if fully set forth herein.

140. Defendant A-I-I denies the allegations contained in Paragraph 140 of the Complaint as they pertain to Defendant A-I-I.

141. Defendant A-I-I denies the allegations contained in Paragraph 141 of the Complaint as they pertain to Defendant A-I-I.

142. Defendant A-I-I denies the allegations contained in Paragraph 142 of the Complaint as they pertain to Defendant A-I-I.

FOR A FIFTH CAUSE OF ACTION

143. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 142 of the Complaint set forth above as if fully set forth herein.

144. Defendant A-I-I denies the allegations contained in Paragraph 144 of the Complaint as they pertain to Defendant A-I-I.

145. Defendant A-I-I denies the allegations contained in Paragraph 145 of the Complaint as they pertain to Defendant A-I-I.

146. Defendant A-I-I denies the allegations contained in Paragraph 146 of the Complaint as they pertain to Defendant A-I-I.

FOR A SIXTH CAUSE OF ACTION

147. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 146 of the Complaint set forth above as if fully set forth herein.

148. Defendant A-I-I denies the allegations contained in Paragraph 148 of the Complaint as they pertain to Defendant A-I-I.

149. Defendant A-I-I denies the allegations contained in Paragraph 149 of the Complaint as they pertain to Defendant A-I-I.

150. Defendant A-I-I denies the allegations contained in Paragraph 146 of the Complaint as they pertain to Defendant A-I-I.

151. Defendant A-I-I denies the allegations contained in Paragraph 150 of the Complaint as they pertain to Defendant A-I-I.

152. Defendant A-I-I denies the allegations contained in Paragraph 152 of the Complaint as they pertain to Defendant A-I-I.

153. Defendant A-I-I denies the allegations contained in Paragraph 153 of the Complaint as they pertain to Defendant A-I-I.

154. Defendant A-I-I denies the allegations contained in Paragraph 154 of the Complaint as they pertain to Defendant A-I-I.

155. Defendant A-I-I denies the allegations contained in Paragraph 155 of the Complaint as they pertain to Defendant A-I-I.

156. Defendant A-I-I denies the allegations contained in Paragraph 156 of the Complaint as they pertain to Defendant A-I-I.

157. Defendant A-I-I denies the allegations contained in Paragraph 157 of the Complaint as they pertain to Defendant A-I-I.

158. Defendant A-I-I denies the allegations contained in Paragraph 158 of the Complaint as they pertain to Defendant A-I-I.

159. Defendant A-I-I denies the allegations contained in Paragraph 159 of the Complaint as they pertain to Defendant A-I-I.

160. Defendant A-I-I denies the allegations contained in Paragraph 160 of the Complaint as they pertain to Defendant A-I-I.

161. Defendant A-I-I denies the allegations contained in Paragraph 161 of the Complaint as they pertain to Defendant A-I-I.

162. Defendant A-I-I denies the allegations contained in Paragraph 162 of the Complaint as they pertain to Defendant A-I-I.

163. Defendant A-I-I denies the allegations contained in Paragraph 163 of the Complaint as they pertain to Defendant A-I-I.

164. Defendant A-I-I denies the allegations contained in Paragraph 164 of the Complaint as they pertain to Defendant A-I-I.

165. Defendant A-I-I denies the allegations contained in Paragraph 165 of the Complaint as they pertain to Defendant A-I-I.

166. Defendant A-I-I denies the allegations contained in Paragraph 166 of the Complaint as they pertain to Defendant A-I-I.

167. Defendant A-I-I denies the allegations contained in Paragraph 167 of the Complaint as they pertain to Defendant A-I-I.

168. Defendant A-I-I denies the allegations contained in Paragraph 168 of the Complaint as they pertain to Defendant A-I-I.

169. Defendant A-I-I denies the allegations contained in Paragraph 169 of the Complaint as they pertain to Defendant A-I-I.

170. Defendant A-I-I denies the allegations contained in Paragraph 170 of the Complaint as they pertain to Defendant A-I-I.

171. Defendant A-I-I denies the allegations contained in Paragraph 171 of the Complaint as they pertain to Defendant A-I-I.

172. Defendant A-I-I denies the allegations contained in Paragraph 172 of the Complaint as they pertain to Defendant A-I-I.

173. Defendant A-I-I denies the allegations contained in Paragraph 173 of the Complaint as they pertain to Defendant A-I-I.

174. Defendant A-I-I denies the allegations contained in Paragraph 174 of the Complaint as they pertain to Defendant A-I-I.

175. Defendant A-I-I denies the allegations contained in Paragraph 175 of the Complaint as they pertain to Defendant A-I-I.

176. Defendant A-I-I denies the allegations contained in Paragraph 176 of the Complaint as they pertain to Defendant A-I-I.

177. Defendant A-I-I denies the allegations contained in Paragraph 177 of the Complaint as they pertain to Defendant A-I-I.

178. Defendant A-I-I denies the allegations contained in Paragraph 178 of the Complaint as they pertain to Defendant A-I-I.

179. Defendant A-I-I denies the allegations contained in Paragraph 179 of the Complaint as they pertain to Defendant A-I-I.

180. Defendant A-I-I denies the allegations contained in Paragraph 180 of the Complaint as they pertain to Defendant A-I-I.

181. Defendant A-I-I denies the allegations contained in Paragraph 181 of the Complaint as they pertain to Defendant A-I-I.

182. Defendant A-I-I denies the allegations contained in Paragraph 182 of the Complaint as they pertain to Defendant A-I-I.

183. Defendant A-I-I denies the allegations contained in Paragraph 183 of the Complaint as they pertain to Defendant A-I-I.

184. Defendant A-I-I denies the allegations contained in Paragraph 184 of the Complaint as they pertain to Defendant A-I-I.

185. Defendant A-I-I denies the allegations contained in Paragraph 185 of the Complaint as they pertain to Defendant A-I-I.

186. Defendant A-I-I denies the allegations contained in Paragraph 186 of the Complaint as they pertain to Defendant A-I-I.

187. Defendant A-I-I denies the allegations contained in Paragraph 187 of the Complaint as they pertain to Defendant A-I-I.

188. Defendant A-I-I denies the allegations contained in Paragraph 188 of the Complaint as they pertain to Defendant A-I-I.

189. Defendant A-I-I denies the allegations contained in Paragraph 189 of the Complaint as they pertain to Defendant A-I-I.

190. Defendant A-I-I denies the allegations contained in Paragraph 190 of the Complaint as they pertain to Defendant A-I-I.

191. Defendant A-I-I denies the allegations contained in Paragraph 191 of the Complaint as they pertain to Defendant A-I-I.

192. Defendant A-I-I denies the allegations contained in Paragraph 192 of the Complaint as they pertain to Defendant A-I-I.

193. Defendant A-I-I denies the allegations contained in Paragraph 193 of the Complaint as they pertain to Defendant A-I-I.

194. Defendant A-I-I denies the allegations contained in Paragraph 194 of the Complaint as they pertain to Defendant A-I-I.

195. Defendant A-I-I denies the allegations contained in Paragraph 195 of the Complaint as they pertain to Defendant A-I-I.

196. Defendant A-I-I denies the allegations contained in Paragraph 196 of the Complaint, including subparagraphs (a) through (d) as they pertain to Defendant A-I-I.

197. Defendant A-I-I denies the allegations contained in Paragraph 197 of the Complaint as they pertain to Defendant A-I-I.

198. Defendant A-I-I denies the allegations contained in Paragraph 198 of the Complaint as they pertain to Defendant A-I-I.

199. Defendant A-I-I denies the allegations contained in Paragraph 199 of the Complaint as they pertain to Defendant A-I-I.

200. Defendant A-I-I denies the allegations contained in Paragraph 200 of the Complaint as they pertain to Defendant A-I-I.

201. Defendant A-I-I denies the allegations contained in Paragraph 201 of the Complaint as they pertain to Defendant A-I-I.

202. Defendant A-I-I denies the allegations contained in Paragraph 202 of the Complaint as they pertain to Defendant A-I-I.

203. Defendant A-I-I denies the allegations contained in Paragraph 203 of the Complaint as they pertain to Defendant A-I-I.

204. Defendant A-I-I denies the allegations contained in Paragraph 204 of the Complaint as they pertain to Defendant A-I-I.

205. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 205 of the Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

206. Defendant A-I-I denies the allegations contained in Paragraph 206 of the Complaint as they pertain to Defendant A-I-I.

207. Defendant A-I-I denies the allegations contained in Paragraph 207 of the Complaint as they pertain to Defendant A-I-I.

208. Defendant A-I-I denies the allegations contained in Paragraph 208 of the Complaint as they pertain to Defendant A-I-I.

209. Defendant A-I-I denies the allegations contained in Paragraph 209 of the Complaint as they pertain to Defendant A-I-I.

FOR A SEVENTH CAUSE OF ACTION

Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 209 of the Complaint set forth above as if fully set forth herein.

210. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 210 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

211. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 211 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

212. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 212 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

213. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 213 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

214. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 214 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

215. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 215 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

216. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 216 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

217. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 217 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

218. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 218 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

219. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 219 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

220. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 220 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

221. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 221 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

222. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 222 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

223. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 223 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

224. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 224 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

225. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 225 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

226. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 226 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

227. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 227 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

228. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 228 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

229. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 229 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

230. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 230 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

231. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 231 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

232. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 232 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

233. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 233 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

234. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 234 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

235. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 235 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

236. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 236 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

237. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 237 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

238. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 238 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

239. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 239 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

240. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 240 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

241. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 241 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

242. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 242 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

243. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 243 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

244. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 244 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

245. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 245 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

246. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 246 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

247. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 247 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

248. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 248 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

249. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 249 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

250. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 250 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

251. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 251 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

252. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 252 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

253. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 253 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

254. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 254 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

255. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 255 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

256. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 256 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

257. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 257 of the Complaint, including subparagraphs (a) through (f) and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

258. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 258 of the Complaint, including subparagraphs (a) through (c) and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

259. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 259 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

260. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 260 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the unnumbered WHEREFORE Paragraph after Paragraph 260 of the Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

FOR AN EIGHT CAUSE OF ACTION

261. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 260 of the Complaint set forth above as if fully set forth herein.

262. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 262 of the Complaint and therefore denies the allegations.

263. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 263 of the Complaint and therefore denies the allegations.

264. Defendant A-I-I denies the allegations contained in Paragraph 264 of the Complaint as they pertain to Defendant A-I-I.

AS TO WHEREFORE CLAUSE

The unnumbered WHEREFORE clause contained in the Complaint does not contain allegations to which a response is required. To the extent a response is required, Defendant A-I-I denies such allegations as they pertain to Defendant A-I-I. Defendant A-I-I denies that Plaintiffs are entitled to recover from it in any amount.

WHEREFORE, Defendant A-I-I requests that the Complaint be dismissed, judgment entered in its favor and against Plaintiff, with costs assessed against Plaintiff.

This 29th day of September 2023.

HAWKINS PARNELL & YOUNG LLP

/s/ E. Elaine Shofner

Elaine Shofner

South Carolina Bar No. 100501

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eshofner@hpylaw.com

Counsel for Defendant

American International Industries

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C.A. No.: 2023-CP-40-04072
LONNIE L. LONG	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANT AMERICAN INTERNATIONAL INDUSTRIES' MOTION TO SET
ASIDE ENTRY OF DEFAULT BEFORE DEFAULT JUDGMENT HEARING**

Defendant AMERICAN INTERNATIONAL INDUSTRIES, incorrectly sued as “American International Industries, individually and as successor to Pinaud, Inc., Barbara Alice, Inc., Ed. Pinaud, Inc. d/b/a Ed. Pinaud, and Nestle-Le Mur Company” (hereinafter “A-I-I”), files this Motion to Set Aside the Entry of Default Before the Default Judgment Hearing. This Court should relieve A-I-I from the entry of default for three reasons. First, the default is void for improper service. Second, A-I-I answered Plaintiffs’ Complaint before the default was entered. Third, even if the Summons and Complaint were properly served, there is sufficient evidence of a good faith mistake and no attempt to thwart the judicial system by A-I-I’s late-filed Answer. This Motion is timely and promptly made within seven days of the Order granting default, A-I-I has a meritorious defense to the claims against it, and Plaintiffs suffer no prejudice if the relief is granted.

PROCEDURAL AND FACTUAL BACKGROUND

On August 3, 2023, Plaintiffs filed their Complaint against A-I-I and 58 additional defendants in this South Carolina court. (*See* Complaint.) A week later, on August 10, Plaintiffs

attempted to personally serve A-I-I in California with the Summons and Complaint. However, Plaintiffs neglected to properly serve the requisite officer, agent, or authorized representative of A-I-I under the South Carolina Rules of Civil Procedure. Rather, Plaintiffs served an individual who was not authorized to accept service. (*See* Affidavit of Brian Dror (“Dror Aff.”) ¶4.) Although service was never properly effected, A-I-I emailed a copy of the Complaint to A-I-I’s “national counsel” (who represents A-I-I in California, where A-I-I is located, but not in South Carolina). (*Affidavit of Julia Gowin* (“Gowin Aff.”) ¶3.); *See also* Dror Aff. ¶5.). Acting swiftly, on August 11, A-I-I’s national counsel recommended retention of local counsel in South Carolina to A-I-I’s insurer. (*Gowin Aff.* ¶4.)

On August 24, A-I-I’s insurer acknowledged the Complaint and noted the need for conflicts check with the South Carolina firm. (*See Gowin Aff.* ¶5.) In the following weeks, A-I-I reached out to three separate counsel and two firms about running conflicts for potential retention, which with 60 named defendants was expected to take time, particularly if waiver letters were also needed. (*See Gowin Aff.* ¶ 6.) By September 11, A-I-I’s answer (assuming the Summons and Complaint were properly served, which they were not) came due. At this time, conflicts were still not cleared for any local counsel in South Carolina. (*See Gowin Aff.* ¶7.) Despite several communications between Dean Omar Branham Shirley, LLP lawyers and A-I-I’s national counsel on other matters during this time frame, Plaintiffs’ counsel never mentioned this case. Nor did Plaintiffs’ counsel inquire whether A-I-I intended to answer Plaintiffs’ Complaint or indicate that they intended to file a Motion for Default. (*See Gowin Aff.* ¶9.) Plaintiffs’ counsel had several opportunities to do so to avoid this unnecessary motion practice. (*Id.*)

The landscape shifted on September 26 when Plaintiffs surprisingly filed a Motion for Default Judgment against A-I-I. Upon learning of this development from the client on September 27, A-I-I’s response was swift and unambiguous—making immediate attempts to remedy the situation. (*See Gowin Aff.* ¶ 10.) National counsel for A-I-I called two of the Plaintiffs’ attorneys to explain the issues with securing local counsel in South Carolina and to seek an extension of time for A-I-I and another defendant in this case, Glamour Industries, Co., to respond to Plaintiffs’

Complaint. (*See* Pendley Aff. ¶ 3.) At this time, A-I-I was unaware that Plaintiffs had failed to properly serve it under South Carolina law. (*See* Pendley Aff. ¶ 4.)

Although counsel for A-I-I made a sincere and good faith effort to rectify the inadvertent response date oversight, the following day, Plaintiffs' counsel denied A-I-I's request for an extension, citing grievances Plaintiffs' counsel had with a strategic decision made by an unrelated defendant in a trial eight months ago. (*See* Pendley Aff. ¶5.) Plaintiffs' refusal was not rooted in any substantive or prejudicial reasoning; rather, Plaintiffs' counsel sought to penalize A-I-I for actions supposedly taken by an unrelated entity who was represented by the firm that acts as A-I-I's national counsel, Lathrop GPM. (*See* Pendley Aff. ¶5.) Such a retaliatory basis, devoid of any relevance to this case or this defendant, not only undermines the sanctity of professional courtesy but also raises concerns about the potential miscarriage of justice as it relates to A-I-I.

On the same day Plaintiffs refused to provide an extension, September 29, A-I-I secured counsel based in Atlanta, Georgia, who promptly filed A-I-I's Answer. (*See* Gowin Aff. ¶11.) At the time, A-I-I was still facing challenges with securing South Carolina counsel that could clear conflicts of interest. (*Id.*) Default had not been entered when A-I-I answered Plaintiffs' Complaint, and the clerk accepted the filing on September 29, 2023.

Four days later, on October 3, 2023, the Court signed an order granting Plaintiffs' motion for default judgment based on an Affidavit representing that A-I-I was properly served. (*See* Order.) Later that day, Trey Branham of Dean Omar Branham Shirley, LLP contacted A-I-I's Atlanta attorney to inform her of the order. He indicated an unwillingness to collaborate with her on withdrawal of the default, referencing personal animosity towards an attorney with Lathrop GPM, A-I-I's national counsel. (*See* Gowin Aff. ¶12.)

A-I-I has continued to face unprecedented challenges in securing local counsel to represent it in South Carolina. Prospective firms were not deterred solely due to conflicts of interest, but were also dissuaded from representing A-I-I due to threats and intimidation from Plaintiffs' attorneys. (*See* Gowin Aff. ¶13.) It was not until yesterday, October 9, 2023, that A-I-I was able to secure local counsel in South Carolina. (*Dror* Aff. ¶13.)

A discerning evaluation of the discovery served in the case reveals minimal substantive bases for Plaintiffs' claims against A-I-I. The sparse references to A-I-I's product, Clubman Talc, exist solely in the allegations of Plaintiffs' Complaint. None of Mr. Perry's discovery responses mention Clubman. Mr. Perry's work history affidavit pertains to vehicle repair, and the photographs he produced reflect images of other talcum powder products—not A-I-I's Clubman Talc. This raises serious concerns about the true motives behind Plaintiffs' aggressive push for default.

Throughout this process, A-I-I has consistently signaled its intent to actively participate in the litigation and has in no way delayed or prejudiced Plaintiffs' proceedings. Discovery has barely commenced. Aside from Plaintiffs providing generic responses to standard interrogatories before Mr. Perry's deposition, no discovery has been conducted. Mr. Perry's deposition began today, October 10, 2023, and A-I-I participated.

Placed against the backdrop of established legal precedent, A-I-I's actions unmistakably reflect a pattern of genuine good faith. Courts have recognized good cause in scenarios marked by genuine mistakes and immediate proactive efforts to correct them—traits clearly demonstrated by A-I-I here. Further, there is no prejudice to Plaintiffs, and the entry of default is void for improper service.

LEGAL STANDARD

Defective service of a summons and complaint is grounds for setting aside an entry of default. The entry of default and default judgment shall be set aside where service was made upon a purported agent who, in fact, did not have authority to accept service on behalf of the defendant. *Hamilton v. Davis*, 300 S.C. 411, 389 S.E.2d 297 (Ct. App. 1990) (claims of authority by the purported agent are not necessarily binding; there must be some evidence the defendant intended to confer such authority); *Richardson Const. Co., Inc. v. Meek Engineering and Const., Inc.*, 274 S.C. 307, 262 S.E.2d 913 (1980) (where the claiming party fails to serve the summons on the opposing party, the court is without jurisdiction over the opposing party and must set aside any default judgment).

Even if A-I-I was properly served, which it contends it was not, the standards for relief from entry of default are met. Rule 55(c) provides that, “[f]or good cause shown the court may set aside an entry of default.” The decision to set aside an entry of default judgment lies within the sound discretion of the trial judge. *Robertson v. S. Fin. Of S.C., Inc.*, 365 S.C. 6, 9, 615 S.E. 2d 112, 115 (2005). The standard for granting relief from an entry of default under Rule 55(c) is merely “good cause.” *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct.App. 1989). “This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Thereafter, “once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham*, 298 S.C. at 465, 381 S.E.2d at 501-02).

ARGUMENT

Because it is always preferable to try and dispose of cases on the merits, it is well established in South Carolina that default judgments are disfavored and motions to set aside defaults should be liberally construed. *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995). Public policy favors the disposition of cases “on their merits rather than on technicalities.” *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511 (Ct. App. 2001) (citing *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59 (Ct. App. 1986)). Indeed, South Carolina views default judgment as a harsh and drastic action. *Petty v. Weyerhaeuser Co.*, 272 S.C. 282, 251 S.E.2d 735 (1979).

The Federal Rules of Civil Procedure, which align with the South Carolina Rules of Civil Procedure, likewise favor deciding issues on the merits instead of in default. See *Moore v. Google, Inc.*, No. CIV.A. 2:13-3034-RMG, 2014 WL 4955264, at *3 (D.S.C. Sept. 30, 2014), *aff'd*, 599 F. App'x 108(4th Cir. 2015) (“[D]efault judgments are devices available to the Court to manage cases

where defendants refuse to participate in judicial proceedings; they are not prizes available for Plaintiffs to claim if they have the good fortune of suing a party that misses a court deadline. Here, far from being unresponsive, Defendant has argued the merits of the case[.]”). The Rule 55(c) standard merely requires a party seeking relief from an entry of default to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Sundown*, 383 S.C. at 607.

I. This Court Should Set Aside the Entry of Default Because It Is Void for Improper Service.

A-I-I is entitled to relief from the entry of default because it is void for improper service. Plaintiffs’ August 9, 2023, attempted personal service of the Summons and Complaint was improper because it was not accepted by an authorized agent. Because the entry of default was explicitly based on this improper service, it must be set aside.

Pursuant to Rule 4(d)(3) of the South Carolina Rules of Civil Procedure, service is proper “upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.” SCRCR Rule 4(d)(3). *Hamilton v. Davis*, 300 S.C. 411, 414, 389 S.E.2d 297, 298 (Ct. App. 1990) (“[A]ctual appointment for the specific purpose of receiving process normally is expected and the mere fact a person may be considered to act as defendant’s agent for some purpose does not necessarily mean that the person has authority to receive process.”); *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 67 (Ct. App. 1996) (“Claims by one to possess authority to receive process or actual acceptance of process by an alleged agent will not necessarily bind the defendant. Rather, there must be evidence the defendant intended to confer such authority.”).

“[A]ny . . . default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.” S.C.R.C.P. 4(d)(8). To be “authorized” to accept service, the principal must grant the authority to the agent. See *Moore v. Simpson*, 322 S.C. 518, 524, 473 S.E.2d 64, 67 (Ct. App. 1996) (“Without specific authorization to receive process, service is not effective when made upon an employee of the defendant, such as a secretary.”); *Roberson v. Southern Finance of S.C, Inc.*, 365 S.C. 6, 11, 615 S.E.2d 112, 115 (2005) (“An apparent agency may not be established solely by the declarations and conduct of an alleged agent.”). “Actual appointment for the specific purpose of receiving process normally is expected and the mere fact a person may be considered to act as defendant’s agent for some purpose does not necessarily mean that the person has the authority to receive process.” *Moore*, 322 S.C. at 523, 473 S.E.2d at 67.

Here, Plaintiffs served the Summons and Complaint on Terri Cooper at A-I-I in Los Angeles. (See Plaintiffs Motion for Default) Plaintiffs indicate in their Affidavit that Terri Cooper was an “authorized representative.” (See Exhibit A to Plaintiffs Motion for Default.) However, A-I-I has not authorized Terri Cooper to receive or accept service on its behalf. (Dror Aff. ¶ 4.) Because the Summons and Complaint were not accepted by an officer, registered agent, or an agent authorized to accept service, Plaintiffs’ attempted service was ineffective. See *Moore*, 322 S.C. at 524, 473 S.E.2d at 67 (quashing service of summons and complaint where receptionist did not have authority to accept service of process).

Despite this, on September 26, 2023, Plaintiffs’ counsel filed a Motion for Default with an Affidavit swearing that A-I-I was served with Summons and Complaint by personal process on August 9, 2023, and that A-I-I was in default by not answering by September 9, 2023. On October 3, 2023, this Court entered default against A-I-I, indicating it was based on an affidavit from Plaintiffs swearing they properly served A-I-I through its “authorized representative.” Plaintiffs make no showing that Terri Cooper has been authorized by A-I-I to accept service of process. Because the order entering default is based on Plaintiffs’ Motion for Default Judgment and erroneous Affidavit of Default, which are based on Plaintiffs’ improper service, the entry of default

is likewise based on improper service and must be set aside. S.C.R.C.P. 4(d)(8); *See generally Honorage Nursing Home of Florence, S.C., Inc. v. Florance Convalescent Center, Inc.*, 367 S.C. 108, 113, 623 S.E.2d 853, 855-56 (Ct. App. 2005) (holding that plaintiff failed to properly serve Defendant and entry of default was correctly set aside).

II. In the Interests of Justice and Fairness, this Court Should Set Aside the Entry of Default Due to a Compelling Showing of Good Cause.

To demonstrate “good cause” pursuant to Rule 55(c), the defaulting party must “provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 11, 753 S.E.2d 537, 542 (2014). Good cause, pursuant to Rule 55(c), is a much lower standard than the standard applied to setting aside default judgments pursuant to Rule 60(b), SCRC.P. *See Richardson v. P V, Inc.*, 383 S.C. 610, 682 S.E.2d 263, 266 (2009) (“The standard for granting relief from an entry of default is good cause under Rule 55(c), SCRC.P, while the standard is more rigorous for granting relief from a default judgment under Rule 60(b), SCRC.P”). Where there is a good faith mistake of fact and no attempt to thwart the judicial system, a sufficient basis exists to set aside an entry of default. *Columbia Pools, Inc. v. Galvin*, 288 S.C. at 61, 339 S.E.2d at 525.

The reason for A-I-I’s default is straightforward: A-I-I has faced unprecedented challenges in retaining local counsel in South Carolina. A-I-I has encountered roadblocks with chosen counsel declining representation due to conflicts of interest and, as A-I-I later came to find out, also because of threats made by Plaintiffs’ counsel to dissuade attorneys from representing A-I-I. (*See Dror Aff.* ¶¶ 6-11.) Since it received the Complaint, A-I-I has requested representation from different firms in South Carolina and has either been told there are conflicts or that Plaintiffs’ counsel is threatening to sue those firms’ other clients if the attorneys agree to represent A-I-I in this case. (*Id.*) This has put A-I-I in an extraordinary position and led to delayed retention of local counsel to file responsive pleadings. (*Id.*)

Despite significant hurdles, A-I-I’s response upon learning of Plaintiffs’ motion for default exemplifies its commitment to the judicial system. Without delay, A-I-I leveraged external

resources, sought assistance from out-of-state counsel, and tried in earnest to negotiate an extension to respond from Plaintiffs' counsel. For example, upon receipt of Plaintiffs' motion for default, A-I-I immediately sent it to counsel who represents A-I-I in states outside South Carolina and asked for assistance. (*See* Gowin Aff. ¶8.) This attorney called two different individuals representing Plaintiffs to explain the issues with securing local counsel, seek an extension for A-I-I to respond to Plaintiffs' Complaint, and request withdrawal of the motion. (*See* Pendley Aff. ¶ 3.) A-I-I's sincere efforts to redress the situation were met with a refusal from Plaintiffs' counsel, which was not anchored in any legitimate legal rationale but, rather, in unrelated past grievances. Indeed, Plaintiffs' counsel refused the extension and withdrawal of their motion for no reason other than a grudge attorneys at Dean Omar Branham and Shirley, LLP are holding against Lathrop GPM for its representation of a different client in an unrelated trial over eight months ago. (*See* Pendley Aff. ¶ 5.) Plaintiffs' counsel did not cite any prejudice to her client or other reasonable grounds for not extending a routine professional courtesy. (*See* Pendley Aff. ¶ 5.) Such personal biases should never undermine the ethos of professional courtesy and fairness, which our legal system upholds.

After Plaintiffs' counsel refused to grant the extension and withdraw their motion, counsel that represents A-I-I outside of South Carolina suggested that A-I-I, in conjunction with its insurance carrier, retain counsel based in Atlanta, Georgia, to appear and immediately file an answer for A-I-I. (*See* Dror ¶ 9; Gowin Aff. ¶ 11; Pendley Aff. ¶6.) A-I-I's Answers was filed the same day. (*Id.*) Although A-I-I now has its responsive pleading on file, A-I-I has been actively in the process of securing local counsel in South Carolina. (*See* Gowin Aff. ¶ 10-13.) In fact, once A-I-I's Answer was filed, Mr. Branham called Ms. Shofner to state that he would not negotiate a set aside of the default with her and that "this is personal." (*See* Gowin Aff. ¶ 12.) It was not until yesterday, October 9, 2023, that A-I-I was able to secure local counsel in South Carolina. (*See* Dror Aff. ¶ 13.)

Despite the obstructions, neither A-I-I nor its counsel has asked Plaintiffs to delay this case in any way. Both A-I-I and Glamour have answered Plaintiffs' Complaint before the Default was

entered and participated in Mr. Perry's deposition. (*See* Dror Aff. ¶ 12.) The timeline reflects a demonstrable pattern of good faith and proactivity by A-I-I, sufficient to evidence a "good faith mistake of fact" with "no attempt to thwart the judicial system." Indeed, courts have found good cause existed in numerous situations involving simple errors and genuine mistakes like here. *See, e.g., Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987) (where teacher provided her suit papers to her employer and her employer failed to properly answer the suit papers, court granted relief to the defaulting defendant in the interest of trying cases on their merits); *D.L. Warren Constr., Inc. v. Robert O. Collins Co., Inc.*, 2005 WL 6215313 (Charleston Co. Trial Ct. Order, January 18, 2005) (good cause existed where defendant incorrectly assumed co-defendant's attorney was defending him, but this was not communicated to the attorney, and defendant immediately retained counsel upon being served with entry of default).

Application of the criteria from *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989) weighs in A-I-I's favor. For example, A-I-I's immediate and proactive efforts post-realization exemplify its commitment to actively participate and resolve this matter in a timely manner. Second, as articulated in Section IV below, A-I-I's defense is not merely meritorious but compelling. It demands the court's meticulous examination. Third, the pendulum of prejudice swings markedly in A-I-I's favor as setting aside the default poses minimal, if any, prejudice to Plaintiffs whereas enforcement would unjustly deprive A-I-I of its rightful defense.

A party seeking relief from an entry of default under Rule 55(c) must provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. A-I-I has provided its explanation for default and good cause through Mr. Dror's, Ms. Pendley's, and Ms. Gowin's affidavits. Therefore, the discussion turns to the factors outlined in *Wham v. Shearson Lehman Bros., Inc.* including: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989).

III. A-I-I Acted Quickly in Moving to Set Aside Entry of Default.

South Carolina courts have held a defendant acts timely in seeking relief to set aside default when the defendant acts promptly upon learning of the entry of default. *Williams v. Watkins*, 384 S.C.319, 326, 681 S.E.2d at 917 (motion for relief was within reasonable time as defendant sought relief as soon as he discovered default); *Melton v. Olenik*, 379 S.C. 45, 56, 664 S.E.2d 487, 493 (C. App. 2008) (finding motion for relief was timely because defendant filed motion for relief a little over a month after learning of the default).

A-I-I filed its Motion to Set Aside Default mere days after the Court entered its Order on Plaintiffs' motion. When A-I-I learned that a motion for default had been filed, outside counsel for A-I-I called Plaintiffs' counsel in South Carolina the very next day to ask for a courtesy and explain the dilemma with securing local counsel. When the extension was denied, A-I-I secured counsel from Atlanta to file the Answer that same day. The Motion to Set Aside followed promptly thereafter. There is no evidence of unreasonable delay by A-I-I.

IV. A-I-I Has a Meritorious Defense

To establish a meritorious defense, defendants do not have to show they would prevail on the merits. *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008). Rather, a meritorious defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." *Id.* at 575, 671 S.E.2d at 94 (citations omitted); *see also Edwards v. Ferguson*, 254 S.C. 278, 282, 175 S.E.2d 224, 225 (1970) (defendant in an automobile accident case made a "prima facie showing of meritorious defenses" through written statements claiming: "(1) that the defendant was not driving the vehicle, and (2) that even if the defendant was driving the vehicle, the plaintiff was guilty of contributory negligence and recklessness."); *Thompson v. Hammond*, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989) (defendants met the meritorious defense requirement where they supplemented their motion for relief from default judgment with "testimony showing that a real controversy existed" as to whether the plaintiffs' claims were true and accurate).

Here, A-I-I's meritorious defense is manifest. Plaintiffs claim Mr. Perry's mesothelioma diagnosis was caused by inhaling asbestos while performing repairs on automobiles and personal use of talcum powder. (See Compl. ¶ 9; Perry Work History Affidavit.) However, A-I-I's comprehensive Answer, containing 85 substantive defenses, robustly counters Plaintiffs' allegations. See Answer. A-I-I categorically denies having played any role in Mr. Perry's alleged injuries. (See Answer.) Indeed, no formulation of any A-I-I product, including Clubman Talc, used or uses asbestos as an ingredient. (See Charles Loveless Affidavit ¶34.) ("Loveless Aff.") From the time A-I-I began to blend and sell Clubman Talc, it only used pharmaceutical grade (USP) talc. (See Loveless Aff. ¶35.) Further, the USP talc A-I-I received was consistently certified not to contain detectable or regulated asbestiform minerals. (See Loveless Aff. ¶37.) A-I-I has hired an independent laboratory to test its USP talc samples and no asbestiform minerals or other fibrous materials were detected. (See Loveless Aff. ¶38.)

Importantly, Plaintiffs' discovery responses do not reflect that Mr. Perry ever used or came into contact with A-I-I's Clubman Talc. Without establishing a relationship between Mr. Perry and A-I-I causing the purported injury, Plaintiffs' claims fail as a matter of law. *Mut. Sav. & Loan Ass'n v. McKenzie*, 274 S.C. 630, 632, 266 S.E.2d 423, 424 (1980) ("if a complaint fails to state a cause of action, the rendering of a default judgment thereon is without authority of law and therefore reversible error.") Undoubtedly, A-I-I's defense presents substantial questions worthy of investigation. A-I-I should, in the interest of justice and fairness, be given the opportunity to rigorously defend its position through the litigation process and not deprived of that right due to a technicality.

V. Plaintiffs Will Not Be Prejudiced If the Entry of Default Is Set Aside, and Justice Warrants Allowing A-I-I to Defend on the Merits.

a. There is no prejudice to Plaintiffs in setting aside the default.

Setting aside the entry of default will not prejudice Plaintiffs or cause any hardship as discovery can proceed as normal and the case can be ready for trial in its current time frame. See *Top Value Homes v. Harden*, 460 S.E.2d 427, 429 (Ct. App. 1995) (the degree of prejudice to the

nonmoving party if the relief is granted must not be to the extreme or unreasonable). Here, it is clear there is no prejudice to Plaintiffs in that:

- **No Depositions Have Been Taken Without A-I-I Present:** The litigation is still in its very early stages. The first volume of Mr. Perry's deposition commenced today, October 10, and A-I-I was present. The litigation is in its infancy, and A-I-I will remain actively involved.
- **Minimal Discovery Conducted:** The discovery process has barely commenced. Aside from Plaintiffs providing generic responses to standard interrogatories before Mr. Perry's deposition, no significant discovery has been exchanged. A-I-I is in possession of Plaintiffs' responses, ensuring it is on equal footing with the other parties. In fact, a review of Plaintiffs' discovery responses reveals a significant fact: there is no mention of A-I-I nor any indication that Mr. Perry used Clubman Talc. This ostensibly purposeful omission underscores the lack of prejudice and suggests that allowing A-I-I to defend itself on the merits will not adversely affect Plaintiffs' case at all.
- **Immediate Action by A-I-I:** Demonstrating good faith and an intention to defend the claims against it, A-I-I promptly filed an Answer to the Complaint on the very day Plaintiffs' counsel communicated her refusal to grant an extension. A responsive pleading was due, at the earliest, on September 11, 2023, thirty (30) days after service. The error was identified on September 27, 2023, when the Motion for Default was provided, and A-I-I immediately requested an extension. The next day, on September 29, 2023, Plaintiffs' counsel denied the routine courtesy, so A-I-I acted fast to secure counsel from Atlanta to file the Answer that very day. This was only two days after learning that a Motion for Default had been filed. These default proceedings will cause more delay in the progress of the litigation than if A-I-I had been simply given an extension to answer by counsel.
- **No Evidence Lost or Compromised:** There is no indication, nor has it been alleged, that any evidence has been lost or compromised due to the short procedural delay. Similarly, there is no risk of witness testimony going missing or being rendered unavailable. Setting

aside the entry of default will not result in the loss of any evidence, will not cause any increased difficulty in discovery, and will not adversely affect Plaintiffs' ability to pursue their claims.

Given these circumstances, it is apparent that allowing A-I-I to defend itself on the merits will not disadvantage or prejudice Plaintiffs in any way. To the contrary, enforcing a default judgment under these conditions would result in a gross injustice as South Carolina universally favors the resolution of cases on their substantive merits rather than procedural technicalities. See *Caldwell v. Wiquist*, 402 S.C. 565, 575, 741 S.E.2d 583, 588 (Ct. App. 2013) (“[O]ur decision to reverse the trial court’s refusal to set aside the default judgments is consistent with the policy of our state to resolve cases on the merits.”); See also, *Dixon*, 320 S.C. at 178, 463 S.E.2d at 638. Allowing the parties to move forward with the litigation of this action would better serve the judicial process than permitting the case to move forward through default proceedings against A-I-I. Accordingly, because there is no prejudice to Plaintiffs and South Carolina prefers cases to be decided on their actual merits rather than procedural defaults, the Court should set aside the default and allow A-I-I its rightful opportunity to defend itself against the claims asserted by Plaintiffs.

- b. Plaintiffs’ counsel’s refusal to grant an extension was based on improper motives, contrary to the spirit of professional courtesy, and wastes judicial resources.

It is a fundamental tenet of the legal profession that attorneys must, at all times, act in good faith and with the highest standards of professionalism. Rule 402, SCACR (pledging “fairness, integrity, and civility, not only in court, but also in all written and oral communications” to opposing counsel). It is imperative to distinguish between personal disputes and the substantive issues of a case, ensuring attorneys’ duty to their clients and the court remains paramount. Regrettably, Plaintiffs’ counsel appears to have deviated from these principles based on a perceived slight from a trial involving unrelated parties and clients.

Upon realizing the inadvertent delay in responding to the Complaint, A-I-I promptly called two different Plaintiffs’ attorneys seeking a modest extension to file a response and an opportunity

to meet and confer to explain the delay. Although not required, a gesture consistent with a professional courtesy is often given among fellow practitioners. In this case, however, Plaintiffs' counsel unequivocally and surprisingly declined this routine request. The stated rationale was not based on any potential prejudice to Plaintiffs, nor any reason related to the present case. Rather, Plaintiffs' counsel candidly acknowledged that her denial was rooted in personal animosity stemming from unrelated litigation involving a completely different client once represented by Lathrop GPM. This revelation was cemented when another attorney for Plaintiffs described their actions as being “personal” against an attorney with Lathrop GPM.

It is worth noting that Plaintiffs' counsel, despite recognizing the absence of A-I-I's answer, made no effort to notify A-I-I's counsel—even though Dean Omar is in active communication and negotiations with A-I-I's attorneys in multiple cases outside of South Carolina. A-I-I's attorneys have communicated with Plaintiffs' counsel at least three times since Plaintiffs filed this Complaint. (*See* Gowin Aff. ¶ 9.) Not once was there any inquiry into whether A-I-I intended to answer nor any mention that a motion for default was contemplated, which is a practice counsel has been known to follow in other cases in this venue. *See In re Asbestos Personal Injury Litigation Coordinated Docket*, No. 2018-CP-40-04680, 2019 WL 13185699, at *1 (S.C.Com.Pl., Richland County Mar. 20, 2019) (Plaintiffs' counsel emailed defense counsel several times to ask about the late answer before moving forward with a motion for default.) Plaintiffs' conscious decision to withhold information, coupled with their refusal to grant an extension, underscores a troubling pattern aimed at hindering defense efforts and undermining decision of this case on its merits.

An attorney's refusal to consent to an extension for “retaliatory” reasons stands in direct violation of the spirit of professional courtesy and decorum. (Rule 407, SCACR, Rules of Prof. Conduct, Rule 8.4(3)(it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.) It also unreasonably multiplies the hearings and proceedings, burdening the Court with unnecessary distractions and consuming valuable judicial resources.

It is clear that Plaintiffs' counsel's refusal is based on improper motives unrelated to the present case and having nothing to do with any alleged prejudice to Plaintiffs. Such behavior is not only contrary to the standards of professional conduct but also compromises the integrity of the judicial process. It is essential that the Court recognize these obstructive tactics for what they are: an attempt to gain an unwarranted advantage through uncivil behavior. *In re White*, 707 S.E.2d 411, 415, 391 S.C. 581, 588 (S.C., 2011)(determining that an attorney may not, as a means of gaining a strategic advantage, engage in conduct that departs from the standards of civility and professionalism required of all attorneys.) A-I-I accordingly requests that the Court grant this Motion because Plaintiffs' counsel has conceded there is no prejudice to their clients in this case. Personal grievances have no place in our judicial system.

VI. Cases in this Judicial Circuit Where No Good Cause Was Shown Are Distinguishable.

A-I-I anticipates Plaintiffs' counsel will rely on this Court's order in *In re Asbestos Personal Injury Litigation Coordinated Docket*, No. 2018-CP-40-04680, 2019 WL 13185699, at *1 (S.C.Com.Pl., Richland County Mar. 20, 2019) ("Covil") where it found that there was no good cause to lift the default. However, this case presents a markedly different factual and procedural landscape. The distinctions are not only significant but go to the very heart of the notion of "good cause" as contemplated by Rule 55(c).

In *Covil*, Plaintiff's counsel apprised defense counsel multiple times in emails about the impending default and asked when she could expect an answer—arguably providing the defendant ample opportunity to rectify the oversight. Here, despite several interactions with Plaintiffs' counsel on cases outside South Carolina, not once did anyone apprise A-I-I of the impending default. Although Plaintiffs are not required to send an email or make a call to defendants, the conspicuous absence of any notice when it is common practice by the same counsel—let alone "repeated notices" as was the case in *Covil*—was intentional and deprived A-I-I the opportunity to take corrective action to avoid a default altogether. *In re Asbestos Personal Injury Litigation Coordinated Docket*, 2019 WL 13185699, at *3.

Also, in *Covil*, the defendant's delay was amplified, taking over 10 days post-default to respond. In stark contrast, A-I-I exhibited proactive diligence. Within two days of learning of the motion for default—and crucially, on the very day Plaintiffs' counsel declined A-I-I's request for an extension—answers were promptly filed with this Court. Further, this Motion was filed within seven days of the Court entering an order granting default. This swift action epitomizes A-I-I's commitment to the litigation and negates any inference of intentional or negligent default.

Further, in *Covil*, depositions had already proceeded in the defendant's absence and would need to be re-opened, creating irrevocable prejudice to the plaintiff in that case. Here, the first deposition started today, and A-I-I actively participated. Far from delaying or obstructing the case, A-I-I has consistently signaled its intent to engage in the litigation actively and promptly. There is no prejudice.

It is critical to underscore the inherently differing natures of the defaults. In *Covil*, the default was arguably a byproduct of a calculated decision by the insurer. Here, the default was a consequence of conflicts rendering A-I-I unable to secure local counsel, and, as it turns out, also threats by Plaintiffs' counsel, hindering A-I-I's ability to secure representation in South Carolina. The pivotal distinctions underscore that A-I-I's default was neither intentional nor negligent but a good faith mistake—void of any intention to thwart the judicial system. To conflate the two scenarios would be factually erroneous.

VII. Entry of Default Runs Afoul of the Contribution Among Tortfeasors Act and Constitutes Reversible Error.

As a matter of South Carolina law, when tort claims are asserted against multiple defendants, a jury must apportion fault among the litigants or it can assign the entirety of liability to a third party. S.C. Code Ann. §§ 15-38-15(C), (D). If a defendant's fault is determined to be less than 50%, then it is liable only for that percentage of damages. *Id.* § 15-38-15(A). By flipping the proper sequence and entering default against A-I-I prior to any jury trial, the court eliminates: (1) the jury's role in apportioning liability among the litigants; (2) the potential "empty chair" defense

that the General Assembly specifically preserved by statute, which is a legitimate defense in this case due to the numerous alleged sources of asbestos exposure and the wide discrepancies in the lengths of time for those exposures; and (3) the statutory protection A-I-I has against paying the entirety of the damages if a jury determines that Mr. Perry, another defendant, or both were at least 51% at fault for the alleged injuries. These errors run contrary to the South Carolina Uniform Contribution Among Tortfeasors Act's protections for litigants in a multi-defendant setting, and they require vacating the entry of default so that a jury can do its statutorily-required jobs.

CONCLUSION

Because of the good cause demonstrated here and South Carolina's preference for trying cases on the merits, this Court should set aside the entry of default and allow A-I-I to defend on the merits. Accordingly, A-I-I's Motion to Set Aside Entry of Default should be granted.

Respectfully submitted this, the 10th day of October, 2023.

FOX ROTHSCHILD LLP

s/Stephanie G. Flynn

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Attorneys for Defendant

American International Industries

Affidavit of Brian Dror

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL**

**MICHAEL L. PERRY and
LONNIE L. LONG**

C/A NO. 2023-CP-40-04072

Plaintiffs,

v.

**AMERICAN INTERNATIONAL
INDUSTRIES**, individually and as
successor-in-interest to Pinaud, Inc.,
Barbara Alice, Inc., Ed. Pinaud, Inc.
d/b/a/ Ed. Pinaud, and Nestle-Le Mur
Company, all for the Clubman line of
products, et al.

Defendants.

Personally appeared before me, Brian Dror, after first being duly sworn, do hereby swear, make oath and affirm as follows:

1. I am an outside accountant and litigation manager for American International Industries ("A-I-I"). I have personal knowledge of the matters contained in this affidavit and/or I have obtained the information from my involvement as accountant and litigation manager for A-I-I.
2. I am over the age of 18 and competent to testify as to the matters contained in this affidavit.
3. A-I-I is a California general partnership. Glamour Industries, Co. is the managing partner.
4. Plaintiffs served the Summons and Complaint to Terri Cooper in Los Angeles. Terri Cooper is not a registered agent or authorized to receive or accept service for talc cases on behalf of A-I-I.

5. Although service was never properly effected, A-I-I emailed a copy of the Complaint to A-I-I's "national counsel" (who represents A-I-I in California, where A-I-I is located, but not in South Carolina).

6. Following Terri Cooper's receipt of Plaintiffs' summons and complaint, and in conjunction with A-I-I's insurance carrier, I have diligently attempted to secure counsel to represent A-I-I and Glamour Industries, Co. ("Glamour") in Plaintiffs' action in South Carolina, but have encountered difficulties with chosen counsel declining representation due to conflicts of interest, and, as A-I-I later came to find out, also because of threats made by Plaintiffs' counsel to dissuade attorneys from representing A-I-I.

7. Since it received the Complaint, A-I-I has requested representation from three different counsel in South Carolina and has either been told there are conflicts or that Plaintiffs' counsel is threatening to sue those firms' other clients if the attorneys agree to represent A-I-I in this case. This has put A-I-I in an extraordinary position and led to delayed retention of local counsel to file responsive pleadings.

8. Although these difficulties remain, when Plaintiffs sent A-I-I the motion for default, I immediately provided the motion to counsel that represents A-I-I outside of South Carolina, and they attempted to secure an extension for A-I-I to respond to Plaintiffs' complaint and asked Plaintiffs to withdraw the motion.

9. After Plaintiffs' counsel refused to grant the extension and withdraw the motion, counsel that represents A-I-I outside of South Carolina suggested that A-I-I, in conjunction with its insurance carrier, retain counsel based in Atlanta, Georgia, to file answers on behalf of A-I-I

10. This firm does not have an office in South Carolina. Accordingly, I am still in the process of securing local counsel for A-I-I and Glamour in South Carolina.

11. Additionally, I am informed and believe that counsel for Plaintiffs is actively obstructing A-I-I's ability to hire counsel in South Carolina—including threatening the attorneys (and their other clients) that A-I-I has sought to retain.

12. Neither A-I-I nor its counsel has asked Plaintiffs to delay this case in any way. Both A-I-I and Glamour have answered Plaintiffs' complaint and intend to participate in Mr. Perry's deposition next week.

13. As of October 9, 2023, A-I-I secured local counsel with offices in South Carolina.

I declare under penalty of perjury that the foregoing is true and correct. Executed October 10, 2023, in Los Angeles, CA.

FURTHER AFFIANT SAYETH NOT.



BRIAN DROR

JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

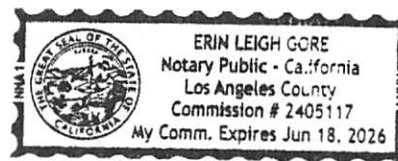
State of California)
County of Los Angeles)

Subscribed and sworn before me on this 10th day of October, 2023, by BRIAN DROR, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

 **NOTARY PUBLIC**

Erin Leigh Gore, Notary Public

My Commission Expires: June 18, 2026



Affidavit of Charles Loveless

CALIFORNIA JURAT WITH AFFIANT STATEMENT**GOVERNMENT CODE § 8202**

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1
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Signature of Document Signer No. 1 Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me

on this 25 day of JULY, 2023,
by Date Month Year

(1) Charles Loveless

(and (2) _____),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Signature _____
Signature of Notary Public



Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Affidavit of Charles Loveless Document Date: July 25/23
Number of Pages: 9 Signer(s) Other Than Named Above: _____

AFFIDAVIT OF CHARLES LOVELESS

I, Charles Loveless, hereby declare under penalty of perjury the following:

1. I am over 18 years of age and fully competent and qualified to give this declaration. The facts stated herein are true of my own personal knowledge except those matters stated on information and belief, and, as to those matters, I believe them to be true. If called as a witness, I could and would competently testify to the same.
2. I am the Executive Vice President of American International Industries ("A-I-I"), a California general partnership. I have been employed by A-I-I for over thirty years. The following is based on my personal knowledge as well as information I have gained through investigation including review of documents, company records, and conversations with current and former employees of A-I-I.
3. In my capacity as Executive Vice President and as a result of my many years as General Manager, I am familiar with and have direct and personal knowledge of the product lines sold by A-I-I, the historical background of how those product lines were obtained by A-I-I, the supply of materials used to manufacture A-I-I's personal care products, the manufacture and distribution of those products, and purchasing and product sales. Through my positions over the last thirty plus years, my responsibilities included overseeing inventory, purchasing, and sales of A-I-I's products including the Clubman and Jeris brands of talcum powder. I am also responsible for and familiar with the overall management of A-I-I's business records.
4. A-I-I was formed in 1971. It is a general partnership organized and existing under the laws of the State of California. A-I-I is engaged in the business of manufacturing and distributing hair care, skin care, and beauty product lines.

5. Prior to August 1987, A-I-I did not make, sell, or distribute any talcum powder products. A-I-I did not blend (manufacture) or sell Clubman Talc prior to August 13, 1987.

6. Before August 13, 1987, the Clubman brand was owned by The Neslemur Company ("Neslemur") and Kleer-Vu Industries, Inc. ("Kleer-Vu"). Attached as **Exhibit 1** is a true and correct copy of Neslemur's Certificate of Good Standing from the Delaware Secretary of State.

7. Prior to July 1, 1985, Neslemur was known as "The Nestle-LeMur Company." Attached as **Exhibit 2** is a true and correct copy of the Certificate of Amendment of Certificate of Incorporation wherein The Nestle-LeMur Company changed its name to The Neslemur Company.

8. On August 13, 1987, A-I-I purchased certain limited assets, including the Clubman brand, from Neslemur and Kleer-Vu via an Asset Purchase Agreement (hereafter the "APA"). **Exhibit 3** is a true and correct copy of relevant portions of the APA entered into by A-I-I on the one hand and Neslemur and Kleer-Vu on the other, dated August 13, 1987.

9. Pursuant to the APA, A-I-I purchased certain assets from Neslemur but none of its pre-existing liabilities. A-I-I did not assume liability for any defective products sold by Neslemur. See **Exhibit 3**, at Article I, sections 1.1, 1.2; Article II, sections 2.1-2.3; and Article VIII, sections 8.1, 8.2 (AIIAPA-000005 to AIIAPA-000011; AIIAPA-000024 to AIIAPA-000026).

10. There is no provision in the APA that precludes Neslemur and/or Kleer-Vu from continuing business operations unrelated to the sale of the specified assets to A-I-I. See **Exhibit 3** at Article I, section 1.1 (Neslemur's retention of certain inventory with right and license to sell); Article IV, section 4.1 (Neslemur "has, and at time of Closing will continue to have, the corporate power to own its respective properties and to carry on its respective business as now being conducted by it"); Article IX, section 9.1 (Five year non-compete agreement by Neslemur and

Kleer-Vu); Article IX, section 9.2 (Employee of Neslemur and Kleer-Vu available for consultation for two years). (AIIAPA-000005 to AIIAPA-000008; AIIAPA-000013; AIIAPA-000026 to AIIAPA-000027).

11. Based upon information I have received as part of my management responsibilities regarding A-I-I's business history including documents, articles, and conversations with current and former employees who were present at the time of the asset sale, I am familiar with the owners, officers, and employees of A-I-I immediately following the Clubman brand purchase in 1987. No officers, shareholders, directors, managers, employees, or other individuals from Neslemur or Kleer-Vu joined A-I-I after acquisition of the Clubman brand. The fact that there was no overlap in ownership or employees is reflected in the APA where Neslemur and Kleer-Vu agreed to make an employee available to A-I-I for a two-year period "for consultation by telephone (not to exceed six hours per month) with respect to manufacturing, distribution and sales issues." See **Exhibit 3**, Article IX section 9.2 (AII-APA000027).

12. A-I-I has never had any ownership interest in, or financial or managerial control over, Neslemur or Kleer-Vu. A-I-I has never been a parent, subsidiary, or affiliate of Neslemur or Kleer-Vu.

13. Neslemur and Kleer-Vu have never had any ownership interest in, or financial or managerial control over, A-I-I. Neslemur and Kleer-Vu have never been parents, subsidiaries, or affiliates of A-I-I.

14. Daniel Dror was Neslemur's Chief Executive Officer and Chairman of the Board of Directors at the time of the APA. He executed the APA on behalf of Neslemur and Kleer-Vu. See **Exhibit 3**, AIIAPA-000028 to AIIAPA-000029; AIIAPA-000031.

15. Based upon review of Neslemur's records from the Delaware Secretary of State, Daniel Dror was an officer of Neslemur until his death on March 15, 2021. **Exhibit 4** is a true and correct copy of Neslemur's Certificate of Revival from the Delaware Secretary of State.

16. Daniel Dror was not, and had never been, an owner, officer, shareholder, director, manager, or employee of A-I-I, and was not associated with A-I-I in any way.

17. A-I-I acquired no manufacturing facilities, manufacturing equipment, or real property from Neslemur or Kleer-Vu. A-I-I purchased specified assets with cash and promissory notes. *See Exhibit 3* at Article I, section 1.1; Article II, sections 2.1, 2.2; Exhibits A, B, C, and G (AIIAPA-000005 to AIIAPA-000010; AIIAPA-000034 to AIIAPA-000044; *See also Exhibit 3* "Negotiable Promissory Note" (AIIAPA-000046 to AIIAPA-000053); "Security Agreement" (AIIAPA-000054 to AIIAPA-000067); and "Non-Recourse Promissory Note" (AIIAPA-000071 to AIIAPA-000078). The APA was not intended to and did not effectuate a merger, consolidation, or reorganization. No stock was exchanged.

18. The APA represented an arm's-length business agreement for the purchase of assets related to certain beauty product brands. *See Exhibit 3* at Article 1, section 1.1; Article II, sections 2.1, 2.2; Exhibits A, B, C, and G (AIIAPA-000005-to AIIAPA-000008; AIIAPA-000034 to AIIAPA-000044. A-I-I brought the handling and production of those products in-house to its facility in Los Angeles, California. Neslemur and Kleer-Vu were based in New York. *See Exhibit 3*, Article IX, section 9.6 (AIIAPA-000028 to AIIAPA-000029).

19. The APA was not entered into with the purpose of escaping any potential liabilities to third-parties or to otherwise defraud anyone.

20. Before 1991, Ar. Winarick, Inc. made and/or sold Jeris Talc. A-I-I did not purchase Ar. Winarick, Inc. ("Ar. Winarick").

21. On April 26, 1991, a company called Ardell International Inc. (“Ardell”) purchased the assets of the Jeris brand from Ar. Winarick. Upon Ardell’s acquisition of the Jeris brand, A-I-I entered into a licensing and distribution agreement with Ardell to blend and sell Jeris products. A-I-I did not blend (manufacture) or sell Jeris Talc before April 26, 1991.

22. Attached as **Exhibit 9** is a true and correct copy of the asset purchase agreement dated April 26, 1991, titled “Sale by Ar. Winarick, Inc. to Ardell International, Inc. of Certain Trademarks, Goodwill, Inventory and Supplies.” (Bate-stamped JPA000001 to JPA000086 and hereafter referred to as the “JPA”).

23. The only assets acquired in the “Sale by Ar. Winarick, Inc. to Ardell International, Inc. of Certain Trademarks, Goodwill, Inventory, and Supplies” were assets related to the Jeris, Q.E.D., and Osage Rub brands. *See Exhibit 9*, Sections 1.A. and 2.D., at JPA000005 and JPA000007-000008.

24. All other assets were retained by Ar. Winarick. Section 1.B states: “all other assets owned by seller are being retained by Seller including, without limitation, all accounts receivable owing by customers who have purchased inventory from the bearing the Trademarks.” *See Exhibit 9* at JPA000006.

25. The parties contemplated that Ar. Winarick would continue to operate as an independent entity and would not cease business operations following the JPA. Sections 3.A. and 3.B. are consulting and non-competition agreements. In Section 3.A., Ar. Winarick contracted to provide service support: “The Seller shall assist Buyer in making a smooth transition of the business formally conducted under the Trademarks for a period of six (6) months after closing. All such consulting shall be done by telephone. All telephone charges are to be borne by Buyer.” *See Exhibit 9* at JPA000008. Section 3.B. states, “The Seller agrees that it will not directly or indirectly

sell men's hair tonic or men's talcum powder to barber shops, beauty salons, barber supply distributors or wholesale drug distributors for a period of two (2) years following the closing date." See **Exhibit 9** at JPA000008.

26. A-I-I did not assume Ar. Winarick's liabilities. Nor did it assume any tort liability for Jeris Talc made and/or sold by Ar. Winarick. Section 5.A. identifies those liabilities buyer would be assuming. See **Exhibit 9** at JPA000009. Section 5.B. states: "Except as specifically set forth in subsection 4A hereof, Buyer is not assuming and shall not be responsible for any debts or obligations of the Seller whether known or unknown fixed or contingent or now existing or hereafter arising." See **Exhibit 9** at JPA000009.

27. Ar. Winarick continued to operate after the sale of these three limited assets. New York State official records show that Ar. Winarick is currently an active corporation with a Department of State Identification Number 381602 filed in New York. See **Exhibit 10**.

28. I am familiar with the owners, officers, and employees of A-I-I immediately following the Jeris brand purchase in 1991. No owners, officers, shareholders, directors, managers, employees, or other individuals from Ar. Winarick joined A-I-I after acquisition of the Jeris brand. The fact that there was no overlap in ownership or employees is reflected in the JPA where Ar. Winarick agreed to provide service support. See **Exhibit 9** at JPA000008.

29. A-I-I has never had any ownership interest in, or financial or managerial control over, Ar. Winarick. A-I-I has never been a parent, subsidiary, or affiliate of Ar. Winarick.

30. Ar. Winarick has never had any ownership interest in, or financial or managerial control over, A-I-I. Ar. Winarick has never been a parent, subsidiary, or affiliate of A-I-I.

31. A-I-I acquired no manufacturing facilities, manufacturing equipment, or real property from Ar. Winarick. The three assets were purchased with cash and a promissory note. See

Exhibit 9 at JPA000026-JPA000027 and JPA000046-JPA000049. The JPA was not intended to and did not effectuate a merger, consolidation, or reorganization. No stock was exchanged. *See Exhibit 9* at JPA000006-JPA000007 (Sections 2.A and 2.B (“the purchase price shall be paid at closing ... by certified check, bank check or wire transfer ... the balance by delivery of note payable in forty-eight (48) consecutive equal monthly installments...”).)

32. The JPA represented an arm’s-length business agreement for the purchase of assets related to three beauty product brands: Jeris, Q.E.D., and Osage Rub.

33. The JPA was not entered into with the purpose of escaping any potential liabilities to third parties or to otherwise defraud anyone.

34. No formulation of any A-I-I product, including Clubman Talc and Jeris Talc, used or uses asbestos as an ingredient. The ingredients of Clubman Talc as blended and sold by A-I-I during the relevant time frame were: talc MP 60-30 USP (1745),¹ red dye, fragrance, a blend of essential oils, and zinc. A-I-I made no changes to the ingredients of Clubman Talc from the time it started blending the product until the time it stopped in 2017.

35. At the time A-I-I began to blend Clubman Talc in approximately 1989 and Jeris Talc in approximately 1991, Whittaker, Clark & Daniels, Inc. (“WCD”) supplied A-I-I with pharmaceutical grade (USP) talc. At some point, WCD was sold to Brenntag Specialties, Inc., and/or Brenntag North America, Inc. (collectively “Brenntag”) who continued to supply A-I-I with pharmaceutical grade (USP) talc for the Clubman and Jeris products. A-I-I has never purchased talc for Clubman or Jeris talcum powder from any source other than WCD or Brenntag.

36. All talc supplied by WCD and Brenntag and incorporated into Clubman Talc and Jeris Talc was sourced from Barretts Minerals Inc. in Southwest Montana. True and correct copies

¹ Formerly known as WCD 1745.

of representative Certificates of Analysis from Barretts Minerals Inc. are attached as **Exhibit 5**. True and correct copies of representative Master Analysis Reports from Brenntag are attached as **Exhibit 6**.

37. During the time A-I-I blended, bottled, and sold Clubman Talc and Jeris Talc, A-I-I's talc supplier (WCD and then Brenntag) and mining/manufacturing company (Barretts Minerals Inc.) consistently certified that the USP talc they supplied A-I-I did not contain detectable or regulated asbestiform minerals. See **Exhibits 5** and **6**. See also, April 7, 2016, Letter from Barretts Minerals Inc. to B. Snyder of Brenntag, and April 19, 2017, Letter from Barretts Minerals Inc. to C. Loveless of A-I-I, true and correct copies of which are attached as **Exhibit 7**. A-I-I relied upon such testing as accurate.

38. A-I-I retained a sample of every batch of talc used to blend Clubman Talc and Jeris Talc from 2002 through 2017. In 2017, A-I-I hired an independent laboratory to test its USP talc samples (retains) dating back to 2002. No asbestiform minerals or other fibrous materials were detected. A true and correct copy of the testing performed by Western Analytical Laboratory, Inc. is attached as **Exhibit 8**.

39. As of July 1, 2017, A-I-I no longer blends Clubman or Jeris Talc. A-I-I now blends Clubman and Jeris Powder, which contains corn starch rather than talc. The decision to reformulate the products was due to baseless litigation as filed against A-I-I and difficulties obtaining insurance.

40. A-I-I has never been a member of the Cosmetic, Toiletry, and Fragrance Association ("CTFA") or the Personal Care Products Council ("PCPC").

///

The affiant, Charles Loveless, swears or affirms, under the penalties for perjury, that the foregoing representations are true and accurate.

Executed July 25, 2023 in Los Angeles, California.



CHARLES LOVELESS

Affidavit of Julia Gowin

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL**

**MICHAEL L. PERRY and
LONNIE L. LONG**

C/A NO. 2023-CP-40-04072

Plaintiffs,

v.

**AMERICAN INTERNATIONAL
INDUSTRIES**, individually and as
successor-in-interest to Pinaud, Inc.,
Barbara Alice, Inc., Ed. Pinaud, Inc.
d/b/a/ Ed. Pinaud, and Nestle-Le Mur
Company, all for the Clubman line of
products, et al.

Defendants.

Personally appeared before me, Julia A. Gowin, after first being duly sworn, do hereby swear,
make oath, and affirm as follows:

1. I am an attorney at law with the law firm Lathrop GPM, LLP. I have personal knowledge of the matters contained in this affidavit and/or I have obtained information from my involvement as counsel for American International Industries (“A-I-I”).

2. I am over the age of 18 and competent to testify as to the matters contained in this affidavit. My office is located in Los Angeles, CA, and I am licensed to practice in California and Hawaii.

3. On August 10, 2023, I received an email from my client A-I-I with a copy of Plaintiffs’ Complaint served to A-I-I in California. At this time, I did not know that service was improper.

4. On August 11, 2023, I acknowledged receipt and recommended a firm to defend A-I-I with a local office in South Carolina to A-I-I’s insurer and the client.

5. On August 24, 2023, A-I-I's insurer acknowledged the Complaint and noted the need for a conflicts check with the South Carolina firm.

6. In the following weeks, colleagues at my firm and I reached out to two separate firms about potential retention and conflict checks, which we understood with 60 named defendants would take time, particularly if waiver letters were also needed.

7. By September 11, 2023, A-I-I's response (assuming Plaintiffs' Summons and Complaint were properly served, which they were not) came due. At this time, conflicts still had not cleared for any recommended local counsel in South Carolina.

8. On September 27, 2023, I learned from the client that Plaintiffs served A-I-I with a Motion for Default Judgment.

9. I have had several conversations with attorneys at Dean Omar Branham Shirley, LLP on other matters involving A-I-I during this time frame. No one at Plaintiffs' counsel's firm ever mentioned the *Perry* case. Nor did Plaintiffs' counsel inquire whether A-I-I intended to respond to Plaintiffs' Complaint or indicate that Plaintiffs intended to file a Motion for Default. Plaintiffs' counsel had several opportunities to do so and avoid unnecessary motion practice.

10. Upon learning of this development from the client on September 27, 2023, I made immediate attempts to remedy the situation. I asked another attorney at my firm, Paula D. Pendley, to contact Plaintiffs' counsel, explain the difficulties securing local counsel, and ask for an extension for A-I-I to respond.

11. On September 29, 2023, when I learned that Plaintiffs refused to provide an extension, I reached out to an attorney in Atlanta, Georgia (who is licensed in South Carolina), and she agreed to promptly file an answer for A-I-I and Glamour Industries, Co. that same day. At that time, A-I-I was still facing challenges with securing local South Carolina counsel.

12. Four days later, on October 3, 2023, I received a message from A-I-I's attorney in Atlanta indicating that Trey Branham of Dean Omar Branham & Shirley, LLP contacted her to indicate an unwillingness to collaborate with her on withdrawal of the default against A-I-I, referencing personal animosity towards an attorney at my firm.

13. My client and its insurance carrier have continued to face unprecedented challenges securing local counsel to represent A-I-I and Glamour Industries, Co. in South Carolina. I understand that prospective firms have been deterred not only due to conflicts of interest, but they have also been dissuaded from representing A-I-I due to threats and intimidation from Plaintiffs' attorneys with Dean Omar Branham & Shirley, LLP.

I affirm under penalty of perjury that the foregoing is true and correct. Executed October 10, 2023, in Furore, Italy.

FURTHER AFFIANT SAYETH NOT.



STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

Before me, Claudia Neal, on this 10th day of October, 2023, personally appeared by means of interactive two-way audio and video communications, JULIA A. GOWIN, who has provided satisfactory evidence of identity, to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed. This notarial act was an online notarization.

My Commission Expires: Jan. 31, 2025




Notary Public

Affidavit of Paula Pendley

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL**

**MICHAEL L. PERRY and
LONNIE L. LONG**

C/A NO. 2023-CP-40-04072

Plaintiffs,

v.

**AMERICAN INTERNATIONAL
INDUSTRIES**, individually and as
successor-in-interest to Pinaud, Inc.,
Barbara Alice, Inc., Ed. Pinaud, Inc.
d/b/a/ Ed. Pinaud, and Nestle-Le Mur
Company, all for the Clubman line of
products, et al.

Defendants.

Personally appeared before me, Paula D. Pendley, after first being duly sworn, do hereby swear,
make oath and affirm as follows:

1. I am an attorney at law in the law firm Lathrop GPM, LLP. I have personal
knowledge of the matters contained in this affidavit.

2. I am over the age of 18 and competent to testify as to the matters contained in this
affidavit.

3. On Thursday, September 28, 2023, I telephoned Theile McVey and spoke with her
receptionist, who told me Ms. McVey was at lunch. I left a voicemail for Ms. McVey asking her
to return my call as I was asking for an extension of time to respond to Plaintiffs' Complaint.
When I did not hear back from Ms. McVey by close of business, I telephoned Rachel Gross, also
listed as counsel of record for Plaintiffs, but who is in Dallas, Texas. I likewise left her a voice
message and asked her to return my call for the same reasons.

4. At this time, I was unaware that my client American International Industries (A-I-
I) had not been properly served by Plaintiffs and their counsel. I did not mention the improper
service during my voice messages.

5. Ms. Theile McVey returned my call the following morning. I explained the situation with our sincere difficulties securing local counsel and asked if Plaintiffs would withdraw the Motion for Default against A-I-I and grant an extension to respond in exchange for A-I-I answering for both A-I-I and Glamour Industries, Co. She stated they had thought it over, and responded, "we decided we want to treat you the same way your firm treated us." To explain, she indicated that her firm and the Dean Omar Branham and Shirley, LLP firm were upset that Whitaker Clark & Daniels, along with other defendants, in a separate litigation earlier this year had attempted to remove a case, which she argued treated them "poorly." Surprised, I indicated I did not think retaliation was proper based on another defendant seeking removal. She was not willing to meet and confer and asked that we file an opposition to their motion. She provided no substantive reasons relevant to this lawsuit nor explained any prejudice to her clients in this case as grounds for refusing to provide an extension to respond to Complaint.

6. That same day my firm secured counsel out of Atlanta, Georgia, who filed Answers for A-I-I and Glamour Industries, Co.

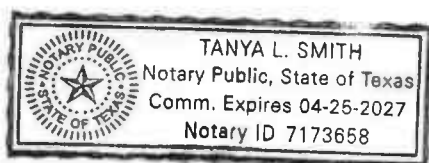
I declare under penalty of perjury that the foregoing is true and correct. Executed October 10, 2023, in Dallas, Texas.

FURTHER AFFIANT SAYETH NOT.


PAULA D. PENDLEY

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME on this 10th day of October, 2023, personally appeared PAULA D. PENDLEY, the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.




Notary Public, State of Texas

My Commission Expires: 04-25-2027

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.	)	
	)	
Defendants.	)	

STATUS REPORT REGARD AII/CLUBMAN DEFAULT

Michael Perry (“Perry” or “Plaintiff” filed this lawsuit on August 8, 2023. On August 10, 2023, service was obtained on American Industrial Industries (“AII”) at 2220 Gaspar Avenue, Los Angeles, CA 90040 by serving AII’s Executive Vice President, Terri Cooper.¹ An affidavit of good service was signed and returned by the process server. *See* Affidavit of Jorge Rivera, August 15, 2023, attached as Exhibit 2.

As of September 9, 2023, AII had not filed an answer or appearance in the case, nor had AII reached out to Plaintiffs’ counsel seeking an extension to answer. Several other Defendants had requested such an extension and each and every time the request was granted.

On September 26, 2023, Plaintiffs filed the instant Motion for Default as a result of AII’s continuing failure to answer the complaint.

On September 28, 2023, AII’s counsel reached out about this issue for the first time and let the following voicemail for Plaintiffs’ counsel Rachel Gross:

¹ A true and correct copy of Terri Cooper’s LinkedIn page is attached as Exhibit 1. This website was last visited on Sunday, October 22, 2023 and can be found at

This is Paula Pendley. I'm calling about the Perry matter. I also left a voicemail for Theile just FYI but thought I'd call you too because I think it's your assistant that sent a cover letter. I was calling because I am wondering if we could get an extension to file an answer for AII and Glamour in the Perry case. **It looks like we were trying to get local counsel to take that out in SC but it didn't happen.** So anyway I see that a Motion for Default was filed for AII so I would also hope that would get withdrawn if we could get an extension from you guys too so we can respond on behalf of both Glamour and AII.

Voicemail from Paula Pendley, September 28, 2023(emphasis added).² The next day, September 29, 2023, Plaintiffs' counsel Theile McVey spoke with Ms. Pendley and told her that Plaintiffs' counsel could not agree to an extension since AII was already in default and invited AII to file any motion it found appropriate. That same day, at 7:20 pm, AII filed an answer to Plaintiffs' Original Complaint that was served on August 10th.

On October 10, 2023, at 9:49, two weeks following the filing of the Default Motion, AII finally filed a Motion to Lift Default. In its motion AII contends, among other things³, that "Plaintiff served an individual who was not authorized to accept service." Affidavit of Brian Dror attached to AII's Motion. That, of course, is untrue.

APPLICABLE LAW

First, South Carolina Rule of Civil Procedure 5(d)(3) provides that service shall be made

Upon a corporation or upon partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires. Also by mailing a copy to the defendant.

² Plaintiffs have not yet had this recording transcribed by a certified court reporter but have maintained the voice mail as received and are happy to provide a certified transcript to the court should the court wish.

³ The other contentions focus on attacking plaintiff's counsel and Mr. Perry and Plaintiffs will deal with those issues once the depositions of the affiants supporting their claims are deposed. However, Plaintiffs note that Ms. Perry's voicemail regarding difficulty finding local counsel occurred long before any "intimidation" supposedly occurred. It should also not go unnoticed that AII's current local counsel is the same local counsel retained by Lathrop (and Robert Thackston) in the Plant matter.

SCRCP 5(d)(3). As set forth above, Terri Cooper is the Executive Vice President of AII. Rule 5 provides that a summons and complaint served on a corporate officer is valid. Thus, AII's complaint about valid service, which Ms. Pendley never mentioned on September 28, 2023, necessarily fails. Moreover, AII has previously accepted service via service at the exact same address in a Connecticut matter in which they have answered and are defending. *See* Proof of Service attached as Exhibit 3.

The decision about whether to set aside a default is within the sound discretion of the trial judge. *Richardson v. P.V.*, 383 S.C. 610 (2006)(Toal, C.J.). AII relies on the affidavit of Brian Dror to contend that Terri Cooper was not authorized to accept service for AII. Mr. Dror's affidavit carefully avoids the fact that Cooper is an officer of AII thus making Cooper (served at the same address as Mr. Dror has previously been served) eligible for service under the South Carolina Rules of Civil Procedure. In *Richardson*, Chief Justice Toal wrote that, as here, "apparent authority is when . . . the principal holds the agent out as possessing such authority." *Id.* at 615. Thus, even if AII did not expressly authorize Cooper to accept service, by virtue of Cooper's title, AII provided all the apparent authority Cooper needed to accept service under the South Carolina rules.

Next, as AII acknowledges in its motion, it's lawyers received the complaint prior to the time to answer. Yet it did not seek an extension to answer until after the Plaintiffs sought default. These two facts clearly demonstrate the negligence of AII's attorneys. "In South Carolina, negligence on the part of an attorney is imputable to the client and will not be the basis for finding good cause to set aside entry of default." *Limehouse v. Hulsey*, 397 S.C. 49 (Ct. App. 2010). The *Limehouse* court went on to find "that negligence on the part of an insurance company or attorney will be imputed to a defaulting litigant and negligence does not constitute good cause to relieve an appellant from entry of default." *Id.* at 72.

CONCLUSION

Plaintiffs indisputably served AII's corporate officer. Even if she did not possess actual authority, her title alone confers apparent authority. Rule 5 further confirms that service on Cooper was proper. Moreover, AII's lawyers acknowledged that they received Plaintiff's complaint timely and further acknowledge that they did not answer timely. This negligence of AII's attorney, under the precedent of this state should be imputed to AII and this Court should deny AII's motion.

Respectfully submitted,

/s/ Charles W. Branham, III
 Charles W. Branham, III (SC Bar No. 106178)
 Rachel A. Gross (Admitted *Pro Hac Vice*)
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ATTORNEYS FOR PLAINTIFF

October 23, 2023
 Dallas, Texas.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C.A. No.: 2023-CP-40-04072
LONNIE L. LONG	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

DEFENDANT AMERICAN INTERNATIONAL INDUSTRIES' AMENDED MOTION TO SET ASIDE ENTRY OF DEFAULT BEFORE DEFAULT JUDGMENT HEARING

Defendant AMERICAN INTERNATIONAL INDUSTRIES, incorrectly sued as “American International Industries, individually and as successor to Pinaud, Inc., Barbara Alice, Inc., Ed. Pinaud, Inc. d/b/a Ed. Pinaud, and Nestle-Le Mur Company” (hereinafter “A-I-I”), files this Amended Motion to Set Aside the Entry of Default Before the Default Judgment Hearing. This Court should relieve A-I-I from the entry of default for three reasons. First, the default is void for improper service. Second, A-I-I answered Plaintiffs’ Complaint before the Order granting default was entered. Third, even if the Summons and Complaint were properly served, there is sufficient evidence of a good faith mistake and no attempt to thwart the judicial system by A-I-I’s late-filed Answer. This Motion is timely and promptly made, A-I-I has a meritorious defense to the claims against it, and Plaintiffs suffer no prejudice if the relief is granted.

PROCEDURAL AND FACTUAL BACKGROUND

On August 4, 2023, Plaintiffs filed their Complaint against A-I-I and 58 additional defendants in this South Carolina court. (*See* Complaint.) A week later, on August 10, Plaintiffs attempted to personally serve A-I-I in California with the Summons and Complaint. However,

Plaintiffs neglected to properly serve the requisite officer, agent, or authorized representative of A-I-I under the South Carolina Rules of Civil Procedure. Rather, Plaintiffs served an individual who was not authorized to accept service. (*See* Affidavit of Brian Dror (“Dror Aff.”) ¶4.) Although service was never properly effected, A-I-I emailed a copy of the Complaint to A-I-I’s “national counsel” (who represents A-I-I in California, where A-I-I is located, but who does not represent A-I-I in South Carolina). (Affidavit of Julia Gowin (“Gowin Aff.”) ¶3.); *See also* Dror Aff. ¶5.). Acting swiftly, on August 11, A-I-I’s national counsel recommended retention of local counsel in South Carolina to A-I-I’s insurer. (Gowin Aff. ¶4.)

On August 24, A-I-I’s insurer acknowledged the Complaint and noted the need for conflicts check with the South Carolina firm. (*See* Gowin Aff. ¶5.) A-I-I presumed that its insurer was doing just that and was trying to secure local counsel who could clear conflicts, understanding that the process could take time with the number of defendants and potential for conflicts as a result. By September 11, A-I-I’s answer (assuming the Summons and Complaint were properly served, which they were not) came due. At this time, A-I-I had still not been notified by its insurer that conflicts had been cleared for any local counsel in South Carolina. (*See* Gowin Aff. ¶7.) Despite several communications between Dean Omar Branham Shirley, LLP lawyers and A-I-I’s national counsel on other matters during this time frame, Plaintiffs’ counsel never mentioned this case. Nor did Plaintiffs’ counsel inquire whether A-I-I intended to answer Plaintiffs’ Complaint or indicate that they intended to file a Motion for Default. (*See* Gowin Aff. ¶9.) Plaintiffs’ counsel had several opportunities to do so to avoid this unnecessary motion practice. (*Id.*)

The landscape shifted on September 26 when Plaintiffs then filed a Motion for Default Judgment against A-I-I. Upon learning of this development from the client on September 27, A-I-I’s response was swift and unambiguous—making immediate attempts to remedy the situation. (*See* Gowin Aff. ¶ 10.) National counsel for A-I-I called two of the Plaintiffs’ attorneys to explain that local counsel had not been secured in South Carolina and to seek an extension of time for A-I-I and another defendant in this case, Glamour Industries, Co., to respond to Plaintiffs’ Complaint.

(*See* Pendley Aff. ¶ 3.) At this time, A-I-I was unaware that Plaintiffs had failed to properly serve it under South Carolina law. (*See* Pendley Aff. ¶ 4.)

Although counsel for A-I-I made a sincere and good faith effort to rectify the inadvertent response date oversight, the following day, Plaintiffs' counsel denied A-I-I's request for an extension, citing grievances Plaintiffs' counsel had with a strategic decision made by an unrelated defendant in a trial eight months ago. (*See* Pendley Aff. ¶5.) Plaintiffs' refusal was not rooted in any substantive or prejudicial reasoning; rather, Plaintiffs' counsel sought to penalize A-I-I for actions supposedly taken by an unrelated entity who was represented by the firm that acts as A-I-I's national counsel, Lathrop GPM. (*See* Pendley Aff. ¶5.) Such a retaliatory basis, devoid of any relevance to this case or this defendant, not only undermines the sanctity of professional courtesy but also raises concerns about the potential miscarriage of justice as it relates to A-I-I.

On the same day Plaintiffs refused to provide an extension, September 29, A-I-I secured counsel based in Atlanta, Georgia, who promptly filed A-I-I's Answer. (*See* Gowin Aff. ¶11.) At that time, A-I-I still had not been able to secure South Carolina counsel that had cleared conflicts of interest. (*Id.*) The Order of default had not been entered when A-I-I answered Plaintiffs' Complaint, and the clerk accepted the filing on September 29, 2023.

Four days later, on October 3, 2023, the Court signed an order granting Plaintiffs' motion for default judgment based on an Affidavit representing that A-I-I was properly served. (*See* Order.) Later that day, Trey Branham of Dean Omar Branham Shirley, LLP contacted A-I-I's Atlanta attorney to inform her of the order. He indicated an unwillingness to collaborate with her on withdrawal of the default, referencing personal animosity towards an attorney with Lathrop GPM, A-I-I's national counsel. (*See* Gowin Aff. ¶12.) A-I-I persisted in its diligent search for local counsel, but was not able to secure local counsel in South Carolina who had reportedly cleared conflicts until October 9, 2023. (*Dror* Aff. ¶13.)

Throughout this process, A-I-I has consistently signaled its intent to actively participate in the litigation and has in no way delayed or prejudiced Plaintiffs' proceedings. Discovery had barely commenced at the time of the above events. Aside from Plaintiffs providing generic responses to

standard interrogatories before Mr. Perry's deposition, no discovery had been conducted. Mr. Perry's deposition began on October 10, 2023, and A-I-I participated without objection.

Placed against the backdrop of established legal precedent, A-I-I's actions unmistakably reflect a pattern of genuine good faith. Courts have recognized good cause in scenarios marked by genuine mistakes and immediate proactive efforts to correct them—traits clearly demonstrated by A-I-I here. Further, there is no prejudice to Plaintiffs, and the entry of default is void for improper service.

LEGAL STANDARD

Defective service of a summons and complaint is grounds for setting aside an entry of default. The entry of default and default judgment shall be set aside where service was made upon a purported agent who, in fact, did not have authority to accept service on behalf of the defendant. *Hamilton v. Davis*, 300 S.C. 411, 389 S.E.2d 297 (Ct. App. 1990) (claims of authority by the purported agent are not necessarily binding; there must be some evidence the defendant intended to confer such authority); *Richardson Const. Co., Inc. v. Meek Engineering and Const., Inc.*, 274 S.C. 307, 262 S.E.2d 913 (1980) (where the claiming party fails to serve the summons on the opposing party, the court is without jurisdiction over the opposing party and must set aside any default judgment).

Even if A-I-I was properly served, which it contends it was not, the standards for relief from entry of default are met. Rule 55(c) provides that, "[f]or good cause shown the court may set aside an entry of default." The decision to set aside an entry of default judgment lies within the sound discretion of the trial judge. *Robertson v. S. Fin. Of S.C., Inc.*, 365 S.C. 6, 9, 615 S.E. 2d 112, 115 (2005). The standard for granting relief from an entry of default under Rule 55(c) is merely "good cause." *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct.App. 1989). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Thereafter, "once a party has put forth a satisfactory

explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham*, 298 S.C. at 465, 381 S.E.2d at 501-02).

ARGUMENT

Because it is always preferable to try and dispose of cases on the merits, it is well established in South Carolina that default judgments are disfavored and motions to set aside defaults should be liberally construed. *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995). Public policy favors the disposition of cases “on their merits rather than on technicalities.” *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511 (Ct. App. 2001) (citing *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59 (Ct. App. 1986)). Indeed, South Carolina views default judgment as a harsh and drastic action. *Petty v. Weyerhaeuser Co.*, 272 S.C. 282, 251 S.E.2d 735 (1979).

The Federal Rules of Civil Procedure, which align with the South Carolina Rules of Civil Procedure, likewise favor deciding issues on the merits instead of in default. See *Moore v. Google, Inc.*, No. CIV.A. 2:13-3034-RMG, 2014 WL 4955264, at *3 (D.S.C. Sept. 30, 2014), *aff'd*, 599 F. App'x 108(4th Cir. 2015) (“[D]efault judgments are devices available to the Court to manage cases where defendants refuse to participate in judicial proceedings; they are not prizes available for Plaintiffs to claim if they have the good fortune of suing a party that misses a court deadline. Here, far from being unresponsive, Defendant has argued the merits of the case[.]”). The Rule 55(c) standard merely requires a party seeking relief from an entry of default to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Sundown*, 383 S.C. at 607.

I. This Court Should Set Aside the Entry of Default Because It Is Void for Improper Service.

A-I-I is entitled to relief from the entry of default because it is void for improper service. Plaintiffs' August 9, 2023, attempted personal service of the Summons and Complaint was improper because it was not accepted by an authorized agent. Because the entry of default was explicitly based on this improper service, it must be set aside.

Pursuant to Rule 4(d)(3) of the South Carolina Rules of Civil Procedure, service is proper “upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.” SCRCF Rule 4(d)(3). *Hamilton v. Davis*, 300 S.C. 411, 414, 389 S.E.2d 297, 298 (Ct. App. 1990) (“[A]ctual appointment for the specific purpose of receiving process normally is expected and the mere fact a person may be considered to act as defendant’s agent for some purpose does not necessarily mean that the person has authority to receive process.”); *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 67 (Ct. App. 1996) (“Claims by one to possess authority to receive process or actual acceptance of process by an alleged agent will not necessarily bind the defendant. Rather, there must be evidence the defendant intended to confer such authority.”).

“[A]ny . . . default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.” S.C.R.C.P. 4(d)(8). To be “authorized” to accept service, the principal must grant the authority to the agent. *See Moore v. Simpson*, 322 S.C. 518, 524, 473 S.E.2d 64, 67 (Ct. App. 1996) (“Without specific authorization to receive process, service is not effective when made upon an employee of the defendant, such as a secretary.”); *Roberson v. Southern Finance of S.C, Inc.*, 365 S.C. 6, 11, 615 S.E.2d 112, 115 (2005) (“An apparent agency may not be established solely by the declarations and conduct of an alleged agent.”). “Actual appointment for the specific

purpose of receiving process normally is expected and the mere fact a person may be considered to act as defendant's agent for some purpose does not necessarily mean that the person has the authority to receive process." *Moore*, 322 S.C. at 523, 473 S.E.2d at 67.

Here, Plaintiffs served the Summons and Complaint on Terri Cooper at A-I-I in Los Angeles. (*See* Plaintiffs' Motion for Default) Plaintiffs indicate in their Affidavit that Terri Cooper was an "authorized representative." (*See* Exhibit A to Plaintiffs Motion for Default.) However, A-I-I has not authorized Terri Cooper to receive or accept service on its behalf. (Dror Aff. ¶ 4.) A-I-I has only one appointed office and officer, a President, based on filings made with the California Secretary of State.¹ (Dror Suppl. Aff. ¶ 7). Neither the President, nor Brian Dror, who is the designated registered agent for each of the partners of A-I-I, was served with process.² (Dror Suppl. Aff. ¶¶ 5-7). While Terri Cooper has been conferred the title of Executive Vice-President, no such office has been created through the California Secretary of State, nor has Ms. Cooper been held out by A-I-I to be a registered agent or authorized representative for purposes of service of process. (Dror Suppl. Aff. ¶ 8). Because the Summons and Complaint were not accepted by an officer, registered agent, or an agent authorized to accept service, Plaintiffs' attempted service was ineffective. *See Moore*, 322 S.C. at 524, 473 S.E.2d at 67 (quashing service of summons and complaint where receptionist did not have authority to accept service of process).

Despite this, on September 26, 2023, Plaintiffs' counsel filed a Motion for Default with an Affidavit swearing that A-I-I was served with Summons and Complaint by personal process on August 9, 2023, and that A-I-I was in default by not answering by September 9, 2023. On October 3, 2023, this Court entered default against A-I-I, indicating it was based on an affidavit from Plaintiffs swearing they properly served A-I-I through its "authorized representative." Plaintiffs make no showing that Terri Cooper has been authorized by A-I-I to accept service of process.

¹ In this instance, A-I-I filed a "Form GP-1" or Statement of Partnership Authority to create the office of President. A-I-I has not elected to file a statement of authority to establish any other "position" or "office."

² It should be noted that, at least in California, where A-I-I is organized and existing, California Code of Civil Procedure § 416.40 requires service on a partnership's general or managing partner (in this case, Glamour Industries, Co., of which Brian Dror is the registered agent) and only contemplates service on other officers such as vice presidents when non-partnership associations, such as homeowners' associations, are involved.

Because the order entering default is based on Plaintiffs' Motion for Default Judgment and erroneous Affidavit of Default, which are based on Plaintiffs' improper service, the entry of default is likewise based on improper service and must be set aside. S.C.R.C.P. 4(d)(8); *See generally Honorage Nursing Home of Florence, S.C., Inc. v. Florance Convalescent Center, Inc.*, 367 S.C. 108, 113, 623 S.E.2d 853, 855-56 (Ct. App. 2005) (holding that plaintiff failed to properly serve Defendant and entry of default was correctly set aside).

II. In the Interests of Justice and Fairness, this Court Should Set Aside the Entry of Default Due to a Compelling Showing of Good Cause.

To demonstrate "good cause" pursuant to Rule 55(c), the defaulting party must "provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 11, 753 S.E.2d 537, 542 (2014). Good cause, pursuant to Rule 55(c), is a much lower standard than the standard applied to setting aside default judgments pursuant to Rule 60(b), SCRC.P. *See Richardson v. P V, Inc.*, 383 S.C. 610, 682 S.E.2d 263, 266 (2009) ("The standard for granting relief from an entry of default is good cause under Rule 55(c), SCRC.P., while the standard is more rigorous for granting relief from a default judgment under Rule 60(b), SCRC.P."). Where there is a good faith mistake of fact and no attempt to thwart the judicial system, a sufficient basis exists to set aside an entry of default. *Columbia Pools, Inc. v. Galvin*, 288 S.C. at 61, 339 S.E.2d at 525.

A-I-I did the right thing here. It turned the pleadings over immediately to its national counsel who, in turn, provided those pleadings to A-I-I's insurer. Receipt was acknowledged and A-I-I's insurer further acknowledged the need for South Carolina local counsel to clear conflicts. A-I-I's insurer has never, in A-I-I's past experience, failed to secure local counsel in this litigation, and A-I-I had no basis to believe it had not secured such local counsel in this case.

A-I-I's response upon learning of Plaintiffs' motion for default exemplifies its commitment to the judicial system. Without delay, A-I-I leveraged external resources, sought assistance from out-of-state counsel, and tried in earnest to negotiate an extension to respond from Plaintiffs' counsel. For example, upon receipt of Plaintiffs' motion for default, A-I-I immediately sent it to

counsel who represents A-I-I in states outside of South Carolina and asked for assistance. (*See* Gowin Aff. ¶8.) This attorney called two different individuals representing Plaintiffs to explain the issues with securing local counsel, seek an extension for A-I-I to respond to Plaintiffs' Complaint, and request withdrawal of the motion. (*See* Pendley Aff. ¶ 3.) A-I-I's sincere efforts to redress the situation were met with a refusal from Plaintiffs' counsel, not anchored on a legitimate legal basis but, rather, on unrelated past grievances. Indeed, Plaintiffs' counsel refused the extension and withdrawal of their motion for no given reason other than a grudge held against Lathrop GPM for its representation of a different client in an unrelated trial over eight months ago. (*See* Pendley Aff. ¶ 5.) Plaintiffs' counsel did not cite any prejudice to her client or other reasonable grounds for not extending a routine professional courtesy. (*See* Pendley Aff. ¶ 5.) Such personal biases should never undermine the ethos of professional courtesy and fairness, which our legal system upholds.

At the same time that A-I-I had one of its Texas-based attorneys reaching out to Plaintiffs' counsel, it was also asking South Carolina based attorneys and firms to run conflicts as expeditiously as possible. After Plaintiffs' counsel refused to grant the extension and withdraw their motion, counsel representing A-I-I outside of South Carolina suggested that A-I-I, in conjunction with its insurance carrier, retain counsel based in Atlanta, Georgia, to appear and immediately file an answer for A-I-I. (*See* Dror ¶ 9; Gowin Aff. ¶ 11; Pendley Aff. ¶6.) They were able to do so, and A-I-I's Answer was filed the same day. (*Id.*) Despite having a responsive pleading on file, A-I-I still desired to have counsel based in South Carolina and continued its active search and efforts to do so. (*See* Gowin Aff. ¶ 10-13.) It was not until October 9, 2023, that A-I-I was finally able to secure local counsel in South Carolina. (*See* Dror Aff. ¶ 13.)

Neither A-I-I nor its counsel has asked Plaintiffs to delay this case in any way. Both A-I-I and Glamour answered Plaintiffs' Complaint before the Order granting default was entered and participated without objection in Mr. Perry's deposition. (*See* Dror Aff. ¶ 12.) The timeline reflects a demonstrable pattern of good faith and proactivity by A-I-I, sufficient to evidence "no attempt to thwart the judicial system." Indeed, courts have found good cause existed in numerous situations

involving simple errors and genuine mistakes like here. *See, e.g., Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987) (where teacher provided her suit papers to her employer and her employer failed to properly answer the suit papers, court granted relief to the defaulting defendant in the interest of trying cases on their merits); *D.L. Warren Constr., Inc. v. Robert O. Collins Co., Inc.*, 2005 WL 6215313 (Charleston Co. Trial Ct. Order, January 18, 2005) (good cause existed where defendant incorrectly assumed co-defendant's attorney was defending him, but this was not communicated to the attorney, and defendant immediately retained counsel upon being served with entry of default).

Application of the criteria from *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989) weighs in A-I-I's favor. For example, A-I-I's immediate and proactive efforts post-realization exemplify its commitment to actively participate and resolve this matter in a timely manner. Second, as articulated in Section IV below, A-I-I's defense is not merely meritorious but compelling. It demands the court's meticulous examination. Third, the pendulum of prejudice swings markedly in A-I-I's favor as setting aside the default poses no prejudice to Plaintiffs, whereas enforcement would unjustly deprive A-I-I of its rightful defense.

A party seeking relief from an entry of default under Rule 55(c) must provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. A-I-I has provided its explanation for default and good cause as outlined above. Therefore, the discussion turns to the factors outlined in *Wham v. Shearson Lehman Bros., Inc.* including: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989).

III. A-I-I Acted Quickly in Moving to Set Aside Entry of Default.

South Carolina courts have held a defendant acts timely in seeking relief to set aside default when the defendant acts promptly upon learning of the entry of default. *Williams v. Watkins*, 384 S.C.319, 326, 681 S.E.2d at 917 (motion for relief was within reasonable time as defendant sought

relief as soon as he discovered default); *Melton v. Olenik*, 379 S.C. 45, 56, 664 S.E.2d 487, 493 (C. App. 2008) (finding motion for relief was timely because defendant filed motion for relief a little over a month after learning of the default).

A-I-I filed its Motion to Set Aside Default mere days after the Court entered its Order on Plaintiffs' motion. When A-I-I learned that a motion for default had been filed, outside counsel for A-I-I called Plaintiffs' counsel in South Carolina the very next day to ask for a courtesy and explain that local counsel had not been secured. When the extension was denied, A-I-I secured counsel from Atlanta to file the Answer that same day. The Motion to Set Aside followed promptly thereafter. There is no evidence of unreasonable delay by A-I-I.

IV. A-I-I Has a Meritorious Defense

To establish a meritorious defense, defendants do not have to show they would prevail on the merits. *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008). Rather, a meritorious defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." *Id.* at 575, 671 S.E.2d at 94 (citations omitted); *see also Edwards v. Ferguson*, 254 S.C. 278, 282, 175 S.E.2d 224, 225 (1970) (defendant in an automobile accident case made a "prima facie showing of meritorious defenses" through written statements claiming: "(1) that the defendant was not driving the vehicle, and (2) that even if the defendant was driving the vehicle, the plaintiff was guilty of contributory negligence and recklessness."); *Thompson v. Hammond*, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989) (defendants met the meritorious defense requirement where they supplemented their motion for relief from default judgment with "testimony showing that a real controversy existed" as to whether the plaintiffs' claims were true and accurate).

Here, A-I-I's meritorious defense is manifest. Plaintiffs claim Mr. Perry's mesothelioma diagnosis was caused by inhaling asbestos while performing repairs on automobiles and personal use of talcum powder. (See Compl. ¶ 9; Perry Work History Affidavit.) However, A-I-I's comprehensive Answer, containing 85 substantive defenses, robustly counters Plaintiffs'

allegations. *See Answer.* A-I-I categorically denies having played any role in Mr. Perry's alleged injuries. (*See Answer.*) Indeed, no formulation of any A-I-I product, including Clubman Talc, used or uses asbestos as an ingredient. (*See Charles Loveless Affidavit ¶34.*) ("Loveless Aff.") From the time A-I-I began to blend and sell Clubman Talc, it only used pharmaceutical grade (USP) talc. (*See Loveless Aff. ¶35.*) Further, the USP talc A-I-I received was consistently certified not to contain detectable or regulated asbestiform minerals. (*See Loveless Aff. ¶37.*) A-I-I has hired an independent laboratory to test its USP talc samples and no asbestiform minerals or other fibrous materials were detected. (*See Loveless Aff. ¶38.*) Undoubtedly, A-I-I's defense presents substantial questions worthy of investigation. A-I-I should, in the interest of justice and fairness, be given the opportunity to rigorously defend its position through the litigation process and not deprived of that right due to a technicality.

V. Plaintiffs Will Not Be Prejudiced If the Entry of Default Is Set Aside, and Justice Warrants Allowing A-I-I to Defend on the Merits.

a. There is no prejudice to Plaintiffs in setting aside the default.

Setting aside the entry of default will not prejudice Plaintiffs or cause any hardship as discovery can proceed as normal and the case can be ready for trial in its current time frame. *See Top Value Homes v. Harden*, 460 S.E.2d 427, 429 (Ct. App. 1995) (the degree of prejudice to the nonmoving party if the relief is granted must not be to the extreme or unreasonable). Here, it is clear there is no prejudice to Plaintiffs in that:

- **No Depositions Have Been Taken Without A-I-I Present:** The litigation is still in its very early stages. A-I-I was present during all days of Mr. Perry's deposition, and actively participated by examining Mr. Perry without objection. The litigation is in its infancy, and A-I-I will remain actively involved.
- **Minimal Discovery Conducted:** The discovery process has barely commenced. Aside from Plaintiffs providing generic responses to standard interrogatories before Mr. Perry's deposition, no significant discovery has been exchanged. A-I-I is in possession of Plaintiffs' responses, ensuring it is on equal footing with the other parties.

- **Immediate Action by A-I-I:** Demonstrating good faith and an intention to defend the claims against it, A-I-I promptly filed an Answer to the Complaint on the very day Plaintiffs' counsel communicated her refusal to grant an extension. A responsive pleading was due, at the earliest, on September 11, 2023, thirty (30) days after service. The error was identified on September 27, 2023, when the Motion for Default was provided, and A-I-I immediately requested an extension. On September 29, 2023, Plaintiffs' counsel denied the routine courtesy, so A-I-I acted fast to secure counsel from Atlanta to file the Answer that very day. This was only two days after learning that a Motion for Default had been filed. These default proceedings will cause more delay in the progress of the litigation than if A-I-I had simply been given an extension to answer by counsel.
- **No Evidence Lost or Compromised:** There is no indication, nor has it been alleged, that any evidence has been lost or compromised due to the short procedural delay. Similarly, there is no risk of witness testimony going missing or being rendered unavailable. Setting aside the entry of default will not result in the loss of any evidence, will not cause any increased difficulty in discovery, and will not adversely affect Plaintiffs' ability to pursue their claims.

Given these circumstances, it is apparent that allowing A-I-I to defend itself on the merits will not disadvantage or prejudice Plaintiffs in any way. To the contrary, enforcing a default judgment under these conditions would result in a gross injustice, as South Carolina universally favors the resolution of cases on their substantive merits rather than procedural technicalities. *See Caldwell v. Wiquist*, 402 S.C. 565, 575, 741 S.E.2d 583, 588 (Ct. App. 2013) (“[O]ur decision to reverse the trial court’s refusal to set aside the default judgments is consistent with the policy of our state to resolve cases on the merits.”); *See also Dixon*, 320 S.C. at 178, 463 S.E.2d at 638. Allowing the parties to move forward with the litigation of this action would better serve the judicial process than permitting the case to move forward through default proceedings against A-I-I. Accordingly, because there is no prejudice to Plaintiffs and South Carolina prefers cases to be

decided on their actual merits rather than procedural defaults, the Court should set aside the default and allow A-I-I its rightful opportunity to defend itself against the claims asserted by Plaintiffs.

- b. Plaintiffs' counsel's refusal to grant an extension was based on improper motives, contrary to the spirit of professional courtesy, and wastes judicial resources.

It is a fundamental tenet of the legal profession that attorneys must, at all times, act in good faith and with the highest standards of professionalism. Rule 402, SCACR (pledging “fairness, integrity, and civility, not only in court, but also in all written and oral communications” to opposing counsel). It is imperative to distinguish between personal disputes and the substantive issues of a case, ensuring attorneys' duty to their clients and the court remains paramount. Regrettably, the only basis provided to A-I-I for a refusal to withdraw the motion for default was a perceived slight from a trial involving unrelated parties and clients.

Upon realizing the inadvertent delay in responding to the Complaint, A-I-I promptly called two different Plaintiffs' attorneys seeking a modest extension to file a response and an opportunity to meet and confer to explain the delay. Although not required, a gesture consistent with a professional courtesy is often given among fellow practitioners. In this case, however, Plaintiffs' counsel unequivocally declined this routine request. The stated rationale was not based on any potential prejudice to Plaintiffs, nor any reason related to the present case. Rather, Plaintiffs' counsel candidly acknowledged that her denial was rooted in personal dissatisfaction stemming from unrelated litigation involving a completely different client once represented by Lathrop GPM. This refusal to lift the default has further been described as being “personal” against an attorney with Lathrop GPM.

It is worth noting that Plaintiffs' counsel, despite recognizing the absence of A-I-I's answer, made no effort to notify A-I-I's counsel—even though Dean Omar is in active communication and negotiations with A-I-I's attorneys in multiple cases outside of South Carolina. A-I-I's attorneys have communicated with Plaintiffs' counsel at least three times since Plaintiffs filed this Complaint. (*See* Gowin Aff. ¶ 9.) Not once was there any inquiry into whether A-I-I

intended to answer nor any mention that a motion for default was contemplated, which is a practice counsel has been known to follow in other cases in this venue. *See In re Asbestos Personal Injury Litigation Coordinated Docket*, No. 2018-CP-40-04680, 2019 WL 13185699, at *1 (S.C.Com.Pl., Richland County Mar. 20, 2019) (Plaintiffs' counsel emailed defense counsel several times to ask about the late answer before moving forward with a motion for default.) Plaintiffs' conscious decision to withhold information, coupled with their refusal to grant an extension, underscores the desire to hinder defense efforts and undermine a decision of this case on its merits.

An attorney's refusal to consent to an extension for "retaliatory" reasons stands contrary to the spirit of professional courtesy and decorum. (Rule 407, SCACR, Rules of Prof. Conduct, Rule 8.4(3)(it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.) It also unreasonably multiplies the hearings and proceedings, burdening the Court with unnecessary distractions and consuming valuable judicial resources. It is clear that Plaintiffs' counsel's refusal is based on improper motives unrelated to the present case and having nothing to do with any alleged prejudice to Plaintiffs. A party should not be able to gain an unwarranted advantage against A-I-I solely to rectify a grudge against A-I-I's counsel from an unrelated case in which A-I-I had absolutely no involvement. *In re White*, 707 S.E.2d 411, 415, 391 S.C. 581, 588 (S.C., 2011)(determining that an attorney may not, as a means of gaining a strategic advantage, engage in conduct that departs from the standards of civility and professionalism required of all attorneys.) A-I-I accordingly requests that the Court grant this Motion because Plaintiffs' counsel has shown no prejudice to their clients in this case. Personal grievances have no place in our judicial system.

VI. Cases in this Judicial Circuit Where No Good Cause Was Shown Are Distinguishable.

A-I-I anticipates Plaintiffs' counsel will rely on this Court's order in *In re Asbestos Personal Injury Litigation Coordinated Docket*, No. 2018-CP-40-04680, 2019 WL 13185699, at *1 (S.C.Com.Pl., Richland County Mar. 20, 2019) ("Covil") where it found that there was no good cause to lift the default. However, this case presents a markedly different factual and procedural

landscape. The distinctions are not only significant but go to the very heart of the notion of “good cause” as contemplated by Rule 55(c).

In *Covil*, Plaintiff’s counsel apprised defense counsel multiple times in emails about the impending default and asked when she could expect an answer—arguably providing the defendant ample opportunity to rectify the oversight. Here, despite several interactions with Plaintiffs’ counsel on cases outside of South Carolina, not once did anyone apprise A-I-I of the impending default. Although Plaintiffs are not required to send an email or make a call to defendants, the conspicuous absence of any notice when it is common practice by the same counsel—let alone “repeated notices” as was the case in *Covil*—deprived A-I-I the opportunity to take corrective action to avoid a default altogether. *In re Asbestos Personal Injury Litigation Coordinated Docket*, 2019 WL 13185699, at *3.

Also, in *Covil*, the defendant’s delay was amplified, taking over 10 days post-default to respond. In stark contrast, A-I-I exhibited proactive diligence. Within two days of learning of the motion for default—and crucially, on the very day Plaintiffs’ counsel declined A-I-I’s request for an extension—answers were promptly filed with this Court. Further, this Motion was filed within seven days of the Court entering an order granting default. This swift action epitomizes A-I-I’s commitment to the litigation and negates any inference of intentional or negligent default.

Further, in *Covil*, depositions had already proceeded in the defendant’s absence and would need to be re-opened, creating irrevocable prejudice to the plaintiff in that case. Here, A-I-I actively participated in all days of Mr. Perry’s deposition and examined him without objection. Far from delaying or obstructing the case, A-I-I has consistently signaled its intent to engage in the litigation actively and promptly. No discovery will need to be re-opened, and there is simply no prejudice.

It is critical to underscore the inherently differing natures of the defaults. In *Covil*, the default was arguably a byproduct of a calculated decision by the insurer. There were no such calculated decisions here. A-I-I always intended to actively participate in the litigation and defend itself, and engaged in its usual practice to secure local counsel with zero notice that local counsel had not, in fact, been secured. The pivotal distinctions underscore that A-I-I’s default was neither

intentional nor negligent but a good faith mistake—void of any intention to thwart the judicial system. To conflate the two scenarios would be factually erroneous.

VII. Entry of Default Runs Afoul of the Contribution Among Tortfeasors Act and Constitutes Reversible Error.

As a matter of South Carolina law, when tort claims are asserted against multiple defendants, a jury must apportion fault among the litigants or it can assign the entirety of liability to a third party. S.C. Code Ann. §§ 15-38-15(C), (D). If a defendant's fault is determined to be less than 50%, then it is liable only for that percentage of damages. *Id.* § 15-38-15(A). Should this Court flip the proper sequence by entering a judgment by default against A-I-I prior to any jury trial, the court eliminates: (1) the jury's role in apportioning liability among the litigants; (2) the potential "empty chair" defense that the General Assembly specifically preserved by statute, which is a legitimate defense in this case due to the numerous alleged sources of asbestos exposure and the wide discrepancies in the lengths of time for those exposures; and (3) the statutory protection A-I-I has against paying the entirety of the damages if a jury determines that Mr. Perry, another defendant, or both were at least 51% at fault for the alleged injuries. These errors run contrary to the South Carolina Uniform Contribution Among Tortfeasors Act's protections for litigants in a multi-defendant setting, and they require vacating the entry of default so that a jury can do its statutorily-required job.

CONCLUSION

Because of the good cause demonstrated here and South Carolina's preference for trying cases on the merits, this Court should set aside the entry of default and allow A-I-I to defend on the merits. Accordingly, A-I-I's Motion to Set Aside Entry of Default should be granted.

Respectfully submitted this, the 24th day of October, 2023.

FOX ROTHSCHILD LLP

s/Stephanie G. Flynn

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American International Industries

Supplemental Affidavit of Brian Dror

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C.A. No.: 2023-CP-40-04072
LONNIE L. LONG	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

Personally appeared before me, Brian Dror, after first being duly sworn, do hereby swear, make oath and affirm as follows:

1. I am an outside accountant and litigation manager for American International Industries (“A-I-I”). I have personal knowledge of the matters contained in this affidavit and/or I have obtained the information from my involvement as accountant and litigation manager for A-I-I.
2. I am over the age of 18 and competent to testify as to the matters contained in this affidavit.
3. I previously provided an Affidavit in this case on or about October 10, 2023, which I understand was attached to A-I-I’s Motion to Set Aside Entry of Default Before Default Judgment Hearing.
4. I now provide this supplemental Affidavit to provide additional information and clarification.
5. A-I-I is a California general partnership, and I serve as the designated registered

agent for each of the partners, which are S-corporations, one of which is Glamour Industries, Co., the managing partner and also a separately named Defendant in this action.

6. I was served with process directed to Glamour Industries, Co., given my role as the registered agent for it, but I was not served with process directed to A-I-I, despite that it would be appropriate to serve me as registered agent for the partners.

7. Only one office (President) has been created within A-I-I, as reflected in filings made with the California Secretary of State. The President was not served with process.

8. Terri Cooper is one of multiple employees within A-I-I who have been conferred the title of Executive Vice-President, but no such office has been created through the California Secretary of State, nor has Ms. Cooper been held out by A-I-I to be a registered agent or authorized representative for purposes of service of process.

9. Nevertheless, following receipt of the pleadings directed to A-I-I, I initiated the process to obtain local counsel in South Carolina.

10. It was after I received the motion for default that I dispensed with the normal channels and, both directly and through counsel, requested representation from various different counsel in South Carolina, at which time I encountered difficulty in my efforts to do so, as described.

I affirm under penalty of perjury that the foregoing is true and correct. Executed October 24, 2023.

FURTHER AFFIANT SAYETH NOT.

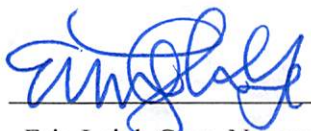

BRIAN DROR

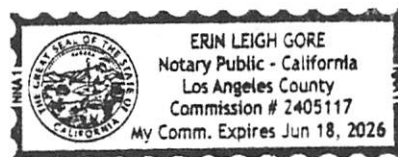
JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

Subscribed and sworn before me on this 24th day of October, 2023, by BRIAN DROR, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

 , NOTARY PUBLIC
Erin Leigh Gore, Notary Public



My Commission Expires: June 18, 2026

Supplemental Affidavit of Julia Gowin

STATE OF SOUTH CAROLINA
PLEAS COUNTY OF RICHLAND

IN THE COURT OF COMMON
FOR THE FIFTH JUDICIAL

MICHAEL L. PERRY and
LONNIE L. LONG

C/A NO. 2023-CP-40-04072

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES, individually and as
successor-in-interest to Pinaud, Inc.,
Barbara Alice, Inc., Ed. Pinaud, Inc.
d/b/a/ Ed. Pinaud, and Nestle-Le Mur
Company, all for the Clubman line of
products, et al.

Defendants.

Personally appeared before me, Julia A. Gowin, after first being duly sworn, do hereby swear,
make oath, and affirm as follows:

1. I am an attorney at law with the law firm Lathrop GPM, LLP. I have personal knowledge of the matters contained in this affidavit and/or I have obtained information from my involvement as counsel for American International Industries (“A-I-I”).

2. I am over the age of 18 and competent to testify as to the matters contained in this affidavit. My office is located in Los Angeles, CA, and I am licensed to practice in California and Hawaii.

3. I previously provided an Affidavit in this case, on or about October 10, 2023, which I understand was attached to A-I-I’s Motion to Set Aside Entry of Default Before Default Judgment Hearing.

4. I now provide this supplemental Affidavit to provide additional information and/or clarification.

5. The pleadings were provided to A-I-I's insurer through normal channels with recommendations regarding counsel and an acknowledgment in return. I had no reason to believe A-I-I's insurer was not proceeding with retention of local counsel in South Carolina.

6. It was after I learned from the client that Plaintiffs had served a Motion for Default Judgment that both I and colleagues at my firm attempted to personally secure local counsel on an expeditious basis, as described.

I affirm under penalty of perjury that the foregoing is true and correct. Executed October 24, 2023.

FURTHER AFFIANT SAYETH NOT.

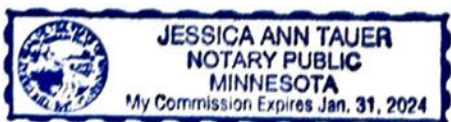


JULIA A. GOWIN

STATE OF MINNESOTA)
) ss.
COUNTY OF WRIGHT)

On this 24th day of October 2023, Julia A. Gowin personally appeared by means of interactive two-way audio and video communications, provided satisfactory evidence of identity to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. This notarial act was an online notarization.

My Commission Expires:
January 31, 2024




Notary Public

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.	)	
	)	
Defendants.	)	

PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR LEAVE TO AMEND SUMMONS AND COMPLAINT

YOU WILL PLEASE TAKE NOTICE that on the tenth day hence, or as soon thereafter as counsel may be heard, pursuant to Rule 15 of the *South Carolina Rules of Civil Procedure*, Plaintiffs will move this Honorable Court for leave to file a first amended summons and complaint to add an additional Defendant. Plaintiffs' proposed Amended Summons and Complaint is attached hereto as Exhibit A and incorporated herein by reference.

Plaintiffs seek to amend the complaint to add an additional Defendant responsible for Mr. Perry's exposures to asbestos in South Carolina. Rule 15 provides that "leave [to amend the pleadings] shall be freely given where justice so requires." Rule 15 further instructs that "[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading." R. 15(a) and (c), *SCRCP*. Here, it has come to light that additional Defendants are responsible in part for Mr. Perry's exposures to asbestos in South Carolina, which Plaintiffs claim resulted in Mr. Perry's diagnosis of

mesothelioma. Rule 15 provides that “leave [to amend the pleadings] shall be freely given where justice so requires.” Plaintiffs have notified all counsel of record and there has been no objection to this Motion. No prejudice exists to current parties by adding an additional defendant responsible in part for Plaintiffs’ damages.

Respectfully submitted,

/s/ David C. Humen

David C. Humen (SC Bar No. 104536)

Rachel A. Gross (Admitted *Pro Hac Vice*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 302

Dallas, TX 75202

T: 214-722-5990

rgross@dobslegal.com

Other email: tgilliland@dobslegal.com

Theile B. McVey (SC Bar No. 16682)

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Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

tmcvey@kassellaw.com

Other email: emoultrie@kassellaw.com

ATTORNEYS FOR PLAINTIFF

November 9, 2023

Dallas, Texas.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL L. PERRY and) C/A NO. 2023-CP-40-04072
LONNIE L. LONG,)
)
Plaintiffs,)
v.) In Re:
) Asbestos Personal Injury Litigation
AMERICAN INTERNATIONAL) Coordinated Docket
INDUSTRIES)
)
ATLAS TURNER INC.)
)
AVON PRODUCTS, INC.) **FIRST AMENDED SUMMONS**
)
BARRETTS MINERALS INC.)
)
BLOCK DRUG COMPANY, INC.) (Jury Trial Demanded)
)
BRENNTAG NORTH AMERICA, INC.)
)
BRENNTAG SPECIALTIES, LLC)
)
BRISTOL-MYERS SQUIBB COMPANY)
)
C&S WHOLESALE GROCERS, LLC)
)
CALVIN KLEIN INC.)
)
CHANEL INC.)
)
CHARLES B. CHRYSTAL COMPANY, INC.)
)
CHATTEM, INC.)
)
COLGATE-PALMOLIVE COMPANY)
)
COLOR TECHNIQUES, INC.)
)
COSMETIC SPECIALTIES, INC.)
)
COTY INC.)
)
CVS HEALTH CORPORATION)

CVS PHARMACY, INC.

EDC DRUG STORES, INC.

ESTÉE LAUDER INC.

ESTÉE LAUDER INTERNATIONAL, INC.

THE ESTÉE LAUDER COMPANIES INC.

FOOD LION, LLC

GENUINE PARTS COMPANY

GLAMOUR INDUSTRIES CO.

HAWTHORNE PHARMACY, INC.

HIMMEL MANAGEMENT CO. LLC

HIMMEL MEDIA LLC

HONEYWELL INTERNATIONAL, INC.

IDELLE LABS, LTD.

IMI FABI (DIANA) LLC

IMI FABI (USA) INC.

IMI FABI, LLC

JANSSEN PHARMACEUTICALS, INC.

JOHNSON & JOHNSON

JOHNSON & JOHNSON HOLDCO (NA) INC.

KENVUE INC.

L'ORÉAL USA, INC.

L'ORÉAL USA PRODUCTS, INC.

LTL MANAGEMENT LLC

MINERALS TECHNOLOGIES INC.	)
	)
THE NESLEMUR COMPANY	)
	)
PFIZER INC.	)
	)
PIGGLY WIGGLY, LLC	)
	)
PNEUMO ABEX LLC	)
	)
PRESPERSE CORPORATION	)
	)
THE PROCTER & GAMBLE COMPANY	)
	)
PTI ROYSTON, LLC	)
	)
PTI UNION LLC	)
	)
RALPH LAUREN CORPORATION	)
	)
RITE AID OF SOUTH CAROLINA, INC.	)
	)
SHULTON, INC.	)
	)
SPECIALTY MINERALS INC.	)
	)
SUMITOMO CORPORATION OF AMERICAS	)
	)
TRUE PHARMACY	)
	)
UNION CARBIDE CORPORATION	)
	)
VI-JON, LLC	)
	)
WALGREEN CO.	)
	)
WALMART INC.	)
	)
Defendants.	)
	)

FIRST AMENDED SUMMONS

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the First Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiffs' counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Rachel A. Gross (TX Bar 24073608)

(To Be Admitted *Pro Hac Vice*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, TX 75202

T: 214-722-5990

F: 214-722-5991

rgross@dobslegal.com

Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

November 30, 2023

Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL L. PERRY and
LONNIE L. LONG

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES, individually and as successor-
in-interest to PINAUD, INC., BARBARA
ALICE, INC., ED. PINAUD, INC. d/b/a ED.
PINAUD, and NESTLE-LE MUR COMPANY,
all for the CLUBMAN line of products

ATLAS TURNER INC.
f/k/a ATLAS ASBESTOS COMPANY LTD.

AVON PRODUCTS, INC.

BARRETTS MINERALS INC.

BLOCK DRUG COMPANY, INC.
individually and as successor to THE GOLD
BOND STERILIZING POWDER CO. a/k/a
THE GOLD BOND CO.

BRENNTAG NORTH AMERICA, INC.
individually and as successor-in-interest to
MINERAL AND PIGMENT SOLUTIONS,
INC., as successor-in-interest to WHITTAKER,
CLARK & DANIELS, INC.

BRENNTAG SPECIALTIES, LLC
f/k/a BRENNTAG SPECIALTIES, INC.
f/k/a MINERAL AND PIGMENT
SOLUTIONS, INC., as successor-in-interest to
WHITTAKER, CLARK & DANIELS, INC.

BRISTOL-MYERS SQUIBB COMPANY

C&S WHOLESALE GROCERS, LLC
f/k/a C&S WHOLESALE GROCERS, INC.

C/A NO. 2023-CP-40-04072

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Mesothelioma

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

individually and as successor-in-interest to)
 FLEMING COMPANIES, INC., successor-in-)
 interest to PIGGLY WIGGLY COMPANY)
)
CALVIN KLEIN INC.)
)
CHANEL INC.)
)
CHARLES B. CHRYSTAL COMPANY,)
INC.)
)
CHATTEM, INC.)
 individually and as successor to MARTIN)
 HIMMEL, INC., successor to BLOCK DRUG)
 COMPANY INC., successor to THE GOLD)
 BOND STERILIZING POWDER COMPANY)
 a/k/a THE GOLD BOND COMPANY,)
 successor to GOLD BOND)
 PHARMACEUTICAL CORPORATION)
)
COLGATE-PALMOLIVE COMPANY)
 individually and as successor-in-interest to)
 THE MENNEN COMPANY)
)
COLOR TECHNIQUES, INC.)
)
COSMETIC SPECIALTIES, INC.)
)
COTY INC.)
)
CVS HEALTH CORPORATION)
)
CVS PHARMACY, INC.)
)
EDC DRUG STORES, INC.)
 f/k/a KERR DRUG STORES, INC.)
)
ESTÉE LAUDER INC.)
)
ESTÉE LAUDER INTERNATIONAL, INC.)
)
THE ESTÉE LAUDER COMPANIES INC.)
)
FOOD LION, LLC)
)
)
)
)

GENUINE PARTS COMPANY)
d/b/a NATIONAL AUTOMOTIVE PARTS)
ASSOCIATION (NAPA))
))
GLAMOUR INDUSTRIES CO.)
individually and as an S-corporation of)
AMERICAN INTERNATIONAL)
INDUSTRIES successor-in-interest to PINAUD,)
INC., BARBARA ALICE, INC., ED. PINAUD,)
INC. d/b/a ED. PINAUD, and NESTLE-LE)
MUR COMPANY, all for the CLUBMAN line)
of products)
))
HAWTHORNE PHARMACY, INC.)
))
HIMMEL MANAGEMENT CO. LLC)
a/k/a HIMMEL GROUP, formerly d/b/a)
MARTIN HIMMEL INC., individually and as)
successor to BLOCK DRUG COMPANY INC.,)
successor to THE GOLD BOND STERILIZING)
POWDER CO. a/k/a THE GOLD BOND CO.)
))
HIMMEL MEDIA LLC)
individually and as successor to BLOCK DRUG)
COMPANY INC., successor to THE GOLD)
BOND STERILIZING POWDER CO. a/k/a)
THE GOLD BOND CO.)
))
HONEYWELL INTERNATIONAL, INC.)
individually and as successor-in-interest to)
ALLIED SIGNAL, INC., as successor to)
BENDIX CORPORATION)
))
IDELLE LABS, LTD.)
))
IMI FABI (DIANA) LLC)
))
IMI FABI (USA) INC.)
))
IMI FABI, LLC)
))
JANSSEN PHARMACEUTICALS, INC.)
individually and as successor-in-interest to)
Johnson & Johnson subsidiaries named)
JOHNSON & JOHNSON CONSUMER INC.,)
both prior to and after its 2021 restructurings)
))

and colloquially known as “Old JJCI” and “New JJCI”)
)
)

JOHNSON & JOHNSON)
)

JOHNSON & JOHNSON HOLDCO (NA))
INC., f/k/a JOHNSON & JOHNSON)
CONSUMER INC., individually and as)
successor-in-interest to Johnson & Johnson)
subsidiary “Old JJCI”)
)

KENVUE INC.)
individually and as successor-in-interest to)
JOHNSON & JOHNSON CONSUMER INC.)
)

L’ORÉAL USA, INC.)
)

L’ORÉAL USA PRODUCTS, INC.)
)

LTL MANAGEMENT LLC)
)

MINERALS TECHNOLOGIES INC.)
)

THE NESLEMUR COMPANY)
f/k/a THE NESTLE-LEMUR COMPANY)
)

PFIZER INC.)
)

PIGGLY WIGGLY, LLC)
a subsidiary of C&S WHOLESALE GROCERS,)
INC. sued individually and as successor-in-)
interest to FLEMING COMPANIES, INC.,)
successor-in-interest to PIGGLY WIGGLY)
COMPANY)
)

PNEUMO ABEX LLC)
individually and as successor-in-interest to)
ABEX CORPORATION)
)

PRESPERSE CORPORATION)
)

THE PROCTER & GAMBLE COMPANY)
individually and as successor-in-interest to)
SHULTON, INC.)
)

PTI ROYSTON, LLC)
)

d/b/a PHARMA TECH INDUSTRIES	)
f/k/a PHARMA TECH INDUSTRIES, INC.	)
f/k/a BLACK CREEK CORPORATION	)
	)
PTI UNION LLC	)
d/b/a PHARMA TECH INDUSTRIES	)
individually and as successor-in-interest to	)
PHARMA TECH INDUSTRIES, INC. f/k/a	)
BLACK CREEK CORPORATION, as	)
successor-in-interest to DIRECT	)
PHARMACEUTICAL CORPORATION and as	)
successor-in interest to ENVI DIVERSIFIED,	)
INC. f/k/a PHARMA-TECH INDUSTRIES,	)
INC.	)
	)
RALPH LAUREN CORPORATION	)
	)
RITE AID OF SOUTH CAROLINA, INC.	)
	)
SHULTON, INC.	)
a subsidiary of THE PROCTER & GAMBLE	)
COMPANY	)
	)
SPECIALTY MINERALS INC.	)
	)
SUMITOMO CORPORATION OF	)
AMERICAS	)
	)
TRUE PHARMACY	)
	)
UNION CARBIDE CORPORATION	)
	)
VI-JON, LLC	)
f/k/a VI-JON, INC. f/k/a CUMBERLAND	)
SWAN	)
	)
WALGREEN CO.	)
	)
WALMART INC.	)
	)
Defendants.	)
	)

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs, MICHAEL L. PERRY and LONNIE L. LONG (hereinafter "Plaintiffs"), sue the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff Michael L. Perry has been diagnosed with mesothelioma caused by asbestos dust and fibers.

2. This Court has personal jurisdiction over Defendants because Plaintiffs' claims arise from Defendants' conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State;
- (e) Entering into a contract to be performed in whole or in part by either party in this State; and/or
- (f) Exposing Plaintiff to asbestos dust, fibers and/or particles generated from the ordinary and foreseeable use of the asbestos-containing products it sold, supplied, distributed, incorporated, and/or otherwise placed in the stream of commerce in the State of South Carolina and/or other states at times relevant to this action.

3. Every Defendant that has obtained a certificate of authority to transact business in South Carolina has thereby agreed that it is amenable to suit in this State. This Court may exercise general jurisdiction over such foreign corporations consistent with due process.

4. At all times material hereto, Defendants acted through their agents, servants or employees who were acting within the scope of their employment on the business of the Defendants.

5. The Defendants are corporations, companies or other business entities which, during all times material hereto, and for a long time prior thereto have been, and/or are now engaged, directly or indirectly, in the manufacturing, producing, selling, merchandising, supplying, distributing, installing, removing, and/or otherwise placing in the stream of commerce, asbestos-containing products. Courts of the State of South Carolina have personal jurisdiction over all Defendants.

6. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products, raw asbestos materials, raw asbestos talc, and/or asbestos-containing talc products for use in South Carolina, and other states, at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products, raw asbestos, raw asbestos talc, and/or asbestos-containing talc materials.

7. Plaintiffs' claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an

established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

8. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff Michael L. Perry to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

9. Plaintiff Michael L. Perry was exposed to asbestos and/or asbestos-containing body talc products from his birth until approximately 2018 through his personal use, and his family's use, of asbestos-containing body talc products throughout his life, his use and his family's use of asbestos-containing body talc products. These asbestos-containing talcum products were designed, advertised, marketed, and sold as being appropriate for use in the ordinary course by Defendants identified above. It was foreseeable Defendants' asbestos-containing talcum products would be sold for personal use by individuals like Plaintiff Michael L. Perry on himself. Plaintiff Michael L. Perry was thereby exposed to defendants' asbestos-containing talcum products in the State of South Carolina.

10. Plaintiff was further exposed to asbestos through his employment at various hotel locations where asbestos and asbestos-containing products were removed, replaced, and present in certain facilities.

11. Plaintiff was also exposed to asbestos-containing products at various times throughout his life from his non-occupation work maintaining his vehicles working with asbestos-containing friction products.

12. Plaintiff Michael L. Perry has suffered personal injuries as a proximate result of his regular and prolonged use of, inhalation, ingestion, absorption, and exposure to a variety of asbestos-containing products¹ where asbestos-containing talc was a constituent ingredient.

13. Plaintiff, Michael L. Perry, was exposed to asbestos through his personal daily use, and his family's use, of a variety of talc-based body products including, but not limited to, Ammens body powders, Avon body powders, Calvin Klein talc powder, Cashmere Bouquet talc powders, Chanel talc products, Clubman talc products, Coty talc products, Drakkar Noir talc powder, Estee Lauder talc products, Gold Bond body powders, Johnson and Johnson Baby Powder, Shower to Shower body powder, Mennen talc products, Old Spice talc products, Pinaud talc products, Polo talc powder, Stetson talc products, Walgreens body powders, Walmart body powders, and White Linen talcum powder, ("Talc Powder Products") throughout his life. These products were manufactured, marketed, sold and/or distributed by Defendants.

14. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in his complaint that provided asbestos-containing talc as a constituent ingredient to the Powder Products he used.

15. Each use of the Powder Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the products.

16. Plaintiff Michael L. Perry's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

¹ As used throughout this complaint, the term "asbestos" shall be interpreted in the broadest sense and included, without limitation, non-regulated and non-commercial forms of asbestos (including non-fibrous asbestos), cleavage fragments, and transition/transitional fibers, without limitation as to fiber size, dimension, or ratio.

17. Plaintiffs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

18. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an “alternate entity” as hereinafter defined. Defendants are liable for the acts of their “alternate entity” and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiffs’ remedy against each such “alternate entity”; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such “alternate entity”; such “alternate entities” have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiffs’ remedy against each such “alternate entity”; each such Defendant has the ability to assume the risk-spreading role of each such “alternate entity;” and that each such defendant enjoys the goodwill originally attached to each “alternate entity.”

DEFENDANT	ALTERNATE ENTITY
AMERICAN INTERNATIONAL INDUSTRIES	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LE MUR COMPANY, and CLUBMAN
ATLAS TURNER INC.	ATLAS ASBESTOS COMPANY LTD.
BLOCK DRUG COMPANY, INC.	THE GOLD BOND STERILIZING POWDER CO. and THE GOLD BOND CO.
BRENNTAG NORTH AMERICA, INC.	MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC.
BRENNTAG SPECIALTIES, LLC	BRENNTAG SPECIALTIES, INC., MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC

DEFENDANT	ALTERNATE ENTITY
C&S WHOLESALE GROCERS, LLC	C&S WHOLESALE GROCERS, INC., FLEMING COMPANIES, INC. and PIGGLY WIGGLY COMPANY
CHATTEM, INC.	MARTIN HIMMEL, INC., BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER COMPANY, THE GOLD BOND COMPANY, and GOLD BOND PHARMACEUTICAL CORPORATION
COLGATE-PALMOLIVE COMPANY	THE MENNEN COMPANY
EDC DRUG STORES, INC.	KERR DRUG STORES, INC.
GENUINE PARTS COMPANY	NATIONAL AUTOMOTIVE PARTS ASSOCIATION (NAPA)
GLAMOUR INDUSTRIES CO.	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LE MUR COMPANY, and CLUBMAN
HIMMEL MANAGEMENT CO. LLC	HIMMEL GROUP, MARTIN HIMMEL INC., BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER CO., and THE GOLD BOND CO.
HIMMEL MEDIA LLC	BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER CO., and THE GOLD BOND CO.
HONEYWELL INTERNATIONAL, INC	ALLIED SIGNAL, INC. and BENDIX CORPORATION
JANSSEN PHARMACEUTICALS, INC.	JOHNSON & JOHNSON CONSUMER INC.
JOHNSON & JOHNSON HOLDCO (NA) INC.	JOHNSON & JOHNSON CONSUMER INC.
KENVUE INC.	JOHNSON & JOHNSON CONSUMER INC.

DEFENDANT	ALTERNATE ENTITY
LTL MANAGEMENT LLC	JOHNSON & JOHNSON CONSUMER INC.
THE NESLEMUR COMPANY	THE NESTLE-LEMUR COMPANY
PIGGLY WIGGLY, LLC	C&S WHOLESALE GROCERS, INC., FLEMING COMPANIES, INC. and PIGGLY WIGGLY COMPANY
PNEUMO ABEX LLC	ABEX CORPORATION
THE PROCTER & GAMBLE COMPANY	SHULTON, INC.
PTI ROYSTON, LLC	PHARMA TECH INDUSTRIES, PHARMA TECH INDUSTRIES, INC. and BLACK CREEK CORPORATION
PTI UNION LLC	PHARMA TECH INDUSTRIES, PHARMA TECH INDUSTRIES, INC., BLACK CREEK CORPORATION, DIRECT PHARMACEUTICAL CORPORATION, ENVI DIVERSIFIED, INC., and PHARMA-TECH INDUSTRIES, INC.
SHULTON, INC.	THE PROCTER & GAMBLE COMPANY
VI-JON, LLC	VI-JON, INC. and CUMBERLAND SWAN

19. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in

the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

20. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, certain Defendants are subject to the following facts relating to their successor liability status, as stated below:

- (a) The Declaration of John K. Kim in Support of First Day Pleadings in LTL's second Bankruptcy filing on April 4, 2023 ("**Kim LTL Decl.**"), *In re: LTL Management LLC*, Case No.: 23-12825, United States Bankruptcy Court District of New Jersey ("**LTL 2**"), summarizes J&J's and its affiliates' corporate history that is pertinent to the claims alleged herein against the Defendants as follows:
 - (i) "J&J, a New Jersey company incorporated in 1887, first began selling JOHNSON'S® Baby Powder in 1894, launching its baby care line of products."
 - (ii) "In 1972, J&J established a formal operating division for its baby products business, which included JOHNSON'S® Baby Powder.... J&J transferred all its assets and liabilities associated with the baby products division to J&J Baby Products."
 - (iii) "In 1981, J&J Baby Products transferred all its assets, except those assets allocated to its diaper programs, to Omni Education Corporation ("Omni"), a wholly owned subsidiary of J&J Baby Products. In turn, Omni assumed all liabilities of J&J Baby Products except those liabilities related to its diaper program. Immediately following the transaction, J&J Baby Products merged into another subsidiary of J&J and was renamed Personal Products Company, and Omni changed its name to Johnson & Johnson Baby Products Company."
 - (iv) "In 1988, Johnson & Johnson Baby Products Company transferred all its assets in respect of its baby products business to Johnson & Johnson Dental Products Company, which assumed all of its liabilities and was renamed Johnson & Johnson Consumer Products, Inc."
 - (v) "In 1997, Johnson & Johnson Consumer Products, Inc. changed its name to Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer Companies")."

- (vi) “In 2015, J&J Consumer Companies merged with and into an affiliate, which then merged into McNeil-PPC, Inc. The resulting entity was renamed Johnson & Johnson Consumer Inc. (including all former names and historical forms, “Old JJCI”).”
- (vii) “Old JJCI became responsible for all claims alleging that JOHNSON’S® Baby Powder and other talc-containing products cause cancer or other diseases.... Old JJCI also became responsible for all claims alleging that Shower to Shower products, which contained talc, cause cancer or other diseases.”
- (b) J&J and its subsidiary, “Johnson & Johnson Consumer, Inc.,” both in the form of “Old JJCI” and “New JJCI” (which is identified and described below), were at all times material responsible for the design, labeling, marketing, distribution, and sale of J&J’s body powder product lines, including the iconic Johnson & Johnson Baby Powder product line.
- (c) Each and every one of the J&J’s corporate entities, including itself and its affiliated companies involved or associated with talc business and PRODUCTS, were at all times material to this case aware that raw talc ingredient and/or resulting talc-based PRODUCTS contained asbestos, and each and all collectively actively concealed such fact from the public for decades.
- (d) Prior to the implementation of J&J’s multifaceted restructuring of its consumer product subsidiaries in 2021, Old JJCI and its predecessors milled, manufactured, labeled, sold, supplied, distributed, and/or marketed asbestos-containing PRODUCTS to which Plaintiff was exposed.
- (e) In an effort to avoid or eliminate J&J and Old JJCI’s respective responsibility and liability for injuries and harm caused by Johnson & Johnson Baby Powder, as well as other talc PRODUCTS, in or about October 2021, Old JJCI underwent a series of corporate restructuring transactions under Texas state corporation and business law in which it split itself into two separate entities through a device referred to as a “divisive merger,” more commonly known as the “Texas Two Step.”
- (f) The corporate restructuring was designed and undertaken with the intent to isolate the talc liabilities of Old JJCI into a newly invented company created by J&J called “LTL Management LLC” (“LTL”). “LTL” is an acronym for “Legacy Talc Liability.”
- (g) LTL was immediately thereafter put into a Chapter 11 Bankruptcy wherein LTL and other J&J entities sought the protection of the Bankruptcy Code’s processes and machinery to obtain a stay of all pending litigation and construct an aggregate resolution of its outstanding present and future asbestos liabilities that would foreclose jury trials and reduce the

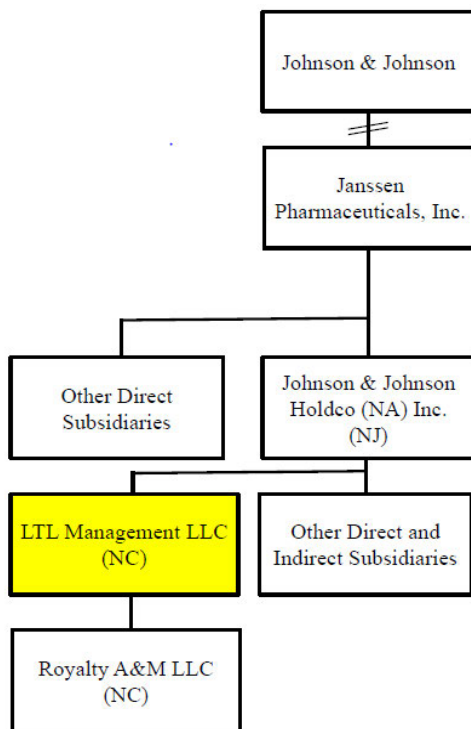
compensation they would owe to those harmed by its PRODUCTS and their families, given that J&J and its subsidiaries were increasingly being held liable by juries in lawsuits brought by talc asbestos claimants and were being ordered to pay compensatory and exemplary damages.

- (h) As part of J&J's liability avoidance/limiting corporate restructuring, all of the productive assets of Old JJCI, including those used to manufacture and market J&J Baby Powder, were transferred to a newly minted corporate entity named "Johnson & Johnson Consumer Inc." ("New JJCI"). New JJCI upon receipt of the Old JJCI's operating assets continued to sell J&J Baby Powder, as had Old JJCI previously before when J&J itself directly marketed the product line through an internal division.
- (i) Over the objection of tens of thousands of personal injury and wrongful death tort plaintiffs, the Bankruptcy Court presiding over LTL's 2021 bankruptcy case stayed and enjoined prosecution of all litigation against not only the Debtor LTL but all cosmetic talc injury related litigation involving J&J and New JJCI.
- (j) During LTL's bankruptcy proceedings, representatives of the affected personal injury and wrongful death tort victims challenged J&J's Texas Two Step scheme before the Bankruptcy Court. After losing their challenges before the Bankruptcy Court, they were ultimately successful on appeal before the United States Court of Appeals for the Third Circuit, which on January 30, 2023, ruled that the Bankruptcy filing by LTL was not proper and ordered that LTL's 2021 Bankruptcy case be dismissed. In re: LTL Management, LLC, No. 22-0007, 2023 WL 2760479 (3d Cir., decided Jan. 30, 2023; opinion entered Mar. 31, 2023).
- (k) LTL's efforts to obtain re-argument before the Third Circuit panel hearing its appeal or an en banc hearing were denied, and the Appeals Court's mandate to the Bankruptcy Court was issued by the Third Circuit Clerk on March 31, 2023, thereby triggering the lower court's duty to enter an order dismissing the case.
- (l) Within hours of the LTL Bankruptcy Court issuing its ensuing dismissal order on April 4, 2023, LTL filed a second Chapter 11 petition for bankruptcy protection in the same court seeking the same relief as in the dismissed case, claiming its funding sources and arrangements had been replaced and reconfigured in such way that purportedly overcomes the Third Circuit's reasons for ordering the earlier bankruptcy case be dismissed.
- (m) Unbeknownst to Plaintiff, during the time the Third Circuit Court of Appeals was considering the propriety of LTL's bankruptcy filing, New JJCI began the process of moving its assets and business to yet another J&J

subsidiary, Defendant Kenvue, Inc., by transfers through JJCI's direct parent, Janssen Pharmaceuticals, Inc.

- (n) According to the Kim Declaration, as part of J&J's further corporate restructuring, New JJCI changed its name to "Johnson & Johnson Holdco (NA) Inc." ("Holdco"), a New Jersey corporation. His declaration before the Bankruptcy Court additionally revealed that "in early January 2023, [New JJCI] transferred its Consumer Business assets to its parent entity." See Kim LTL Decl. at ¶ 26.
- (o) While Mr. Kim's declaration does not expressly state who the parent entity is, a careful examination of the affidavit demonstrates that Janssen Pharmaceuticals, Inc. is the parent entity of Defendant New JJCI. *Id.* Figure 1 below is from an Exhibit to Mr. Kim's Declaration and shows that Janssen is the parent that received all of the JJCI assets used to manufacture, market, and sell J&J Baby Powder.

Figure 1



- (p) Accordingly, under South Carolina law, both Holdco and Janssen are successors to Old JJCI and responsible for the contractual undertakings and tortious conduct of Old JJCI.

- (q) The information gleaned from Mr. Kim’s Declaration and a J&J subsidiary’s SEC filings shows that J&J is in the process once again of manipulating assets and responsibilities related to the sale of J&J’s Baby Powder.
- (r) On January 4, 2023, Defendant Kenvue, another J&J subsidiary, submitted its first filing with the Securities and Exchange Commission (“SEC”), an S-1 registration of securities form. Kenvue Inc. Form S-1 Registration Statement Under the Securities Act of 1933 (Jan. 4, 2023). Figure 2 below reproduces a portion of the filing’s cover page.

Figure 2

As filed with the Securities and Exchange Commission on January 4, 2023. Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

Kenvue Inc.
(Exact name of registrant as specified in its charter)

2844
(Primary Standard Industrial
Classification Code Number)

88-1032011
(I.R.S. Employer
Identification Number)

Delaware
(State or other jurisdiction of
incorporation or organization)

199 Grandview Road
Skillman, NJ 08558
(732) 524-0400
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

- (s) In its SEC registration filing, Kenvue sets forth the products that it claims to manufacture and sell in the United States. In this regard, Kenvue represented to the SEC and the public: “A number of our products marketed in the United States, including many of our products in our Skin Health and Beauty segment, are considered cosmetics regulated by the FDA through the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. Our cosmetic products include Aveeno Restorative Skin Therapy Oat Repairing Cream, Aveeno Restorative Skin Therapy Sulfate-Free Body Wash, Johnson’s Baby Powder and certain of our Listerine mouthwash products.” *Id.* (emphasis added).
- (t) Kenvue acknowledged in its SEC S-1 filing that it may be held accountable for the harm caused by the talc-based PRODUCTS it is responsible for: “It is also possible that various parties will seek to bring **and will be successful** in bringing claims against us, including by raising allegations that we are liable for the Talc-Related Liabilities” *Id.* (emphasis added).
- (u) Kenvue further acknowledges itself as the company responsible for the manufacture of Johnson’s Baby Powder indicating that it “may be subject to additional claims . . . related to the sale of talc-based Johnson’s Baby Powder in markets where we have discontinued this product (such as in the United States and Canada), including potential governmental inquiries,

investigations, claims and consumer protection cases from state attorneys general.” Id. (emphasis added).

- (v) Kenvue also acknowledges that it is “responsible for all liabilities on account of or relating to harm arising out of, based upon, or resulting from, directly or indirectly, the presence of or exposure to talc or talc-containing products sold outside the United States or Canada.” Id.
- (w) As such, Kenvue is responsible individually and as successor to all predecessor entities involved in the manufacturing, marketing, and sale of the asbestos-containing talc PRODUCTS to which the Plaintiff was exposed.

21. For purposes of clarity and avoidance of doubt, this Complaint is not asserting and does not assert claims against, or seek any relief from Imerys Talc Vermont, Inc., or any of its affiliates (collectively, “Imerys”), and not relief obtained by Plaintiff pursuant to this Complaint will be used by the Plaintiff against Imerys in any manner.

22. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

23. As a direct and proximate result of the conduct as alleged within, Plaintiff Michael L. Perry suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

24. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Michael L. Perry incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to

Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Michael L. Perry's medical treatment is ascertained.

25. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff Michael L. Perry incurred, and will continue to incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs pray leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

THE PARTIES

26. Plaintiffs, Michael L. Perry and Lonnie L. Long, are currently residents of the State of South Carolina. Plaintiff Michael L. Perry was exposed to asbestos during the course of his career at various job sites, including but not limited to, locations in South Carolina and Illinois.

27. Plaintiff Michael L. Perry was also exposed to asbestos from his personal use, and his family's use, of asbestos-containing talc-based powder products throughout his life in his Illinois, Florida and South Carolina homes beginning in the 1960s. The dust and fibers from the asbestos-containing talc products permeated his person and clothes. As a direct and proximate result of Michael L. Perry's inhalation and ingestion of dust particles and fibers, he was diagnosed with Mesothelioma on or about July 7, 2023.

28. Defendant, **AMERICAN INTERNATIONAL INDUSTRIES**, individually and as successor-in-interest to PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC. d/b/a ED. PINAUD, and NESTLE-LE MUR COMPANY, all for the CLUBMAN line of products, was and is a California General Partnership with its principal place of business in California. At all times material hereto, AMERICAN INTERNATIONAL INDUSTRIES was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding,

supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products and Pinaud talc products used by Plaintiff and others living in the same household with Plaintiff. AMERICAN INTERNATIONAL INDUSTRIES is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

29. Defendant, **ATLAS TURNER INC.**, f/k/a ATLAS ASBESTOS COMPANY LTD., was and is a Canadian corporation with its principal place of business in Canada. At all times material hereto, ATLAS TURNER INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos, asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, raw asbestos fibers sold to various manufacturers of asbestos products including, but not limited to, asbestos friction, drywall, fireproofing, and insulation products. ATLAS TURNER INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

30. Defendant, **AVON PRODUCTS, INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, AVON PRODUCTS, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly

or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Avon talc products used by Plaintiff and others living in the same household with Plaintiff. AVON PRODUCTS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

31. Defendant, **BARRETTS MINERALS INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BARRETTS MINERALS INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products used by Plaintiff and others living in the same household with Plaintiff. BARRETTS MINERALS INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

32. Defendant, **BLOCK DRUG COMPANY, INC.**, individually and as successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a New Jersey corporation with its principal place of business in Pennsylvania. At all times material hereto,

BLOCK DRUG COMPANY, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Gold Bond talc products used by Plaintiff and others living in the same household with Plaintiff. BLOCK DRUG COMPANY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

33. Defendant, **BRENNTAG NORTH AMERICA, INC.**, individually and as successor-in-interest to MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, BRENNTAG NORTH AMERICA, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson, Cashmere Bouquet talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. BRENNTAG NORTH AMERICA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions,

and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

34. Defendant, **BRENNTAG SPECIALTIES, LLC** f/k/a BRENNTAG SPECIALTIES, INC. f/k/a MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware limited liability company with its principal place of business in New Jersey. At all times material hereto, BRENNTAG SPECIALTIES, LLC was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson, Cashmere Bouquet talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. BRENNTAG SPECIALTIES, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

35. Defendant, **BRISTOL-MYERS SQUIBB COMPANY**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BRISTOL-MYERS SQUIBB COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-

containing talc products including, but not limited to, asbestos-containing Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. BRISTOL-MYERS SQUIBB COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

36. Defendant, **C&S WHOLESALE GROCERS, LLC** f/k/a C&S WHOLESALE GROCERS, INC., individually and as successor-in-interest to FLEMING COMPANIES, INC. successor-in-interest to PIGGLY WIGGLY COMPANY, was and is a Delaware limited liability company with its principal place of business in New Hampshire. At all times material hereto, C&S WHOLESALE GROCERS, LLC was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. C&S WHOLESALE GROCERS, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

37. Defendant, **CALVIN KLEIN INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, CALVIN KLEIN INC. was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the

business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Calvin Klein talc powder, used by others living in the same household with Plaintiff. CALVIN KLEIN INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

38. Defendant, **CHANEL INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, CHANEL INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Chanel talc products, including but not limited to Chanel No. 5 perfumed talc powder, used by others living in the same household with Plaintiff. CHANEL INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

39. Defendant, **CHARLES B. CHRYSTAL COMPANY, INC.**, was and is a New York corporation with its principal place of business in Connecticut. At all times material hereto, CHARLES B. CHRYSTAL COMPANY, INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining,

designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by Plaintiff and others living in the same household with Plaintiff. CHARLES B. CHRYSTAL COMPANY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

40. Defendant, **CHATTEM, INC.**, individually and as successor to MARTIN HIMMEL, INC., successor to BLOCK DRUG COMPANY INC., successor to THE GOLD BOND STERILIZING POWDER COMPANY a/k/a THE GOLD BOND COMPANY, successor to GOLD BOND PHARMACEUTICAL CORPORATION, was and is a Tennessee corporation with its principal place of business in New Jersey. At all times material hereto, CHATTEM, INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products used by Plaintiff and others living in the same household with Plaintiff. CHATTEM, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products,

actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

41. Defendant, **COLGATE-PALMOLIVE COMPANY**, individually and as successor-in-interest to THE MENNEN COMPANY, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COLGATE-PALMOLIVE COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Cashmere Bouquet talc products and Mennen talc products, used by others living in the same household with Plaintiff. COLGATE-PALMOLIVE COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

42. Defendant, **COLOR TECHNIQUES, INC.**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, COLOR TECHNIQUES, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Cashmere Bouquet talc products, Estee Lauder talc products and Coty talc products, used by Plaintiff and others living in the same household with Plaintiff. COLOR TECHNIQUES, INC. is sued as a Product Defendant.

Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

43. Defendant, **COSMETIC SPECIALTIES, INC.**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, COSMETIC SPECIALTIES, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to its IMI FABI Co-Defendants named herein and J&J, Avon, Vi-Jon, Chanel, Estee Lauder and other talc products used by Plaintiff and others living in the same household with Plaintiff. COSMETIC SPECIALTIES, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

44. Defendant, **COTY INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COTY INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Stetson talc products, used by Plaintiff and others living in the same household with Plaintiff. COTY INC. is sued as a Product Defendant.

Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

45. Defendant, **CVS HEALTH CORPORATION**, was and is a Delaware corporation with its principal place of business in Rhode Island. At all times material hereto, CVS HEALTH CORPORATION was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. CVS HEALTH CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

46. Defendant, **CVS PHARMACY, INC.**, was and is a Rhode Island corporation with its principal place of business in Rhode Island. At all times material hereto, CVS PHARMACY, INC. was authorized to do business in the State of South Carolina and Florida while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. CVS PHARMACY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and

does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

47. Defendant, **EDC DRUG STORES, INC.**, f/k/a KERR DRUG STORES, INC., was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, EDC DRUG STORES, INC. was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. EDC DRUG STORES, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

48. Defendant, **ESTÉE LAUDER INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. ESTÉE LAUDER INC. is sued as a Product Defendant.

Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

49. Defendant, **ESTÉE LAUDER INTERNATIONAL, INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INTERNATIONAL INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. ESTÉE LAUDER INTERNATIONAL INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

50. Defendant, **THE ESTÉE LAUDER COMPANIES INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, THE ESTÉE LAUDER COMPANIES INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing

Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. THE ESTÉE LAUDER COMPANIES INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

51. Defendant, **FOOD LION, LLC**, was and is a North Carolina limited liability company with its principal place of business in North Carolina. At all times material hereto, FOOD LION, LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. FOOD LION, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

52. Defendant, **GENUINE PARTS COMPANY**, d/b/a NATIONAL AUTOMOTIVE PARTS ASSOCIATION (NAPA), was and is a Georgia corporation with its principal place of business in Georgia. At all times material hereto, GENUINE PARTS COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial

amounts of asbestos-containing products, materials, or equipment including, but not limited to, asbestos-containing friction products, including but not limited to NAPA and Raylock brakes, and NAPA gaskets purchased and used by Plaintiff on his personal and family vehicles. GENUINE PARTS COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

53. Defendant, **GLAMOUR INDUSTRIES CO.**, individually and as an S-corporation of AMERICAN INTERNATIONAL INDUSTRIES successor-in-interest to PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC. d/b/a ED. PINAUD, and NESTLE-LE MUR COMPANY, all for the CLUBMAN line of products, was and is a California corporation with its principal place of business in California. At all times material hereto, GLAMOUR INDUSTRIES CO. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Clubman talc products used by Plaintiff and others living in the same household with Plaintiff. GLAMOUR INDUSTRIES CO. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

54. Defendant, **HAWTHORNE PHARMACY, INC.**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, HAWTHORNE PHARMACY, INC. was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. HAWTHORNE PHARMACY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

55. Defendant, **HIMMEL MANAGEMENT CO. LLC** a/k/a HIMMEL GROUP, formerly d/b/a MARTIN HIMMEL INC., individually and as successor to BLOCK DRUG COMPANY INC., successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a Florida limited liability company with its principal place of business in New York. At all times material hereto, HIMMEL MANAGEMENT CO. LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. HIMMEL MANAGEMENT CO. LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of

South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

56. Defendant, **HIMMEL MEDIA LLC.**, individually and as successor to BLOCK DRUG COMPANY INC., successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a Delaware limited liability company with its principal place of business in New York. At all times material hereto, HIMMEL MEDIA LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. HIMMEL MEDIA LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

57. Defendant, **HONEYWELL INTERNATIONAL, INC.**, individually and as successor-in-interest to ALLIED SIGNAL, INC., as successor to BENDIX CORPORATION, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, HONEYWELL INTERNATIONAL, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing products,

materials, or equipment including, but not limited to, asbestos-containing friction products, including but not limited to Bendix brakes, purchased and used by Plaintiff on his personal and family vehicles. HONEYWELL INTERNATIONAL, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

58. Defendant, **IDELLE LABS, LTD.**, was and is a Texas corporation with its principal place of business in Texas. At all times material hereto, IDELLE LABS, LTD. was authorized to do business in the State of South Carolina and Florida while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. IDELLE LABS, LTD. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

59. Defendant, **IMI FABI (DIANA) LLC**, was a North Carolina limited liability company with its principal place of business in West Virginia. At all times material hereto, IMI FABI (DIANA) LLC was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using,

and/or retailing substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to J&J, Avon, Vi-Jon, Chanel, Estee Lauder and other talc products, used by others living in the same household with Plaintiff. IMI FABI (DIANA) LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

60. Defendant, **IMI FABI (USA) INC.**, was and is a Delaware corporation with its principal place of business in West Virginia. At all times material hereto, IMI FABI (USA) INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to J&J, Avon, Vi-Jon, Chanel, Estee Lauder and other talc products, used by others living in the same household with Plaintiff. IMI FABI (USA) INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

61. Defendant, **IMI FABI, LLC**, was and is a West Virginia limited liability company with its principal place of business in West Virginia. At all times material hereto, IMI FABI, LLC was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing

substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to J&J, Avon, Vi-Jon, Chanel, Estee Lauder and other talc products, used by others living in the same household with Plaintiff. IMI FABI, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

62. Defendant, **JANSSEN PHARMACEUTICALS, INC.**, individually and as successor-in-interest to Johnson & Johnson subsidiaries named JOHNSON & JOHNSON CONSUMER INC., both prior to and after its 2021 restructurings and colloquially known as "Old JJCI" and "New JJCI", was and is a Pennsylvania corporation with its principal place of business in New Jersey. At all times material hereto, JANSSEN PHARMACEUTICALS, INC. was authorized to do business in the State of South Carolina, Florida and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. JANSSEN PHARMACEUTICALS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

63. Defendant, **JOHNSON & JOHNSON**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, JOHNSON & JOHNSON was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. JOHNSON & JOHNSON is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

64. Defendant, **JOHNSON & JOHNSON HOLDCO (NA) INC.**, f/k/a JOHNSON & JOHNSON CONSUMER INC., individually and as successor-in-interest to Johnson & Johnson subsidiary "Old JJCI", was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, JOHNSON & JOHNSON HOLDCO (NA) INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. JOHNSON & JOHNSON HOLDCO (NA) INC. is sued as a Product Defendant. Furthermore, this

Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

65. Defendant, **KENVUE INC.**, individually and as successor-in-interest to JOHNSON & JOHNSON CONSUMER INC., was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, KENVUE INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. KENVUE INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

66. Defendant, **L'ORÉAL USA, INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA, INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not

limited to, asbestos-containing Drakkar Noir talc powder, used by Plaintiff and others living in the same household with Plaintiff. L'ORÉAL USA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

67. Defendant, **L'ORÉAL USA PRODUCTS, INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA PRODUCTS, INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Drakkar Noir talc powder, used by Plaintiff and others living in the same household with Plaintiff. L'ORÉAL USA PRODUCTS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

68. Defendant, **LTL MANAGEMENT, LLC**, is a North Carolina limited liability company with its principal place of business and headquarters in the State of New Jersey. Although other Defendants in this Complaint have acquired the assets and continued the business operations pertaining to Products, LTL MANAGEMENT, LLC is sued herein as the other Defendants have each asserted as between themselves that LTL MANAGEMENT, LLC has also assumed the liabilities for those Products and claim that LTL MANAGEMENT, LLC is a party responsible and

liable to Plaintiff for their injuries as it relates to Johnson & Johnson Baby Powder, Shower to Shower and possibly other talc products used by Plaintiff in the State of South Carolina, Florida and Illinois. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

69. Defendant, **MINERALS TECHNOLOGIES INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, MINERALS TECHNOLOGIES INC. was authorized to do business in the State of South Carolina Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied to Clubman talc products and Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. MINERALS TECHNOLOGIES INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

70. Defendant, **THE NESLEMUR COMPANY**, f/k/a THE NESTLE-LEMUR COMPANY, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, THE NESLEMUR COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing talc fiber

supplied to Clubman talc products, used by Plaintiff and others living in the same household with Plaintiff. THE NESLEMUR COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

71. Defendant, **PFIZER INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing talc fiber supplied to Coty talc products, including but not limited to Stetson talc products, used by Plaintiff and others living in the same household with Plaintiff. PFIZER INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

72. Defendant, **PIGGLY WIGGLY, LLC**, a subsidiary of C&S WHOLESALE GROCERS, LLC., individually and as successor-in-interest to FLEMING COMPANIES, INC. successor-in-interest to PIGGLY WIGGLY COMPANY, was and is a New Hampshire limited liability company with its principal place of business in New Hampshire. At all times material hereto, PIGGLY WIGGLY, LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing,

importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens and Gold Bond talc products, purchased and used by Plaintiff. PIGGLY WIGGLY, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

73. Defendant, **PNEUMO ABEX LLC**, individually and as successor-in-interest to ABEX CORPORATION, was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, PNEUMO ABEX LLC was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing products, materials, or equipment including, but not limited to, asbestos-containing friction products, including but not limited to Abex/Raylock brakes, purchased and used by Plaintiff on his personal and family vehicles. PNEUMO ABEX LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

74. Defendant, **PRESERSE CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, PRESERSE CORPORATION was authorized to do business in the State of South Carolina and Illinois while

engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied to Avon, Chanel, Coty and Estee Lauder for use in their talc products used by Plaintiff and others living in the same household with Plaintiff. PRESERSE CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

75. Defendant, **THE PROCTER & GAMBLE COMPANY**, individually and as successor-in-interest to SHULTON INC., was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE PROCTER & GAMBLE COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Old Spice talc products and Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. THE PROCTER & GAMBLE COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

76. Defendant, **PTI ROYSTON, LLC** d/b/a PHARMA TECH INDUSTRIES f/k/a PHARMA TECH INDUSTRIES, INC. f/k/a BLACK CREEK CORPORATION, was and is a Delaware limited liability company with its principal place of business in Georgia. At all times material hereto, PTI ROYSTON, LLC was authorized to do business in the State of South Carolina Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. PTI ROYSTON, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

77. Defendant, **PTI UNION LLC** d/b/a PHARMA TECH INDUSTRIES, individually and as successor-in-interest to PHARMA TECH INDUSTRIES, INC. f/k/a BLACK CREEK CORPORATION, as successor-in-interest to DIRECT PHARMACEUTICAL CORPORATION and as successor-in interest to ENVI DIVERSIFIED, INC. f/k/a PHARMA-TECH INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, PTI UNION LLC was authorized to do business in the State of South Carolina, Florida and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing talc

fiber supplied, distributed and/or manufactured for Gold Bond talc products and Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. PTI UNION LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

78. Defendant, **RALPH LAUREN CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, RALPH LAUREN CORPORATION was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Polo talc powder, used by Plaintiff and others living in the same household with Plaintiff. RALPH LAUREN CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

79. Defendant, **RITE AID OF SOUTH CAROLINA, INC.**, was and is a South Carolina corporation with its principal place of business in Pennsylvania. At all times material hereto, RITE AID OF SOUTH CAROLINA, INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing,

repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. RITE AID OF SOUTH CAROLINA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

80. Defendant, **SHULTON INC.**, was and is an New Jersey corporation with its principal place of business in Ohio. At all times material hereto, SHULTON INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Old Spice talc products used by Plaintiff and others living in the same household with Plaintiff. SHULTON INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

81. Defendant, **SPECIALTY MINERALS INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, SPECIALTY MINERALS INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing,

processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied, distributed and/or manufactured for to Gold Bond, Clubman and Coty talc products used by Plaintiff and others living in the same household with Plaintiff. SPECIALTY MINERALS INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

82. Defendant, **SUMITOMO CORPORATION OF AMERICAS**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, SUMITOMO CORPORATION OF AMERICAS was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied to Avon, Chanel, Coty and Estee Lauder for use in their talc products used by Plaintiff and others living in the same household with Plaintiff. SUMITOMO CORPORATION OF AMERICAS is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

83. Defendant, **TRUE PHARMACY**, was and is a South Carolina company with its principal place of business in South Carolina. At all times material hereto, TRUE PHARMACY was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. TRUE PHARMACY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

84. Defendant, **UNION CARBIDE CORPORATION**, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, UNION CARBIDE CORPORATION was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, Calidria asbestos fibers sold to US Gypsum, National Gypsum, Gold Bond, Georgia Pacific, Kelly Moore and others, for use in drywall joint compounds and other construction materials. UNION CARBIDE CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

85. Defendant, **VI-JON, LLC** f/k/a VI-JON, INC. f/k/a CUMBERLAND SWAN, was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, VI-JON, LLC was authorized to do business in the State of South Carolina Florida and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc sold and bottled for Walgreens and other retailers of talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. VI-JON, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

86. Defendant, **WALGREEN CO.**, was and is an Illinois corporation with its principal place of business in Illinois. At all times material hereto, WALGREEN CO. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. WALGREEN CO. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective

products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

87. Defendant, **WALMART INC.**, was and is a Delaware corporation with its principal place of business in Arkansas. At all times material hereto, WALMART INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. WALMART INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

BACKGROUND FACTS

88. Plaintiff Michael L. Perry brings this action for monetary damages as a result of contracting an asbestos-related disease.

89. Plaintiff Michael L. Perry was diagnosed with Mesothelioma on or about July 7, 2023.

90. Plaintiff Michael L. Perry's mesothelioma was caused by his exposure to asbestos through his personal use, and his family's use, of asbestos-containing Talc Powder Products where asbestos-containing talc was a constituent ingredient throughout his life.

91. During his work history, Plaintiff was exposed to Defendants' asbestos-containing construction materials removed and replaced as a bystander to construction work and remodel

performed in some of the hotels where he worked in various capacities of employment and management from approximately mid 1980s to approximately 1998 and in the early 2000s. These facilities were located in South Carolina and Illinois.

92. Plaintiff also was exposed to Defendants' asbestos-containing friction products during various times throughout his life while performing maintenance and changing the brakes on his personal vehicles and his family's vehicles from approximately 1984-1987. These activities exposed Plaintiff to asbestos, asbestos dust and fibers.

93. Plaintiff Michael L. Perry used, or had used on him by his parents and grandparents, the Talc Powder Products from 1969 continuously until approximately 2018, but does not know the precise date he stopped. He frequently and regularly dusted the Talc Powder Products on various parts of his body which at varying times may have included amongst other areas: neck, shoulders, collarbones, chest, arms, armpits, legs, genital area, and feet. During this time he repeatedly inhaled, ingested, and was regularly exposed to asbestos dust emanating from the asbestos laden talc within the Talc Powder Products permeating his person and clothes in his Illinois, Florida and South Carolina homes. All of these activities exposed Plaintiff to asbestos, asbestos dust and fibers.

94. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in his complaint that provided asbestos-containing talc as a constituent ingredient to the Talc Powder Products that he used.

95. Each use of the Talc Powder Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the product. It was foreseeable Defendants' asbestos-containing talc products would be sold for personal use by individuals like Plaintiff Michael L. Perry on himself. Plaintiff was thereby exposed to defendants' asbestos-

containing Talc Powder Products in the State of South Carolina and other states at times relevant to this action.

96. Plaintiff Michael L. Perry's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff Michael L. Perry's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

97. Plaintiff Michael L. Perry was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury and/or disease.

98. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

99. As a direct and proximate result of the conduct as alleged within, Plaintiff Michael L. Perry suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

100. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Michael L. Perry incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Michael L. Perry's medical treatment is ascertained.

101. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiffs incurred loss of profits and commissions, a diminishment of earning potential, and other

pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs request leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiffs Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

102. Plaintiffs incorporate herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

103. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos-containing talc products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry on himself. Plaintiff was thereby exposed to Defendants’ asbestos-containing talc products in the State of South Carolina.

104. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, distributed, bought, offered for sale, supplied, sold,

inspected, marketed, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos-containing talc products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, in that said products caused personal injuries to Plaintiff Michael L. Perry and others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

105. The asbestos and asbestos-containing talc products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing talc products from causing Plaintiff Michael L. Perry’s mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing talc products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Plaintiff Michael L. Perry. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

106. Defendants, and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing talc products would be

transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for personal use by individuals like Plaintiff Michael L. Perry on himself, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff Michael L. Perry, would use or be in proximity to and exposed to said asbestos fibers.

107. At all times relevant, Defendants and/or their “alternate entities” were aware of their asbestos and asbestos-containing talc products’ defect but failed to adequately warn Plaintiff Michael L. Perry, Plaintiff’s family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

108. Plaintiff Michael L. Perry, Plaintiff’s family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff’s exposure to asbestos and asbestos-containing talc products occurred at various locations as set forth in this Complaint.

109. Plaintiff Michael L. Perry suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff Michael L. Perry was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury or disease.

110. Defendants’ conduct and defective products as described in this cause of action were a direct cause of Plaintiff Michael L. Perry’s injuries, and all damages thereby sustained by

Plaintiff Michael L. Perry. Plaintiffs therefore seek all compensatory damages in order to make them whole, according to proof.

111. Furthermore, the conduct of Defendants and/or their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff Michael L. Perry and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff and others similarly situated.

112. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, Defendants and/or their “alternate entities” did so with conscious disregard for the safety of “exposed persons” who came in contact with asbestos and asbestos-containing talc products, in that Defendants and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

113. Defendants and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing talc products, or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, could cause injury, and Defendants, and their “alternate entities,”

each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, would assume, and in fact did assume, that exposure to asbestos-containing talc products was safe, when in fact said exposure was extremely hazardous to health and human life.

114. The above-referenced conduct of Defendants, and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, distribution, purchase, offer for sale, supply, sale, inspection, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos-containing talc products and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos-containing talc products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to use and be exposed thereto, including Plaintiff Michael L. Perry.

115. Plaintiff Michael L. Perry and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff. The dangers inherent in the use of these products were not readily recognizable by Plaintiff Michael L. Perry or other exposed persons. Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

116. Defendants and/or their “alternate entities” are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and

managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

117. The herein-described conduct of Defendants and their “alternate entities,” was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiffs, for the sake of example and by way of punishing said Defendants, seek punitive damages according to proof against all defendants.

FOR A SECOND CAUSE OF ACTION

(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiffs Complain of Defendants, and Allege as Follows:

118. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

119. Plaintiff Michael L. Perry suffered from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing talc products and products manufactured for foreseeable personal use by individuals like Plaintiff. Plaintiff Michael L. Perry was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury and/or disease.

120. The Products Defendants’ conduct and defective products as described above were a direct cause of Plaintiff Michael L. Perry’s injuries, and the injuries and damages thereby sustained by Plaintiffs.

121. Furthermore, the Defendants’ conduct and that of their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff Michael L. Perry and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Plaintiff Michael L. Perry and others similarly situated.

122. Defendants and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for personal use by individuals like Plaintiff Michael L. Perry, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, “exposed persons,” including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

123. Plaintiff Michael L. Perry, Plaintiff’s family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, referred to herein in a manner that was reasonably foreseeable. Plaintiff Michael L. Perry’s exposure to asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry occurred at various locations as set forth in this Complaint.

124. Defendants and/or their “alternate entities” knew and intended that the above-referenced asbestos and asbestos-containing talc products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

125. The asbestos and asbestos-containing talc products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals from causing Plaintiff Michael L. Perry’s mesothelioma, due to an inability of any asbestos-alternative to

penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing talc products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing talc products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

126. The defect existed in the said products at the time they left the possession of defendants and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed persons," including Plaintiff Michael L. Perry herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

127. Plaintiff Michael L. Perry and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing talc products, or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Said Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff Michael L. Perry and others similarly situated were exposed.

128. Defendants' defective products as described above were a direct cause of Plaintiff Michael L. Perry's injuries, and the damages thereby sustained.

129. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, Defendants and/or their “alternate entities,” and each of them, did so with conscious disregard for the safety of Plaintiff and other exposed persons who came in contact with the asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals, in that Defendants and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

130. Defendants and/or their “alternate entities” were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing talc products, had no knowledge or information indicating that asbestos or asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry could cause injury. Defendants and/or their “alternate entities” further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact exposure was extremely hazardous to health and human life.

131. The above-referenced conduct of Defendants and/or their “alternate entities” motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, distribution, purchase, offer for sale, supply, sale, inspection, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry. Defendants and/or their “alternate entities” consciously disregarded the safety of “exposed persons” in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff Michael L. Perry and other exposed persons and induced persons to use, be exposed to, and thereby injured by asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry.

132. Defendants are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their “alternate entities” as set forth herein.

133. The conduct of said defendants, their “alternate entities,” and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiffs, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

134. At all times herein mentioned, each of the named Defendants, and/or their “alternate entities,” was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively

as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely products containing asbestos and talc products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry.

FOR A THIRD CAUSE OF ACTION
(Negligence Per Se)

As a Third Distinct Cause of Action for Negligence Per Se, Plaintiffs Complain of Defendants, and Allege as Follows:

135. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

136. The actions of Defendants also constituted negligence per se.

137. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Plaintiff Michael L. Perry. Plaintiffs are not making any claims under federal law; instead, Plaintiffs are simply using the violation of federal standards as proof of liability on their state-law theories. Further, the reference to Federal regulations does not create a federal question. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

138. The negligence per se of Defendants was a proximate cause of Plaintiff Michael L. Perry’s injuries.

FOR A FOURTH CAUSE OF ACTION**(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)****As a Fourth Distinct Cause Of Action for Breach of Implied Warranties, Plaintiffs Complain of Defendants and Allege as Follows:**

139. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

140. Each of the Defendants and/or their “alternate entities” impliedly warranted that their asbestos materials or asbestos-containing talc products were of good and merchantable quality and fit for their intended use.

141. The implied warranty made by the Defendants and/or their “alternate entities” that the asbestos and asbestos-containing talc products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff Michael L. Perry used the talc products and was inhaled by Plaintiff Michael L. Perry.

142. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff Michael L. Perry was exposed to Defendants’ asbestos, asbestos-containing talc products, and/or products manufactured for personal use by individuals like Plaintiff Michael L. Perry and consequently developed mesothelioma, causing Plaintiffs to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION**(Fraudulent Misrepresentation)****For a Fifth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiffs Complain of Defendants, and Allege as Follows:**

143. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

144. That during, before and after Plaintiff Michael L. Perry’s exposure to asbestos products manufactured by Defendants and/or their “alternate entities”, the Defendants and/or their

“alternate entities” falsely represented facts, including the dangers of asbestos exposure to Plaintiff Michael L. Perry in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff Michael L. Perry. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

145. The foregoing representations were material conditions precedent to Plaintiff Michael L. Perry’s continued exposure to asbestos-containing talc products. Defendants and/or their “alternate entities” each intended that Plaintiff Michael L. Perry act upon the representations by continuing his personal use of, and thereby exposure to, the asbestos-containing talc products. Plaintiff Michael L. Perry was ignorant of the falsity of Defendants’ representations and rightfully relied upon the representations.

146. As a direct and proximate result, Plaintiff Michael L. Perry’s reliance upon Defendants’ false representations, Plaintiff has suffered injury and damages as described herein.

FOR A SIXTH CAUSE OF ACTION

(Fraudulent Misrepresentation and Conspiracy/Concert Action as to Talc Manufacturers, Miners, Millers, Sellers, Compounders, and Distributors)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation and Conspiracy/Concert Action, Plaintiffs Complain of Talc Defendants, and Allege as Follows:

147. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

148. For decades, defendants manufactured products composed of talc that were sold and marketed as safe for daily use by consumers on their person to give off a pleasant smell, mask odors, prevent chaffing and/or absorb moisture. Defendants’ products were advertised as healthful for babies, children and adults and to be applied regularly to maintain freshness, keep skin soft, mask odors with a floral fragrance, prevent chaffing and/or absorb moisture.

149. Defendants and the Cosmetic, Toiletry & Fragrance Association (n/k/a Personal Care Products Council) (“CTFA”) made false statements to plaintiff, the general public, news media and government agencies that exercise regulatory authority over the cosmetic industry, including, but not limited to, the U.S. Food & Drug Administration (“FDA”), the National Institute of Occupational Health and Safety (“OSHA”), the National Institute for Occupational Safety and Health (“NIOSH”), the Mine Health and Safety Administration (“MHS”), and the National Toxicology Program (“NTP”), which, in turn, proximately caused plaintiff’s harm through intentional efforts to deceive the general public as to the safety of and presence of carcinogens, including asbestos, in talc-containing products.

150. Defendants and CTFA, for decades before Plaintiff Michael L. Perry was born, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos, in talc and that demonstrated the existence of health hazards to those exposed to asbestos-containing talcum powder products.

151. Talc is a hydrous magnesium silicate, inorganic material that is mined from the earth. It is used in the manufacture of goods, such as paper, plastic, paint and coatings, rubber, food, electric cable, ceramics, and cosmetics. In its loose form and as used in defendants’ products, talc is known as “talcum powder.”

152. Geologists, Defendants and CTFA—and their suppliers, experts, agents and advisors—have long known that the deposits in the earth that are associated with talc are also associated with the formation of asbestos. “Asbestos” is a commercial and legal term, rather than a geologic or scientific term, referring to six now-regulated magnesium silicate minerals that occur in fibrous form, including the serpentine mineral chrysotile, and amphibole minerals such as actinolite, anthophyllite, tremolite, amosite and crocidolite. The United States Geological Survey on Commercial Talc production in 1965, as well as those dating back to the 1800s, note the

presence of tremolite, anthophyllite and chrysotile commonly among those minerals found within talc deposits.

153. Defendants, some of which have been and still are the largest talc producers and/or talc-containing product manufactures in the world, admit that they have long employed and/or consulted with doctors, scientists, geologists, mineralogists and toxicologists, and that they have long maintained extensive medical and scientific libraries and archives containing materials relating to the health hazards of talc and the presence of carcinogens, including asbestos, in talc and talc deposits.

154. Beginning in the 1930s, medical and scientific literature emerged indicating talc was commonly, if not invariably, contaminated with substances known or suspected of being carcinogenic, such as asbestos, silica, quartz, nickel and arsenic. Within the next several decades, an ever-growing body of medical and scientific literature demonstrated that direct and secondary exposure to talc, including asbestos-containing talc, was hazardous to exposed persons' health in that it could cause lung disease, cancer and death.

155. Defendants and their affiliates, employees, agents and/or suppliers were members of the National Safety Council. In March of 1933, Waldemar C. Dreesen of the United States Public Health Service reported 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% talc and 45% 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 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.”

156. In 1936, the National Safety Council published an article entitled “Lesser Known Facts About Occupational Diseases” that found “exposure to asbestos fibers, present in the weaving and grinding of dry asbestos material, offers another type of dust which may cause fatalities among workers.” In 1958, The New York Department of Labor published Industrial Code Rule No. 12 establishing regulations applying to all employees and employers relating to dangerous air contaminants and listing both asbestos and talc as such substances.

157. In 1968, a study presented at the American Industrial Hygiene Conference & Exposition 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.” L. J. Cralley, et al., Fibrous and Mineral Content of Cosmetic Talcum Products, 29 Am. Ind. Hyg. Assoc. J. 350-354 (1968). Defendants were aware of these findings.

158. In 1968, a scientific study of store-bought, commercially available talcum powders conducted by the Occupational Health Program, National Center for Urban Industrial Health, was published and presented by the American Industrial Hygiene Association. Defendants were aware of this study. The study revealed that, contrary to popular belief, talcum powders were not entirely

pure, but rather contained various fibrous minerals, including tremolite, anthophyllite and chrysotile. The study explained that such fibrous content was not unexpected because these types of fibers are often present in fibrous talc mineral deposits. Available documents indicate that during the same year and in the years following, at least one company began testing store-bought talcum powders for asbestos content. Despite tests showing some talcum powders contained asbestos, there is no evidence that positive results or the brand names of contaminated products were communicated to any governmental agency, the media or the public.

159. A 1976 follow-up study conducted by researchers at Mount Sinai Hospital in New York concluded that “[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc...We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products.” Rohl A.N., et al., Consumer Talcums and Powders: Mineral and Chemical Characterization, 2 J. Toxicol. Environ. Health 255-284 (1976). The Mount Sinai study results were published by various newspapers, including the New York Times and the Washington Post, and Defendants were aware of same.

160. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on talc-containing products. Defendants and CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers (including asbestos hazards) associated with cosmetic talcum powder products, such as Defendants’ products.

161. In 1971, the New York City of Environmental Protection Administration Air Resources Board conducted a study of two “leading” brands of talcum powder using transmission

electron microscopy (“TEM”) and X-ray diffraction (“XRD”) analysis, and found them to contain 5-25% tremolite and anthophyllite asbestos.

162. Soon thereafter, a symposium was held in August of 1971 at the FDA to discuss the issue of asbestos content of talcum powders with the talc industry, government officials, and doctors and scientists from Mt. Sinai Hospital, which was then the epicenter of the medical and scientific study of asbestos. Among other statements, participants and attendees heard: that asbestos should be banned in talcum powders; models should be set up to measure the levels exposure to asbestos experienced by persons using talcum powder containing asbestos at the lowest level of microscopic detection; and that finding asbestos in talc and talcum powder is extremely difficult, and the only truly reliable way to determine the asbestos content of talc and talcum powder is through TEM and electron diffraction. Defendants and CTFA, aware of the foregoing and citing costs as well as their fear of the public learning talc was contaminated with asbestos, ignored and completely rejected any measures to meaningfully test talc products to make sure they were free from asbestos and other carcinogens.

163. After this 1971 symposium, Dr. Weissler of the FDA hired Dr. Seymour Z. Lewin to test commercially available talcum powders for asbestos. Dr. Lewin tested 195 samples and found asbestos of varying amounts in 43. Many of Dr. Lewin’s positive results were eventually corroborated by Pfizer Inc. The results, however, were uncorroborated by two other laboratories, leading the FDA to the conclusion that XRD, optical and electron microscopy, and electron diffraction must be used to detect asbestos in talc and talcum powders.

164. Dr. Lewin of New York University disclosed twice in 1972 that asbestos had been found in cosmetic talc. In a report to the FDA on August 3, 1972, Dr. Lewin reported that of 195 talc products, 20 had tremolite, 7 had chrysotile, 9 had both tremolite and chrysotile, and 7 had substantial percentages of one of both. XRD had been used as the first step in analysis and the

presence of asbestos and was verified by the use of optical microscopy to disclose the presence of significant numbers of fibers. Shortly thereafter, Dr. Lewin reported to Whittaker, Clark & Daniels Inc. on September 30, 1972, that Italian talc 1615 contained about 2% tremolite and 0.5% chrysotile as determined with XRD and detailed microscopic exam. In a July 31, 1973, review of Dr. Lewin's testing of 195 talc samples, the FDA found "good semi-quantitative agreement" for tremolite on selected samples re-analyzed using optical microscope analysis by FDA and XRD by Pfizer. Agreement was not as good for chrysotile, but the review did warn that optical microscopy could "completely miss the presence of chrysotile if the fibers are submicroscopic, which may well be the case in finely-milled talc." In 1972, ES Laboratories reported that "1615" talc contained 1% chrysotile and that "4615" talc contained 3% chrysotile and 3% anthophyllite. An August 23, 1973, report by Johns-Manville on TEM analysis of commercial talcs reported that nine of fourteen samples contained chrysotile. Only five samples did not have detectable levels of chrysotile. Pages from the laboratory notebook of Colgate-Palmolive Co. scientist Paul Briscese from March 7, 1976, show that Old Regal (North Carolina) talc tested positive for tremolite, New Montana talc tested positive for anthophyllite and tremolite, and Italian talc tested positive for tremolite.

165. A December 10, 1973, report of the CTFA's Talc Subcommittee disclosed that optical microscope analyses of talcs from the Italian, Montana I & II, Alabama, Vermont, and North Carolina mines had failed the proposed FDA's method because of elevated chrysotile concentrations. This December 10, 1973, CTFA report also showed that several laboratories had reported chrysotile in many of the talc samples sent by the CTFA for evaluation of analytical methods as well as the several identifications of asbestos in talc mentioned.

166. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, including many of the

Defendants herein, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers associated with cosmetic talcum powder products, such as Defendants' products. On September 3, 1973, the FDA sent CTFA a letter regarding various means of measuring asbestos in talc, stating that "conventional methods employing X-ray diffraction or differential thermal analysis are not sufficiently reliable to produce quantitative results of the desired precision." The FDA further advised CTFA that it "has been exploring refractory optical microscopy as a means of measuring asbestos in talc." CTFA responded to the FDA's public notice on its proposed optical microscopy method on December 26, 1973. CTFA contended that the proposed method was not "reliable" for the detection of asbestos in talc, recommended a "collaborative effort between FDA and industry to develop such a method," and urged deferment of the proposed rule. Minutes of CTFA's Talc Subcommittee meeting on March 15, 1976, indicate that the FDA's "Dr. Shaffner suggested the possibility of having industry report periodically on the results of its analysis to the FDA." Dr. Estrin of CTFA responded that "the subcommittee would give serious consideration to this suggestion."

167. Contemporaneously, evidence began to emerge from testing conducted by various regulatory agencies revealing that asbestos was being found in food, beer and drugs, including intravenously injected medicines. In 1972, and later in 1973, the FDA filed notices of proposed rulemaking requiring talc used in food, food packing and drugs to be completely free of asbestos. These were some of the same "grades" of talc used by Defendants.

168. The talc industry's response, including that of the defendants, was swift and well-coordinated through CTFA, with which the defendants conspired and worked in concert to purposely create a flawed, voluntary testing and surveillance methodology for detecting asbestos in talc and block efforts to label and warn consumers regarding the dangers associated with the talc products, including defendants' products.

169. Regarding the FDA's proposed 1972 rule-making, the FDA Director of Product Development and Cosmetics, Dr. Schaffner, invited representatives of the talc industry to a meeting in August of 1972 to discuss the results of Dr. Lewin's study and inform them that the FDA was preparing to release a "Proposed Statement of Policy On Asbestos in Cosmetics Containing Talc." Dr. Schaffner explained that he was duty-bound and must publicize the brand names of the talcum powders that contained asbestos. CTFA's president, Dr. Merritt, strongly objected to the FDA alerting the general public and publishing the brand names of the talcum powders, as it would cause the manufactures "economic hardship." Dr. Merritt also threatened to sue the FDA to prevent the disclosure of the brand names. As a result, the FDA, defendants and CTFA never revealed or publicized the brand names of the talcum powders that contained asbestos, much to the detriment of the plaintiff and the general public.

170. In 1973, CTFA created a talc subcommittee and the Scientific Advisory Committee to develop a testing methodology for detecting asbestos in talc. Initially, CTFA designated a group of its members to tests talc grades used in talcum powder utilizing the methodology proposed by the FDA in its notice of rulemaking. Six samples of talc used in commercially available talcum powders, plus one talc sample purposely spiked with tremolite and chrysotile, were circulated among the members, including representatives of defendants. Of the eight participating members, four found asbestos in every sample, three did not find asbestos in any sample (including the spiked sample), and one found asbestos only in the spiked sample. In conclusion, all members agreed that the best and most reliable method of detecting asbestos in talc is not optical microscopy, but rather TEM and electron diffraction. The same members, however, dispensed with this analytical method, claiming TEM and electron diffraction equipment was too expensive, despite defendants then owning or having unfettered access to same.

171. From there, the difference between what defendants and CTFA knew diverged from what they were representing to the FDA. Defendants, CTFA and others in the industry knew that there was no such thing as asbestos-free talc—only talc in which asbestos could not be detected using the prevailing, most economic analytical methodology, XRD, which at the time could not accurately identify chrysotile asbestos in talc, nor detect tremolite asbestos contamination levels below 2-5%.

172. Defendants and the CTFA also did not disclose to the FDA that the overwhelming majority of talcum powder manufacturers and sellers were not testing their products for asbestos, and even if they were testing, it was done so superficially: only four or so grams per 20 tons of pre-shipment and pre-processed talc, as an example. Defendants and CTFA also failed to inform the FDA that they were not testing off-the-shelf talc powder products, but rather old samples that were never from the end products themselves. They also failed to inform the FDA that they were limiting their testing of talc to only one type of asbestos fiber to the exclusion of all other fiber types that are commonly found in talc deposits. What is more, to the extent defendants found asbestos in their samples, these positive results were not reported to the FDA. Instead, on their behalf, CTFA sent letters to the FDA in March of 1976 fraudulently claiming that industry testing had shown all talcum powder products to be completely free of asbestos.

173. Beginning in 1975 and 1976, researchers at New York Air Resources Board, Mt. Sinai School of Medicine, and the FDA became increasingly concerned that CTFA, defendants and the cosmetic industries were slow to address the issue of asbestos in talc and talcum powders. Defendants had not issued any recalls, provided consumer warnings, informed the FDA of any effort to ensure that talcum powders on the market did not contain asbestos, or developed a reliable methodology or protocol for ensuring that talc and talcum powder did not contain asbestos.

174. Taking matters into their own hands, Mt. Sinai Hospital researchers published a follow-up article to Dr. Lewin's 1971 study that demonstrated that some of defendants' talcum powders contained over 20% asbestos. The researchers concluded that "[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc...We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products." The results of the Mount Sinai study were known to the defendants and published the same year by the New York Times and the Washington Post.

175. Defendants and CTFA responded to these developments by falsely claiming that the industry was doing "everything" it could to solve the problem; issuing press releases falsely claiming that chrysotile had never been found in talcum powders; and intentionally suppressing data that showed tremolite was commonly found in talc and talcum powder.

176. CTFA subsequently began in earnest to produce a voluntary protocol and methodology that would provide defendants cover from both lawsuits and regulation. Egregiously, as concerned media members, citizens and regulators began asking more questions about which other brands of talcum powder contained asbestos, defendants and CTFA falsely represented that talcum powders have never contained asbestos.

177. Defendants and third parties collectively met with and corresponded with CTFA, as well as collectively met with the FDA and other government agencies, to individually and collectively advocate for the use of "voluntary" XRD testing of miniscule portions of the tons of talc to be used in consumer products. Defendants' "voluntary" method—that was developed collectively by defendants and CTFA and advocated to the FDA in lieu of regulations requiring asbestos labeling or warnings on talcum powder products—was inadequate because levels of asbestos contamination in talc commonly fell below the detection limit of the testing methods.

Defendants and CTFA also knew that asbestos contamination was not uniformly distributed, such that the miniscule amounts tested would not reveal the true level of contamination in talc products, such as those to which Plaintiff Michael L. Perry was exposed.

178. In support of its voluntary XRD methodology, which was finally published in 1977, CTFA produced letters to the FDA written by its members, including defendants, identifying tests conducted showing talcum powder products did not contain asbestos. CTFA, defendants and other talc product producers, however, never informed the FDA of the hundreds of positive tests showing talc and talcum powders contained asbestos and other carcinogens.

179. CTFA “Method J4-1,” published on October 7, 1976, states that TEM-SAED “offers greater sensitivity, but is not presented since it is unsuitable for normal quality control applications.” The published method, rather, relies on XRD with “the level of detection of amphibole by this method [being] 0.5% and above.” CTFA met with and corresponded with defendants and third parties, to individually and collectively advocate to the FDA for the use of inadequate XRD testing on miniscule portions of the tons of talc obtained from the mining sources to be used in the consumer products, followed by fewer “periodic” tests by TEM. This voluntary method was developed by CTFA and defendants, and was advocated to the FDA by CTFA and defendants in lieu of regulations requiring labeling and warnings on talcum powder products, even though CTFA and defendants knew that the J4-1 method would not reveal the true level of asbestos in the talc that reached consumers. In fact, the first “round robin” tests, which analyzed a “CTFA Tremolite-Spiked Talc,” resulted in 6 of 7 participating laboratories failing to detect the tremolite. In other words, 84% of the industry’s laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA’s own J4-1 method. There is no evidence that CTFA or defendants ever shared this remarkable failure with the FDA or the public.

180. Minutes of CTFA's Talc Subcommittee from February 24, 1975, stated "It was agreed, however, that chrysotile is never found in cosmetic talcs, based on numerous analyses by several investigators..." When referring to the challenge of chrysotile detection, an article entitled "Talc" in the January/March 1976 CTFA Cosmetic Journal, states that "The only known backup method for a positive identification in this event, is [TEM] with selected area diffraction." However, "despite many efforts, the committee had been unable to find a sample of cosmetic talc containing naturally occurring asbestos...it was asked, 'Why should we test for chrysotile if there isn't any?'" CTFA's Specification for Cosmetic Talc, revised on October 7, 1976, falsely represented that no fibrous asbestos was detected in cosmetic talc. Even after 1976, CTFA and defendants continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos and other carcinogens in the talc being used to manufacture cosmetic products. However, CFTA and defendants continued to represent that no asbestos was detected in cosmetic talc. These material representations adversely and directly impacted the FDA's attempt to adequately test consumer talc for asbestos and regulate cosmetics. The most sensitive method of identifying or detecting asbestos in cosmetic talc, TEM-SAED, was not used because CTFA represented that its "ultra-sensitivity could be a problem" and that it was too expensive to use. Instead, its J4-1 method relied on XRD alone for detection of asbestos at greater concentrations than 0.5%, a concentration that could allow more than a billion asbestos fibers per gram of talc to be passed off as "asbestos-free."

181. Defendants and CTFA made and published such representations, claiming that their testing method was adequate, that they were ensuring that talcum powder products were safe, and that the talc reaching consumers was "safe," despite having substantial knowledge and evidence to the contrary. Defendants intentionally and knowingly did so to avoid FDA regulations that may

have required them to place warnings regarding the asbestos content of their products, and thereby inform the public, including plaintiff, that talc-containing products contained asbestos.

182. CTFA then published an article in 1979 stating it conducted over three thousand tests of talcum powders and none of them found chrysotile. The article and report failed to disclose whether the talcum powders tested contained tremolite, anthophyllite or any other form of asbestos. This publication of half-truths was conveyed to the FDA and the public with the purpose of preventing regulations of cosmetic products. Thereafter CTFA's methodology became the standard by which nearly all talc was analyzed by the entire industry, including talc used in cosmetic and hygiene products today.

183. CTFA and defendants have represented to various news media outlets and the public at large that their products are "asbestos-free," when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods. "No asbestos detected" does not mean the product does not contain asbestos, but due to defendants' repeated conflation of the terms, the public has been led to erroneously believe talc products are safe. Furthermore, since defendants and CTFA did not have sufficient testing protocols in place to support the claims that talc products were safe or asbestos-free, such statements were recklessly made, as they had no reason to believe them.

184. Between 1970 and the 1990s, tests conducted by and on behalf of defendants and the talc industry continued to show that talc and talcum powder products contained asbestos. None of these positive tests have ever been produced or made known to any regulatory agency, and knowledge of their existence is only because of civil litigation.

185. Defendants and CTFA's failure to disclose these positive results and the inadequacies of their testing protocols continued through the 1980s, 1990s and 2000s, even when

various government agencies raised concerns about the safety of talc, including the issue of asbestos content.

186. To this day, many talc-containing products presently on the market contain asbestos. Instead of publicizing this fact, defendants and CTFA continue to deny all the above to protect their pecuniary interests, to the severe detriment of the public, including Plaintiff.

187. Since at least 1979, defendants have conducted a campaign to convince the public that their products are regulated by the FDA, that their tests are conducted pursuant to FDA regulations, and that talcum powder products are, therefore, safe. Nothing could be further from the truth: the FDA has never been assigned a budget by Congress to regulate cosmetics, including asbestos and other carcinogens in talcum powders. Defendants' concerns for the safety of their products have always been voluntary and under the auspices of CTFA, a private industry group, that in its 40 years has only banned the use of 11 ingredients in all cosmetics ever sold in the United States. Indeed, as of today, asbestos-containing talc in cosmetics has not been banned or otherwise regulated by CTFA or the FDA.

188. Defendants (and other entities in the talc industry and cosmetic industries, including the CTFA), individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in both their finished products as well as talc shipments from Talc Supplier Defendants and other sources that were used to produce finished products.

189. Defendants, and even the outside laboratories, including McCrone Associates, sent letters to CTFA, to be and which were forwarded to the FDA, stating that results of testing of talc used by them after 1972 had not revealed the presence of amphibole or chrysotile asbestos, when in fact all of these entities had received or performed tests indicating the contrary when such false representations were made.

190. After 1976, defendants and CTFA continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos in talc.

191. Defendants failed to place any warning on their talc and talcum powder products or ever disclose the fact that these products contained carcinogens, including asbestos, at any point, up to and including the present, despite the clear hazard and direct information that their products did and continue to contain such carcinogens.

192. Defendants and CTFA, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, distribution and use of talcum powder products, and controlled the level of knowledge and information available to the public, including Plaintiff, regarding the hazards of exposure to carcinogens, including asbestos, from talc and talc-containing products.

193. Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including Plaintiff, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos in their talc and talc-containing products.

194. Defendants and CTFA, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder products, including those to which Plaintiff Michael L. Perry was exposed.

195. Defendants and CTFA, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data and embarked upon a plan of deception intended to deprive the public at large, including plaintiff, of alarming medical and

scientific findings, many of which remained in their exclusive possession and under their exclusive control.

196. Defendants and CTFA conspired and/or acted in concert with each other and/or with other entities through agreement and consciously parallel behavior:

- (a) to withhold from users of their products—and from persons who they knew and should have known would be exposed thereto—information regarding the health risks of inhaling and/or ingesting asbestos and other carcinogens contained in talc and talcum powder products;
- (b) to eliminate, suppress or prevent investigation into the health hazards of exposure to asbestos and other carcinogens in talc and talcum powder products;
- (c) to ensure that asbestos-containing talc and talcum powder products became widely used in commerce, irrespective of the potential and actual risk of harm to the users and consumers from the asbestos and other carcinogens therein; and
- (d) to falsely represent that talc and talcum powder products, including those of defendants, were safe and healthful for use by consumers.

197. Plaintiff reasonably and in good faith relied upon the false and fraudulent representations made by defendants and CTFA regarding the hazards of talc and talcum powder products that contained asbestos and other carcinogens, and he was, therefore, deprived of an opportunity to make informed decisions concerning use of, exposure to and contact with said products.

198. CTFA, as well as defendants and other entities in the talc industry and cosmetic industries, individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in defendants' and other CTFA members' finished products as well as talc shipments from talc suppliers and other sources that were used to produce finished products. Instead, CTFA sent letters to the FDA stating that results of testing of talc used by the industry after 1972 had not revealed the presence of amphiboles or

chrysotile, when in fact all of these entities had received or performed tests indicating the contrary by 1976, when such intentionally false misrepresentations were made. CTFA and defendants made and published such representations claiming that their collective testing method was adequate, they were ensuring that talcum powder products were safe, and that their testing of talc reaching consumers was “safe,” despite knowing the contrary.

199. The FDA, and ultimately Plaintiff, directly and/or indirectly relied upon CTFA’s and defendants’ false representations regarding the safety of cosmetic talc. In fact, an FDA letter dated January 11, 1979, states: “In cooperation with scientists from industry, our scientists have been making progress in the development of such regulatory methods.” The continuing lack of FDA awareness regarding CTFA’s and defendants’ misrepresentations was obvious seven years later. In a response to a citizen petition to require an asbestos warning label on cosmetic talc, on July 11, 1986, the FDA states that an “analytical methodology was sufficiently developed” to ensure that “such talc [is] free of fibrous amphibole...” CTFA’s J4-1 method has continued for the past four decades to be the cosmetic talc industry’s method for “ensuring” “asbestos-free” talc. The use of TEM, recognized by the CTFA as offering “greater sensitivity” for asbestos, continued to increase over the following decades as its advantages were applied to more matrices. In 1990, Kremer and Millette published a TEM method for analysis of asbestos in talc with a theoretical detection limit of about 0.00005%. Despite such improvements in analytical techniques, the cosmetic talc industry, including defendants, continues, four decades later, to use and promote its antiquated and wholly inadequate J4-1 method.

200. CTFA and defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, marketing, distribution and use of asbestos-containing talcum powder products, and controlled the

level of knowledge and information available to the public regarding the hazards of exposure to asbestos and other carcinogens from talc and talc-containing products.

201. CTFA and defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including plaintiff and their family members, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos from their talc and talc-containing products.

202. CTFA and defendants, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder, and specifically talc and talcum powder used in the production of products to which Plaintiff Michael L. Perry was exposed.

203. CTFA and defendants, through agreement and consciously parallel behavior, suppressed, altered, changed, destroyed and/or revised reports, data, tests, studies and other documents regarding the potential presence of asbestos and other carcinogens in talc and talc-containing products, including defendants' products to which Plaintiff Michael L. Perry was exposed.

204. As recently as 2016, Defendants made material misrepresentations to the FDA regarding asbestos in its talcum powder products.

205. For additional details regarding and supporting plaintiff's claim, see Bird T., et al., "A Review of the Talc Industry's Influence on Federal Regulation and Scientific Standards for Asbestos In Talc," New Solut., 2021 Aug; 31(2): 152-169.

206. Defendants, both acting individually and in concert with others, including the CTFA, violated the common law duty of care owed to plaintiff or otherwise engaged in intentionally culpable activity that caused Plaintiff to suffer severe injuries and damages.

207. As a direct and proximate consequence of the foregoing acts and omissions, Plaintiff Michael L. Perry (i) relied on defendants' false assurances that their talc-containing products were free from asbestos and safe, (ii) used or was otherwise exposed to defendants' talc-containing products; (iii) and inhaled and/or ingested asbestos resulting from the ordinary and foreseeable use thereof.

208. The actions and omissions of defendants, independently and collectively, constitute a pattern or practice of intentionally wrongful conduct and/or malice resulting in injuries to Plaintiff as described in this complaint.

209. As a direct and proximate consequence of the foregoing acts and omissions by the defendants, Plaintiff Michael L. Perry used or was otherwise exposed to defendants' products and inhaled and/or ingested asbestos resulting from the ordinary and foreseeable use thereof.

FOR A SEVENTH CAUSE OF ACTION

**(Fraud as to Defendants Johnson & Johnson,
Johnson & Johnson Holdco (NA) Inc., Janssen Pharmaceuticals Inc., Kenvue Inc., and
LTL Management LLC)**

For a Seventh Distinct Cause of Action for Fraud, Plaintiffs Complain of Defendants, and Allege as Follows:

210. Defendants JOHNSON & JOHNSON, JOHNSON & JOHNSON HOLDCO (NA) INC., f/k/a Johnson & Johnson Consumer Inc., individually and successor-in-interest to Johnson & Johnson subsidiary "Old JJCI", JANSSEN PHARMACEUTICALS INC., individually and as successor-in-interest to Johnson & Johnson subsidiaries named Johnson & Johnson Consumer Inc., both prior to and after its 2021 restructurings and colloquially known as "Old JJCI" and "New JJCI", KENVUE INC., individually and as successor-in-interest to Johnson & Johnson Consumer

Inc., and LTL MANAGEMENT LLC (collectively “J&J”) made false representations regarding the asbestos content of their talc products, including Johnson’s Baby Powder and Shower to Shower used by Plaintiff Michael L. Perry, misrepresentations that Plaintiff relied on to his detriment and which caused the development of his mesothelioma. J&J’s misrepresentations were deliberate and were effectuated through a campaign to hide and destroy laboratory testing detecting asbestos in Johnson’s Baby Powder and Shower to Shower, to manipulate the protocols for such testing to falsely suggest no asbestos was found in Johnson’s Baby Powder and Shower to Shower, and to repeatedly assert to the public and federal regulatory agencies that Johnson’s Baby Powder and Shower to Shower were safe.

211. Johnson’s Baby Powder was a critical cornerstone product for J&J, referenced as the company’s “golden egg” and “sacred cow.” *See Exhibit 1* (04/28/1997 The Johnson & Johnson Advantage: Emotional Trust); *see also Exhibit 2* (08/18/1997 Mother-Baby Strategic Mission); *see also Exhibit 3* (08/20/1997 Johnson & Johnson "Golden Egg" Advertising Strategy); *see also Exhibit 4* (excerpt of 08/04/1999 Johnson & Johnson Baby Camp PowerPoint); *see also Exhibit 5* (excerpt of 08/10/1999 Johnson & Johnson Baby Camp PowerPoint with Koffman (Golden Egg presentation)).

212. J&J knew that its cosmetic talc products, including Johnson’s Baby Powder and Shower to Shower, contained asbestos fibers, knew those asbestos fibers could cause cancer, and knew that it was not safe to be selling such products to the public for use on babies, children, and adults. In a memorandum dated April 9, 1969, J&J internally expressed concern that the presence of tremolite asbestos in its talc products would cause pulmonary diseases and cancer and increased the risk that the company would be drawn into litigation. J&J acknowledged that trace amounts of tremolite were unavoidable, and that efforts should be made to keep the amount of tremolite to a minimum.

213. In a memorandum dated July 30, 1971, J&J was informed that there is no place for asbestos in talc, trace amounts were not acceptable, and any talc with asbestos should be removed from the market. J&J was informed that no level of asbestos in talc is acceptable for cosmetic use.

214. In a memorandum dated October 16, 1997, J&J acknowledged that there is no doubt that “mesothelioma can be caused by non-occupational exposure to mineral fibers” and that “mesothelioma may occur after brief or indirect exposure to asbestos.” This memorandum further stated that tremolite is considered one of “the most potent mesothelioma producers” and that scientists contend that trace amounts of tremolite in other minerals is responsible for mesotheliomas.

215. In its memorandum of October 16, 1997, J&J acknowledged that “in several mesothelioma patients studied, both talc fibers and tremolite were detected. In fact, the majority of asbestos bodies isolated from the lungs of women in the general population have tremolite or anthophyllite and because tremolite and anthophyllite are known contaminants of talc, this data suggests that rare cases of mesothelioma among women with no other identifiable exposure might be related to exposure to cosmetic talc.” Further, an environmental factor that must be given “major consideration in the incidence of Mesothelioma” includes “tremolite asbestos” which “is a known contaminant [of] some deposits of talc.”

216. J&J’s corporate representative has acknowledged in litigation that it has known for years that the talc used in Johnson’s Baby Powder could be inhaled and reach deep into the lung. For decades, J&J has known about the dangers of talc powder inhalation during the normal use of its talc-based cosmetic products, especially to babies.

217. The relationship between asbestos exposure and mesothelioma has been well understood since the 1960s and numerous studies confirm that causal relationship. J&J was aware of this causal relationship through its knowledge of the scientific literature and its membership in trade organizations through which such knowledge was distributed.

218. Beginning at least in the 1950s, J&J tested its talc for impurities or comineral, including “asbestos” and “tremolite,” because the company knew they are deleterious minerals that could be harmful to a person’s health and thus should not be found in talc-based cosmetic products. At all relevant times, J&J understood the dangers posed by asbestos exposure and that asbestos was a known impurity of talc.

219. J&J, internally and through hired testing laboratories such as the Battelle Memorial Institute, McCrone Associates, and the Colorado School of Mines Research Institute, tested for asbestos impurities in the source talc ore, processed ore, and finished products used to manufacture J&J cosmetic talc products. All of these testing laboratories found asbestos minerals in J&J source talc ore or cosmetic talc products. Independent labs have also found asbestos in the talc used in J&J cosmetic talc products.

220. The existence of laboratory tests finding asbestos in J&J cosmetic talc products and source talc used in those products has been verified by J&J under cross examination in recent litigation. J&J knew about these positive test results all along. In 1972, J&J executives acknowledged internally that the results of testing demonstrating the presence of asbestos in J&J’s cosmetic talc products and the source ore used to make these products. At that time, J&J confirmed that McCrone found trace tremolite and that these findings are “not new.”

221. In May 1973, Roger Miller, the President of J&J’s mining company, Windsor Minerals, informed J&J that “the ore body contains actinolite.” This talc ore body was actively used to produce J&J’s cosmetic talc products. One week later, J&J’s records note that “[t]he first showing of actinolite we know about is October 1972.”

222. J&J consistently lied about these positive test results for decades. In response to consumer inquiries, J&J has assured consumers that “asbestos has never been found in Johnson’s Baby Powder and it never will.” In print advertisements as late as December 19, 2018, J&J told the public

that “Baby Powder does not contain asbestos and never will. We test every single lot to ensure it.” The Johnson’s Baby Powder product label says it was the “Purest Protection” and it was advertised as “the best you can buy” and “the purest.”

223. J&J has acknowledged that the intent of these representations to consumers has always been to “to reassure them they could feel safe and comfortable using Johnson’s Baby Powder because it does not contain asbestos” and to convey that in using Johnson’s Baby Powder, there was “zero chance” of exposing their families to asbestos. The statements that Johnson’s Baby Powder and Shower to Shower does not contain asbestos, that there was “zero chance” consumers were exposing their families to asbestos were false when they were made, and J&J knew they were false when they made those statements. As a direct result of J&J’s false representations that Johnson’s Baby Powder and Shower to Shower never contained asbestos, millions of people, including babies, were unwittingly and needlessly exposed to asbestos.

224. J&J has never placed warnings on its talc-based powder products about the potential hazards presented by the product being aerosolized in normal application. J&J never placed warnings on its powder products about the risk of asbestos exposure or cancer.

225. Instead, J&J represented to the public that Johnson’s Baby Powder was safe. J&J withheld from their spokespeople whose job it was to communicate the “no evidence of asbestos” message any reports indicating there was in fact evidence of asbestos in Johnson’s Baby Powder. J&J’s misrepresentations and omissions regarding the safety of Johnson’s Baby Powder and Shower to Shower has resulted in consumer use of this and other cosmetic talc products in a potentially lethal way without any knowledge of the danger.

226. Since the early 1970s the FDA has repeatedly asked J&J whether there was any evidence of any amount of asbestos in any J&J cosmetic talc product. J&J’s answer to the FDA’s inquiries was always the same: there is no evidence of any amount of asbestos in any J&J cosmetic

talc product. Over the course of more than four decades, J&J represented to the FDA over and over again that there is not a single instance or report of asbestos – including chrysotile asbestos – in its products.

227. In a letter dated September 21, 1971, J&J represented to the FDA that its data “conclusively proves that Johnson’s Baby Powder is free of asbestos.” J&J has represented to the FDA that “no amphibole materials have been detected” in the company’s talc-based products. Documentation of a meeting between J&J and the FDA in 1972 shows that, when pressed, J&J went so far as to represent to the FDA that “there wasn’t a shred of evidence to support the idea that either our Johnson’s Baby Powder or Shower to Shower contained any chrysotile asbestos.”

228. Although aware of repeated McCrone reports over the course of years to the contrary, J&J falsely represented to the FDA that its consultant McCrone never found asbestos in the talc ore that was used to make Johnson’s Baby Powder and Shower to Shower. In 1976, J&J rejected the FDA’s request to provide the results of its respective periodic monitoring for asbestos.

229. J&J also submitted false and misleading statements through its trade association, the Cosmetic, Toiletry & Fragrance Association (“CTFA”) (n/k/a Personal Care Products Council) (“PCPC”). The CTFA made false statements to Plaintiff, the general public, news media, and government agencies, including, but not limited to the FDA, the National Institute of Occupational Health and Safety (“OSHA”), the National Institute for Occupational Safety and Health (“NIOSH”), the Mine Health and Safety Administration (“MHSA”), and the National Toxicology Program (“NTP”), which, in turn, proximately caused Plaintiff’s harm through intentional efforts to deceive the general public and regulatory authorities as to the safety of and presence of carcinogens in Johnson’s Baby Powder and Shower to Shower.

230. J&J used the CTFA to communicate false information about the purity of its talc and lack of asbestos content, as evidenced by a letter dated March 15, 1976. This false information was

then transmitted by the CTFA to the FDA to “give assurance as to the freedom from contamination by asbestos form materials of cosmetic talc products.” This was done after J&J was aware of over 50 reports about asbestos minerals and fibers in the talc it used for cosmetic talc products. Two weeks after relaying this false information, J&J met privately in Hillside, New Jersey and congratulated themselves on the “success” of the “presentations” to the FDA and agreed that they should not bind themselves to having to further update the FDA.

231. J&J and other industry members agreed to do testing on their respective cosmetic talc products in a “round robin” format. The testing was done using a table that identified the manufacturer of the samples that were tested. Multiple samples contained asbestos. In a letter dated March 1, 1978, the Chairman of the CTFA Task Force on Round Robin Testing and then current employee of J&J instructed the CTFA to “destroy your copy of the table” containing the results finding asbestos in cosmetic talcs.

232. Although possessing test results indicating that the talc used in its talc-based products contained tremolite and chrysotile asbestos — reportable as asbestos under federal regulations — J&J represented to the NTP that there was never any evidence of asbestos in the talc used in Johnson’s Baby Powder and Shower to Shower. And decades after asbestos was first reported, J&J continued to represent to the FDA that it had confirmed “the absence of asbestiform minerals” in its finished talc-based products. It did so in the CTFA’s Comments in Response to a Citizens Petition dated June 27, 1995.

233. As recently as 2016, in a document dated March 17, 2016, J&J represented to the FDA that no asbestos structures have ever been found in its talc-based products in any testing anywhere in the world. This statement made to the FDA was false.

234. In an advertisement to the public dated December 19, 2018, J&J falsely claimed that it has cooperated fully and openly with the FDA and other regulators. In fact, J&J did not provide

the FDA with positive asbestos tests from its hired consultants, including McCrone, and the Colorado School of Mines. J&J did not tell the FDA that it possessed test results finding asbestos in the mine ore and the finished talc product nor did it give those results to the FDA.

235. J&J also used its consultants as vehicles to intentionally mislead the FDA. A letter dated October 12, 1971, evidences that J&J knew that its standby consultant McCrone purposely omitted findings of asbestos in its talc-based products because it “would only tend to confuse the issue perhaps with the FDA” and that McCrone offered that if J&J “decide[d] to use these reports with the FDA” to “please call us.”

236. As a part of its testing protocol for J&J’s talc products, McCrone would segregate any test results that were positive for the presence of asbestos in talc ore or cosmetic talc products from those that allegedly found “no quantifiable” asbestos. For instance, on April 29, 1986, under McCrone Project No. ME-2275 and Purchase Order WS-0503, McCrone authored two separate reports of test results for Windsor Minerals. The first was for 11 talc samples in which “no quantifiable” amounts of asbestiform were found. The second was for the three talc samples (noticeably extracted from the numbering sequence) in which traces of chrysotile were found.

237. McCrone and J&J worked together to manipulate the asbestos testing results of J&J products done by outside laboratories and reported those manipulated findings to the FDA as negative results. For example, in a report dated October 27, 1972, McCrone found tremolite asbestos in J&J talc products but a handwritten note was written in large print on the front of the report stating: “DO NOT USE THIS REPORT.” The report was revised to remove the quantification of asbestos found.

238. Similar asbestos findings by other J&J consultants were also hidden from the FDA. J&J submitted to the FDA testing performed by Professor Hutchinson from the Minnesota Space Center only in excerpts that removed all references to his “incontrovertible” findings of chrysotile asbestos. J&J did not submit a March 1974 test results from Professor Reynolds at Dartmouth College

that “Actinolite is the dominant fiberform amphibole in the ore and talc product provided by Windsor Minerals.” Instead, J&J submitted test results to the FDA from Dartmouth claiming that no amphiboles were found in the company’s talc products.

239. J&J had its consultants use purposefully misleading laboratory tests to support its false claims that its talc ore and talc products were free of any asbestos. Since at least 1971, J&J has known that transmission electron microscopy (“TEM” or electron microscopy) is the superior microscope to detect asbestos in talc and was its consultants’ recommended testing method. In fact, the positive asbestos results obtained by Professor Hutchinson utilized the TEM method. But J&J convinced the FDA that lesser test methods were effective, knowing that those lesser methods had failed to detect asbestos that was verified to be present in J&J’s cosmetic talc products. J&J routinely submitted test reports to the FDA as proof that its talc was asbestos free knowing that the methods used would not detect asbestos at low levels and thus were not reliable to rule out the presence of asbestos. For example, a McCrone report dated April 24, 1974, noted that lesser methods failed to find asbestos in over a dozen samples where the asbestos was confirmed when using the correct tool – TEM.

240. Despite J&J’s knowledge that other testing methods missed verified asbestos in its talc, J&J advocated an industry standard using one of the weaker/lesser methods and claimed it would ensure the talc was asbestos free. This method is known as J4-1. The J4-1 testing method utilized x-ray diffraction (“XRD”) as the initial screen to determine if any further testing was necessary. The limit of detection was between .5% and 5% and ensured that millions to trillions of asbestos fibers in a gram of talc could escape detection. Using the J4-1 method, if the XRD test result was negative, no more testing would occur, and the sample would be reported as “none detected.” This process virtually guaranteed that low levels of asbestos would never be found. J&J also knew that XRD could not detect chrysotile at levels below two percent of the talc product and was also incapable of detecting low levels of tremolite. In the unlikely event an XRD test result was positive, J&J’s second step

utilized polarized light microscopy (“PLM”), also a lesser testing method, and J&J instructed the PLM analyst not to count all of the fibers he or she would actually see under the microscope. Short fibers, below a defined size, recognized as carcinogenic, were excluded from any reporting.

241. The CTFA’s December 10, 1973 report confirmed that multiple talc sources, including Italian and Vermont talc, failed the proposed FDA’s method because of elevated chrysotile concentrations. Thereafter, the CTFA proposed J4-1 knowing it was a “unreliable” testing method for asbestos in talc. The first “round robin” tests, which analyzed a “CTFA Tremolite-Spiked Talc,” resulted in six of seven participating laboratories failing to detect the tremolite. In other words, 84% of the industry’s laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA’s J4-1 method. There is no evidence that CTFA or J&J ever shared this remarkable failure with the FDA or the public.

242. J&J also knew that the “concentration method” of sample preparation was most able to detect the presence of asbestos in its talc and thus provide more accurate results. Internal memorandums from 1973 show that J&J understood that the concentration method was “much more sensitive than our proposed specifications” and when used found traces of tremolite which the J&J testing methods would fail to expose. J&J’s stated concern with using a concentration method, set forth in a memorandum dated May 16, 1973, was that it was too good at detecting asbestos – it was too sensitive. Correspondence dated February 18, 1975 indicates that J&J rejected the concentration method because the effective and sensitive testing was not “in the worldwide company interest.” Indeed, many of J&J’s consultants — including the Colorado School of Mines, Professor Pooley of Cardiff University, Professor Reynolds of Dartmouth College, and Professor Alice Blount of Rutgers University — found asbestos in J&J’s talc-based cosmetic products using the concentration method. J&J did not provide any of those test results to the FDA, however.

243. When J&J finally decided to use TEM on a limited basis in 1995, it implemented a TEM reporting methodology designed to yield negative, rather than accurate results. J&J called its method TM7024. According to this method, a lab would report the test results as negative and “not quantifiable” unless the scientist counted 5 or more asbestos fibers of the same variety in an incredibly small sample (it varied but was well under 50 milligrams). Thus, even if the examiner identified, counted and quantified as many as 16 asbestos fibers (four fibers of tremolite, four fibers of actinolite, four fibers of anthophyllite, and four fibers of chrysotile) the finding of asbestos was not to be reported. This method instructed labs who confirm the presence of asbestos in incredibly small samples to “couch” the results in specific and deceptive language that the lab “did not find any quantifiable amount of asbestosforms minerals.” J&J’s position about the scientific propriety of its TM7024 testing protocol was and remains inconsistent with EPA protocols for counting asbestos fibers.

244. Even though J&J tested miniscule amounts of product, and utilized methods specifically designed to yield negative results, asbestos was still found in J&J’s cosmetic talc. J&J never produced these test results to the public until 2017. In editing information for its website in about 2016, J&J acknowledged internally that it “cannot say our talc-based consumer products have always been asbestos free.”

245. J&J represented to the FDA that the most sensitive testing was not needed because “substantial asbestos can be allowed safely in baby powder.” J&J also claimed that “extensive” animal studies of its Vermont and Italian talc revealed no cancer risk from their talc. J&J now admits that only one study was done of its Vermont talc and only one study of its Italian talc as it relates to the risk of cancer from talc. The FDA was not told tests were conducted on a special lot of “extremely clean” talc. This information was first disclosed in litigation from J&J internal records, first produced no earlier than 2017.

246. J&J knew that it had liability to persons who developed asbestos-related diseases as a result of exposure to its cosmetic talc products. In an internal communication dated April 15, 1969, the Medical Director for J&J wrote to advise the company of danger relative to “inhalation” of the “needle-like” crystals of tremolite asbestos in J&J’s talc. J&J was cautioned that “since the usage of these products is so widespread, and the existence of pulmonary disease is increasing, it is not inconceivable that [J&J] could become involved in litigation in which pulmonary fibrosis or other changes might be rightfully or wrongfully attributed to inhalation of our powder formulations.” To that end, Dr. Thompson recommended that “someone in the Law Department should be consulted with regard to the defensibility of our position in the event that such a situation could ever arise.” The medical director further forewarned J&J that the company could confront a situation where the company would be more or less compelled to remove its talc products “if it became known that our talc formulations contained any significant amount of Tremolite.” This prediction of litigation came to fruition shortly thereafter. J&J has reported that during the 1970s alone, the company was sued in talc-based cases in 1971, 1972, 1973 1974, 1976, 1977, 1978, and 1979.

247. Due to the litigation process, J&J has been forced to identify documents from as early as 1971 (and every year thereafter) relating to “ongoing,” “pending,” and “anticipated” litigation regarding Johnson’s Baby Powder. Since at least 1971, J&J has known that information in the company’s possession relevant to or produced in any particular talc-based lawsuit would be relevant to discovery in future talc-based cases. Although J&J was legally obligated to retain the evidence, it does not know where the documents and evidence related to these cases are located or whether they even exist. Entries on J&J’s privilege log indicate that samples of talcum powder used in litigation existed at the time the litigation in the 1970s was pending but are no longer available.

248. Despite being involved in litigation for decades, J&J never produced a single asbestos test in any case prior to 2017, even when specifically requested. J&J was repeatedly asked in litigation

whether the talc used in any of its talc-based cosmetic products contained any amount of asbestos. J&J represented to plaintiffs' counsel that "there was no evidence" of asbestos in its cosmetic talc. These representations exemplified J&J's pattern and practice in defending talc-injury litigation, which was to conceal evidence of asbestos in its cosmetic talc products and represent that no such evidence ever existed. Many of the same J&J executives who were involved in discussions with the FDA about the company's talc-based cosmetic products were involved in defending J&J in litigation alleging asbestos-related injuries from talc-based cosmetic products.

249. J&J routinely provided sworn affidavits from company executives falsely asserting that there was no evidence of asbestos in the talc used for J&J cosmetic products. In addition to submitting false affidavits, J&J repeatedly certified answers to interrogatories stating that there was never any evidence of asbestos in any J&J cosmetic talc product when it knew the truth to be otherwise. J&J knew there was tremolite in Johnson's Baby Powder when responding to discovery requests in the Krushinski case. J&J has been forced to admit that these interrogatories, which were answered in conjunction with the company's lawyers, were false.

250. J&J concealed and refused to produce in response to plaintiffs' discovery requests any documents evidencing or relating to tests, studies, investigations, and analyses of Johnson's Baby Powder and Shower to Shower for the presence of asbestos, despite its knowledge that relevant and material documents existed and were in its possession and that it had the duty to disclose them.

251. Although J&J by its own admission had an obligation to preserve evidence once litigation concerning the health effects of its talc products was foreseeable, it failed to do so. J&J knew that evidence adduced in litigation concerning the health effects of its talc products would be material and relevant to other anticipated cases. Yet J&J failed to preserve records from any of the lawsuits that alleged injuries as a result of Johnson's Baby Powder, Shower to Shower, talc, or asbestos, even though J&J knew that relevant and material documents existed and were in its possession.

252. J&J did not retain any samples of its talc ore and milled talc used in its talc-based cosmetic products, which it tested regularly for the presence of asbestos and asbestiform minerals at any time until 2017. Although litigation was pending and anticipated, the samples chosen by J&J specifically to create test results were not retained under the company's evidence retention schedules and were not subject to any litigation-hold. J&J also failed to retain all test results for the presence of asbestos and asbestiform minerals of the talc ore and milled talc used in its talc-based cosmetic products. The failure to institute a litigation hold made certain that the testing results were destroyed in accordance with its document retention policy. In 2008, nearly ten years after the first litigation hold, when asked about retention time for "information related to the CTFA ingredient surveys" J&J directed its employees to "PITCH them." Any test results that J&J has not yet produced are presumed to be destroyed, as the disposal of these results were mandated by the company's evidence retention scheduled absent a litigation hold, which J&J never issued.

253. The limited underlying scientific data that still exists of J&J's consultants confirms that the reports of "no detectable" asbestos are belied by the underlying scientific data, which shows evidence of asbestos. There are countless similar non-detect letters with no underlying data.

254. In 1989, after facing litigation related to its talc-based products for nearly two decades and anticipating further litigation, J&J destroyed records relating to its Hammondsville, Vermont mining operations.

255. J&J historically preserved no records from the majority of cases in which it has been sued for causing talc related injuries. For those cases where there is at least some documentation, J&J either lost or destroyed most of the material evidence related to historical litigation alleging asbestos-related disease from its talc products. Despite being involved in many cases dating back to 1971, J&J could only locate two sets of discovery responses for its corporate representative to review.

256. J&J once maintained a paper file documenting all of its telephone conversations with the FDA related to its talc-based cosmetic products dating to the early 1970s. The “FDA Call File” no longer exists.

**J&J is Fully Responsible for Conduct
Fraudulent Misrepresentation**

257. J&J intentionally and fraudulently continued to misrepresent to the public that Johnson’s Baby Powder and Shower to Shower were safe, concealing the dangers of asbestos exposure and evidence of asbestos in J&J’s talc product. J&J’s misrepresentations and omissions regarding the safety of Johnson’s Baby Powder and Shower to Shower have resulted in consumer use of cosmetic talc products in a potentially lethal way without any knowledge of the danger, thus denying Plaintiff the knowledge with which to avoid further exposure. Specifically, J&J’s intentional and fraudulent conduct included the following acts and omissions:

- (a) J&J made a material representation;
- (b) The representation was false;
- (c) J&J knew it was false when made or made it recklessly without knowing it was true as a material positive assertion;
- (d) J&J made the misrepresentation intending that Plaintiff act on the representation;
- (e) Plaintiff acted in reliance on it; and
- (f) Plaintiff, as a result, suffered damage.

**J&J is Fully Responsible for Conduct
Silent Fraud (a/k/a Fraudulent Concealment)**

258. J&J intentionally and fraudulently concealed the dangers of asbestos exposure and continued to represent to the public that Johnson’s Baby Powder and Shower to Shower were safe, concealing the evidence of asbestos in J&J’s talc product. J&J’s concealment and omissions regarding the safety of Johnson’s Baby Powder and Shower to Shower have resulted in consumer use of cosmetic talc products in a potentially lethal way without any knowledge of the danger, thus denying

Plaintiff the knowledge with which to avoid further exposure. Specifically, J&J's intentional and fraudulent conduct included the following acts and omissions:

- (a) J&J suppressed a material fact;
- (b) J&J had a duty to disclose the fact; and
- (c) J&J concealed the fact with the intent to defraud.

259. Plaintiff Michael L. Perry trusted Johnson's Baby Powder and Shower to Shower. He used it on himself, believing it to be safe. Plaintiff trusted that the talc products used on himself were safe and did not have any carcinogens. He relied on J&J to provide any safety information to him and his family and to make sure any life-threatening hazards were communicated to her. Had the Plaintiff known the true facts, he would never have purchased or used the products.

260. Plaintiff Michael L. Perry developed malignant mesothelioma, a fatal cancer, as a direct and proximate cause of the misrepresentations made by J&J regarding the safety of Johnson's Baby Powder and Shower to Shower and its concealment of evidence that its cosmetic talc products utilized talc that contained asbestos fibers that could cause cancer.

WHEREFORE, Plaintiffs demand judgment against defendants Johnson & Johnson, Johnson & Johnson Holdco (NA) Inc., Janssen Pharmaceuticals Inc., and Kenvue Inc. for a reasonable amount plus statutory interest and costs, and for such other relief as shall be deemed appropriate.

FOR AN EIGHTH CAUSE OF ACTION
(Loss of Consortium)

For an Eighth Distinct Cause of Action for Loss of Consortium, Plaintiff Lonnie L. Long Complains of Defendants, and Alleges as Follows:

261. Plaintiff incorporates by reference, the preceding paragraphs, where relevant.

262. Plaintiffs Michael L. Perry and Lonnie L. Long were married on June 20, 2009 and at all times relevant to their action were legally married.

263. Prior to his injuries as alleged, Plaintiff Michael L. Perry was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff Michael L. Perry has been unable to perform his spousal duties and the work and service usually performed in the care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Lonnie L. Long was deprived of the consortium of his spouse, including the performance of duties, all to Plaintiffs' damages, in an amount presently unknown to Plaintiffs but which will be proven at time of trial.

264. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Plaintiff Michael L. Perry as set forth herein, Plaintiff's spouse and co- Lonnie L. Long suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of his spouse, and has suffered severe mental and emotional distress and general nervousness. Plaintiffs pray judgment against Defendants, their "alternate entities" and each of them, as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiffs' actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For Plaintiffs' cost of suit herein;
6. For damages for breach of implied warranty according to proof;

7. For damages for fraudulent misrepresentation according to proof; and
8. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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ATTORNEYS FOR PLAINTIFFS

November 30, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES , individually and as	)	
successor-in-interest to Pinaud, Inc.,	)	
Barbara Alice, Inc., Ed. Pinaud, Inc.	)	
d/b/a/ Ed. Pinaud, and Nestle-Le Mur	)	
Company, all for the Clubman line of	)	
products, et al.	)	
	)	
Defendants.	)	
	)	

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT AMERICAN
INTERNATIONAL INDUSTRIES TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant AMERICAN INTERNATIONAL INDUSTRIES, sued individually and erroneously as “successor-in-interest to Pinaud, Inc., Barbara Alice, Inc., Ed. Pinaud, Inc. d/b/a Ed. Pinaud, and Nestle-Le Mur Company, all for the Clubman line of products,” (hereinafter “A-I-I”), by its attorneys, submits its Answer and Affirmative Defenses to Plaintiffs’¹ First Amended Complaint (“Amended Complaint”). A-I-I denies each and every allegation in the Amended Complaint directed to it, except as expressly set forth herein, and avers as follows:

GENERAL ALLEGATIONS

1. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 1 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

2. Defendant A-I-I denies the allegations in Paragraph 2 of the Amended Complaint including subparts (a) through (f) as they pertain to Defendant A-I-I.

¹ Preliminary Note: all references to “Plaintiff” or “Plaintiffs,” contained herein, shall mean and include both singular and plural, incorporating the party alleging actual exposure as well as any party alleging any claim derivative of such alleged exposure under a theory of “loss of consortium,” “survival,” or otherwise.

3. Defendant A-I-I denies the allegations in Paragraph 3 of the Amended Complaint as they pertain to Defendant A-I-I.

4. Defendant A-I-I denies the allegations in Paragraph 4 of the Amended Complaint as they pertain to Defendant A-I-I.

5. Defendant A-I-I denies the allegations in Paragraph 5 of the Amended Complaint as they pertain to Defendant A-I-I.

6. Defendant A-I-I denies the allegations in Paragraph 6 of the Amended Complaint as the pertain to Defendant A-I-I.

7. Defendant A-I-I denies the allegations in Paragraph 7 of the Amended Complaint as they pertain to Defendant A-I-I.

8. Defendant A-I-I denies the allegations contained in Paragraph 8 of the Amended Complaint as they pertain to Defendant A-I-I.

9. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 9 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

10. Defendant A-I-I. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 10 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

11. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 11 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

12. Defendant A-I-I denies the allegations in Paragraph 12 of the Amended Complaint as they pertain to Defendant A-I-I.

13. Defendant A-I-I denies the allegations in Paragraph 13 of the Amended Complaint as they pertain to Defendant A-I-I.

14. Defendant A-I-I denies the allegations in Paragraph 14 of the Amended Complaint as they pertain to Defendant A-I-I.

15. Defendant A-I-I denies the allegations in Paragraph 15 of the Amended Complaint as they pertain to Defendant A-I-I.

16. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 16 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

17. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 17 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

18. Defendant A-I-I denies the allegations in Paragraph 18 of the Amended Complaint as they pertain to Defendant A-I-I and specifically denies that A-I-I is or was an “alternate entity” or “successor in interest” to Pinaud, Inc., Barbara Alice, Inc., ED. Pinaud, Inc., ED. Pinaud, Nestle-Lemur Company, and Clubman” as alleged in the Amended Complaint or to any other party or entity.

19. Defendant A-I-I denies the allegations in Paragraph 19 of the Amended Complaint as they pertain to Defendant A-I-I.

20. Defendant A-I-I denies the allegations in Paragraph 20 of the Amended Complaint including subparts (a) through (w) as they pertain to Defendant A-I-I.

21. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 21 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

22. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 22 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

23. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 23 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

24. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 24 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

25. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 25 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

THE PARTIES

26. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 26 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

27. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 27 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

28. Defendant A-I-I admits that it is a California General Partnership with its principal place of business in California; A-I-I denies each and every remaining allegation in Paragraph 28 of the Amended Complaint as they pertain to Defendant A-I-I.

29. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 29 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

30. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 30 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

31. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 31 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

32. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 32 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

33. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 33 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

34. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 34 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

35. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 35 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

36. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 36 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

37. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 37 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

38. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 38 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

39. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 39 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

40. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 40 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

41. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 41 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

42. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 42 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

43. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 43 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

44. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 44 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

45. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 45 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

46. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 46 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

47. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 47 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

48. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 48 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

49. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 49 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

50. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 50 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

51. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 51 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

52. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 52 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

53. Defendant A-I-I admits that Glamour Industries, Co. is a California S-corporation; A-I-I denies each and every remaining allegation in Paragraph 53 of the Amended Complaint as they pertain to Defendant A-I-I.

54. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 54 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

55. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 55 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

56. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 56 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

57. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 57 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

58. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 58 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

59. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 59 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

60. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 60 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

61. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 61 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

62. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 62 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

63. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 63 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

64. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 64 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

65. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 65 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

66. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 66 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

67. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 67 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

68. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 68 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

69. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 69 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

70. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 70 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

71. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 71 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

72. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 72 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

73. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 73 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

74. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 74 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

75. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 75 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

76. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 76 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

77. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 77 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

78. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 78 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

79. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 79 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

80. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 80 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

81. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 81 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

82. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 82 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

83. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 83 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

84. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 84 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

85. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 85 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

86. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 86 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

87. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 87 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

BACKGROUND FACTS

88. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 88 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

89. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 89 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

90. Defendant A-I-I denies as stated the allegations contained in Paragraph 90 of the Amended Complaint as they pertain to Defendant A-I-I.

91. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 91 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

92. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 92 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

93. Defendant A-I-I denies as stated the allegations contained in Paragraph 93 of the Amended Complaint as they pertain to Defendant A-I-I.

94. Defendant A-I-I denies the allegations contained in Paragraph 94 of the Amended Complaint as they pertain to Defendant A-I-I.

95. Defendant A-I-I denies the allegations contained in Paragraph 95 of the Amended Complaint as they pertain to Defendant A-I-I.

96. Defendant A-I-I denies the allegations contained in Paragraph 96 of the Amended Complaint as they pertain to Defendant A-I-I.

97. Defendant A-I-I denies the allegations contained in Paragraph 97 of the Amended Complaint as they pertain to Defendant A-I-I.

98. Defendant A-I-I denies the allegations contained in Paragraph 98 of the Amended Complaint as they pertain to Defendant A-I-I.

99. Defendant A-I-I denies the allegations contained in Paragraph 99 of the Amended Complaint as they pertain to Defendant A-I-I.

100. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 100 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

101. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 101 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

FOR A FIRST CAUSE OF ACTION

102. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 101 of the Amended Complaint set forth above as if fully set forth herein.

103. Defendant A-I-I denies the allegations contained in Paragraph 103 of the Amended Complaint as they pertain to Defendant A-I-I.

104. Defendant A-I-I denies the allegations contained in Paragraph 104 of the Amended Complaint as they pertain to Defendant A-I-I.

105. Defendant A-I-I denies the allegations contained in Paragraph 105 of the Amended Complaint as they pertain to Defendant A-I-I.

106. Defendant A-I-I denies the allegations contained in Paragraph 106 of the Amended Complaint as they pertain to Defendant A-I-I.

107. Defendant A-I-I denies the allegations contained in Paragraph 107 of the Amended Complaint as they pertain to Defendant A-I-I.

108. Defendant A-I-I denies the allegations contained in Paragraph 108 of the Amended Complaint as they pertain to Defendant A-I-I.

109. Defendant A-I-I denies the allegations contained in Paragraph 109 of the Amended Complaint as they pertain to Defendant A-I-I.

110. Defendant A-I-I denies the allegations contained in Paragraph 110 of the Amended Complaint as they pertain to Defendant A-I-I.

111. Defendant A-I-I denies the allegations contained in Paragraph 111 of the Amended Complaint as they pertain to Defendant A-I-I.

112. Defendant A-I-I denies the allegations contained in Paragraph 112 of the Amended Complaint as they pertain to Defendant A-I-I.

113. Defendant A-I-I denies the allegations contained in Paragraph 113 of the Amended Complaint as they pertain to Defendant A-I-I.

114. Defendant A-I-I denies the allegations contained in Paragraph 114 of the Amended Complaint as they pertain to Defendant A-I-I.

115. Defendant A-I-I denies the allegations contained in Paragraph 115 of the Amended Complaint as they pertain to Defendant A-I-I.

116. Defendant A-I-I denies the allegations contained in Paragraph 116 of the Amended Complaint as they pertain to Defendant A-I-I.

117. Defendant A-I-I denies the allegations contained in Paragraph 117 of the Amended Complaint as they pertain to Defendant A-I-I.

FOR A SECOND CAUSE OF ACTION

118. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 117 of the Amended Complaint set forth above as if fully set forth herein.

119. Defendant A-I-I denies the allegations contained in Paragraph 119 of the Amended Complaint as they pertain to Defendant A-I-I.

120. Defendant A-I-I denies the allegations contained in Paragraph 120 of the Amended Complaint as they pertain to Defendant A-I-I.

121. Defendant A-I-I denies the allegations contained in Paragraph 121 of the Amended Complaint as they pertain to Defendant A-I-I.

122. Defendant A-I-I denies the allegations contained in Paragraph 122 of the Amended Complaint as they pertain to Defendant A-I-I.

123. Defendant A-I-I denies the allegations contained in Paragraph 123 of the Amended Complaint as they pertain to Defendant A-I-I.

124. Defendant A-I-I denies the allegations contained in Paragraph 124 of the Amended Complaint as they pertain to Defendant A-I-I.

125. Defendant A-I-I denies the allegations contained in Paragraph 125 of the Amended Complaint as they pertain to Defendant A-I-I.

126. Defendant A-I-I denies the allegations contained in Paragraph 126 of the Amended Complaint as they pertain to Defendant A-I-I.

127. Defendant A-I-I denies the allegations contained in Paragraph 127 of the Amended Complaint as they pertain to Defendant A-I-I.

128. Defendant A-I-I denies the allegations contained in Paragraph 128 of the Amended Complaint as they pertain to Defendant A-I-I.

129. Defendant A-I-I denies the allegations contained in Paragraph 129 of the Amended Complaint as they pertain to Defendant A-I-I.

130. Defendant A-I-I denies the allegations contained in Paragraph 130 of the Amended Complaint as they pertain to Defendant A-I-I.

131. Defendant A-I-I denies the allegations contained in Paragraph 131 of the Amended Complaint as they pertain to Defendant A-I-I.

132. Defendant A-I-I denies the allegations contained in Paragraph 132 of the Amended Complaint as they pertain to Defendant A-I-I.

133. Defendant A-I-I denies the allegations contained in Paragraph 133 of the Amended Complaint as they pertain to Defendant A-I-I.

134. Defendant A-I-I denies the allegations contained in Paragraph 134 of the Amended Complaint as they pertain to Defendant A-I-I.

FOR A THIRD CAUSE OF ACTION

135. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 134 of the Amended Complaint set forth above as if fully set forth herein.

136. Defendant A-I-I denies the allegations contained in Paragraph 136 of the Amended Complaint as they pertain to Defendant A-I-I.

137. Defendant A-I-I denies the allegations contained in Paragraph 137 of the Amended Complaint as they pertain to Defendant A-I-I.

138. Defendant A-I-I denies the allegations contained in Paragraph 138 of the Amended Complaint as they pertain to Defendant A-I-I.

FOR A FOURTH CAUSE OF ACTION

139. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 138 of the Amended Complaint set forth above as if fully set forth herein.

140. Defendant A-I-I denies the allegations contained in Paragraph 140 of the Amended Complaint as they pertain to Defendant A-I-I.

141. Defendant A-I-I denies the allegations contained in Paragraph 141 of the Amended Complaint as they pertain to Defendant A-I-I.

142. Defendant A-I-I denies the allegations contained in Paragraph 142 of the Amended Complaint as they pertain to Defendant A-I-I.

FOR A FIFTH CAUSE OF ACTION

143. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 142 of the Amended Complaint set forth above as if fully set forth herein.

144. Defendant A-I-I denies the allegations contained in Paragraph 144 of the Amended Complaint as they pertain to Defendant A-I-I.

145. Defendant A-I-I denies the allegations contained in Paragraph 145 of the Amended Complaint as they pertain to Defendant A-I-I.

146. Defendant A-I-I denies the allegations contained in Paragraph 146 of the Amended Complaint as they pertain to Defendant A-I-I.

FOR A SIXTH CAUSE OF ACTION

147. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 146 of the Amended Complaint set forth above as if fully set forth herein.

148. Defendant A-I-I denies the allegations contained in Paragraph 148 of the Amended Complaint as they pertain to Defendant A-I-I.

149. Defendant A-I-I denies the allegations contained in Paragraph 149 of the Amended Complaint as they pertain to Defendant A-I-I.

150. Defendant A-I-I denies the allegations contained in Paragraph 146 of the Amended Complaint as they pertain to Defendant A-I-I.

151. Defendant A-I-I denies the allegations contained in Paragraph 150 of the Amended Complaint as they pertain to Defendant A-I-I.

152. Defendant A-I-I denies the allegations contained in Paragraph 152 of the Amended Complaint as they pertain to Defendant A-I-I.

153. Defendant A-I-I denies the allegations contained in Paragraph 153 of the Amended Complaint as they pertain to Defendant A-I-I.

154. Defendant A-I-I denies the allegations contained in Paragraph 154 of the Amended Complaint as they pertain to Defendant A-I-I.

155. Defendant A-I-I denies the allegations contained in Paragraph 155 of the Amended Complaint as they pertain to Defendant A-I-I.

156. Defendant A-I-I denies the allegations contained in Paragraph 156 of the Amended Complaint as they pertain to Defendant A-I-I.

157. Defendant A-I-I denies the allegations contained in Paragraph 157 of the Amended Complaint as they pertain to Defendant A-I-I.

158. Defendant A-I-I denies the allegations contained in Paragraph 158 of the Amended Complaint as they pertain to Defendant A-I-I.

159. Defendant A-I-I denies the allegations contained in Paragraph 159 of the Amended Complaint as they pertain to Defendant A-I-I.

160. Defendant A-I-I denies the allegations contained in Paragraph 160 of the Amended Complaint as they pertain to Defendant A-I-I.

161. Defendant A-I-I denies the allegations contained in Paragraph 161 of the Amended Complaint as they pertain to Defendant A-I-I.

162. Defendant A-I-I denies the allegations contained in Paragraph 162 of the Amended Complaint as they pertain to Defendant A-I-I.

163. Defendant A-I-I denies the allegations contained in Paragraph 163 of the Amended Complaint as they pertain to Defendant A-I-I.

164. Defendant A-I-I denies the allegations contained in Paragraph 164 of the Amended Complaint as they pertain to Defendant A-I-I.

165. Defendant A-I-I denies the allegations contained in Paragraph 165 of the Amended Complaint as they pertain to Defendant A-I-I.

166. Defendant A-I-I denies the allegations contained in Paragraph 166 of the Amended Complaint as they pertain to Defendant A-I-I.

167. Defendant A-I-I denies the allegations contained in Paragraph 167 of the Amended Complaint as they pertain to Defendant A-I-I.

168. Defendant A-I-I denies the allegations contained in Paragraph 168 of the Amended Complaint as they pertain to Defendant A-I-I.

169. Defendant A-I-I denies the allegations contained in Paragraph 169 of the Amended Complaint as they pertain to Defendant A-I-I.

170. Defendant A-I-I denies the allegations contained in Paragraph 170 of the Amended Complaint as they pertain to Defendant A-I-I.

171. Defendant A-I-I denies the allegations contained in Paragraph 171 of the Amended Complaint as they pertain to Defendant A-I-I.

172. Defendant A-I-I denies the allegations contained in Paragraph 172 of the Amended Complaint as they pertain to Defendant A-I-I.

173. Defendant A-I-I denies the allegations contained in Paragraph 173 of the Amended Complaint as they pertain to Defendant A-I-I.

174. Defendant A-I-I denies the allegations contained in Paragraph 174 of the Amended Complaint as they pertain to Defendant A-I-I.

175. Defendant A-I-I denies the allegations contained in Paragraph 175 of the Amended Complaint as they pertain to Defendant A-I-I.

176. Defendant A-I-I denies the allegations contained in Paragraph 176 of the Amended Complaint as they pertain to Defendant A-I-I.

177. Defendant A-I-I denies the allegations contained in Paragraph 177 of the Amended Complaint as they pertain to Defendant A-I-I.

178. Defendant A-I-I denies the allegations contained in Paragraph 178 of the Amended Complaint as they pertain to Defendant A-I-I.

179. Defendant A-I-I denies the allegations contained in Paragraph 179 of the Amended Complaint as they pertain to Defendant A-I-I.

180. Defendant A-I-I denies the allegations contained in Paragraph 180 of the Amended Complaint as they pertain to Defendant A-I-I.

181. Defendant A-I-I denies the allegations contained in Paragraph 181 of the Amended Complaint as they pertain to Defendant A-I-I.

182. Defendant A-I-I denies the allegations contained in Paragraph 182 of the Amended Complaint as they pertain to Defendant A-I-I.

183. Defendant A-I-I denies the allegations contained in Paragraph 183 of the Amended Complaint as they pertain to Defendant A-I-I.

184. Defendant A-I-I denies the allegations contained in Paragraph 184 of the Amended Complaint as they pertain to Defendant A-I-I.

185. Defendant A-I-I denies the allegations contained in Paragraph 185 of the Amended Complaint as they pertain to Defendant A-I-I.

186. Defendant A-I-I denies the allegations contained in Paragraph 186 of the Amended Complaint as they pertain to Defendant A-I-I.

187. Defendant A-I-I denies the allegations contained in Paragraph 187 of the Amended Complaint as they pertain to Defendant A-I-I.

188. Defendant A-I-I denies the allegations contained in Paragraph 188 of the Amended Complaint as they pertain to Defendant A-I-I.

189. Defendant A-I-I denies the allegations contained in Paragraph 189 of the Amended Complaint as they pertain to Defendant A-I-I.

190. Defendant A-I-I denies the allegations contained in Paragraph 190 of the Amended Complaint as they pertain to Defendant A-I-I.

191. Defendant A-I-I denies the allegations contained in Paragraph 191 of the Amended Complaint as they pertain to Defendant A-I-I.

192. Defendant A-I-I denies the allegations contained in Paragraph 192 of the Amended Complaint as they pertain to Defendant A-I-I.

193. Defendant A-I-I denies the allegations contained in Paragraph 193 of the Amended Complaint as they pertain to Defendant A-I-I.

194. Defendant A-I-I denies the allegations contained in Paragraph 194 of the Amended Complaint as they pertain to Defendant A-I-I.

195. Defendant A-I-I denies the allegations contained in Paragraph 195 of the Amended Complaint as they pertain to Defendant A-I-I.

196. Defendant A-I-I denies the allegations contained in Paragraph 196 of the Amended Complaint, including subparagraphs (a) through (d) as they pertain to Defendant A-I-I.

197. Defendant A-I-I denies the allegations contained in Paragraph 197 of the Amended Complaint as they pertain to Defendant A-I-I.

198. Defendant A-I-I denies the allegations contained in Paragraph 198 of the Amended Complaint as they pertain to Defendant A-I-I.

199. Defendant A-I-I denies the allegations contained in Paragraph 199 of the Amended Complaint as they pertain to Defendant A-I-I.

200. Defendant A-I-I denies the allegations contained in Paragraph 200 of the Amended Complaint as they pertain to Defendant A-I-I.

201. Defendant A-I-I denies the allegations contained in Paragraph 201 of the Amended Complaint as they pertain to Defendant A-I-I.

202. Defendant A-I-I denies the allegations contained in Paragraph 202 of the Amended Complaint as they pertain to Defendant A-I-I.

203. Defendant A-I-I denies the allegations contained in Paragraph 203 of the Amended Complaint as they pertain to Defendant A-I-I.

204. Defendant A-I-I denies the allegations contained in Paragraph 204 of the Amended Complaint as they pertain to Defendant A-I-I.

205. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 205 of the Amended Complaint and therefore denies the allegations as they pertain to Defendant A-I-I.

206. Defendant A-I-I denies the allegations contained in Paragraph 206 of the Amended Complaint as they pertain to Defendant A-I-I.

207. Defendant A-I-I denies the allegations contained in Paragraph 207 of the Amended Complaint as they pertain to Defendant A-I-I.

208. Defendant A-I-I denies the allegations contained in Paragraph 208 of the Amended Complaint as they pertain to Defendant A-I-I.

209. Defendant A-I-I denies the allegations contained in Paragraph 209 of the Amended Complaint as they pertain to Defendant A-I-I.

FOR A SEVENTH CAUSE OF ACTION

Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 209 of the Amended Complaint set forth above as if fully set forth herein.

210. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 210 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

211. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 211 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

212. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 212 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

213. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 213 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

214. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 214 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

215. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 215 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

216. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 216 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

217. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 217 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

218. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 218 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

219. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 219 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

220. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 220 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

221. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 221 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

222. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 222 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

223. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 223 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

224. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 224 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

225. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 225 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

226. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 226 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

227. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 227 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

228. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 228 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

229. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 229 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

230. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 230 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

231. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 231 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

232. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 232 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

233. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 233 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

234. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 234 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

235. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 235 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

236. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 236 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

237. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 237 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

238. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 238 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

239. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 239 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

240. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 240 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

241. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 241 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

242. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 242 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

243. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 243 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

244. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 244 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

245. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 245 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

246. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 246 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

247. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 247 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

248. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 248 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

249. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 249 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

250. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 250 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

251. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 251 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

252. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 252 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

253. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 253 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

254. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 254 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

255. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 255 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

256. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 256 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

257. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 257 of the Amended Complaint, including subparagraphs (a) through (f) and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

258. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 258 of the Amended Complaint, including subparagraphs (a) through (c) and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

259. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 259 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

260. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 260 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the unnumbered WHEREFORE Paragraph after Paragraph 260 of the Amended Complaint and therefore denies the allegations to the extent any allegation is intended to pertain to Defendant A-I-I.

FOR AN EIGHTH CAUSE OF ACTION

261. Defendant A-I-I incorporates by reference herein each and every response to the allegations asserted in Paragraphs 1 through 260 of the Amended Complaint set forth above as if fully set forth herein.

262. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 262 of the Amended Complaint and therefore denies the allegations.

263. Defendant A-I-I lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 263 of the Amended Complaint and therefore denies the allegations.

264. Defendant A-I-I denies the allegations contained in Paragraph 264 of the Amended Complaint as they pertain to Defendant A-I-I.

AS TO WHEREFORE CLAUSE

The unnumbered WHEREFORE clause contained in the Amended Complaint does not contain allegations to which a response is required. To the extent a response is required, Defendant A-I-I denies such allegations as they pertain to Defendant A-I-I. Defendant A-I-I denies that Plaintiffs are entitled to recover from it in any amount.

AFFIRMATIVE DEFENSES

Defendant A-I-I alleges the following affirmative defenses to each alleged cause of action and hereby reserves its right to amend this Answer to allege additional affirmative defenses that may later be ascertained during discovery.

FIRST DEFENSE

Defendant A-I-I denies each and every material allegation of the Amended Complaint directed towards it except as specifically admitted.

SECOND DEFENSE

The Amended Complaint fails to state a claim against Defendant A-I-I upon which relief can be granted, and the same should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

THIRD DEFENSE

Each and every Count of the Amended Complaint, to the extent the Count pertains to Defendant A-I-I, is preempted by the Federal Food, Drug, and Cosmetics Act (“FFDCA”), 21 U.S.C. §§ 301399(a) (2015), in that the FDA has primary and exclusive jurisdiction over the safety of cosmetic and pharmaceutical grade talc-containing and primary and exclusive jurisdiction to determine whether any warning must accompany such products. Each and every count of the Amended Complaint, to the extent the count pertains to Defendant A-I-I, is also preempted, in whole or in part, by any other applicable state and/or federal statutes, rules, regulations, and/or other applicable standards such as those set forth by the United States Pharmacopeia and other bodies.

FOURTH DEFENSE

Each and every count of the Amended Complaint, to the extent the count pertains to Defendant A-I-I’s alleged manufacture and/or sale pharmaceutical and/or cosmetic grade talc-containing products, is subject to the FDA’s primary jurisdiction. Consequently, each and every count of the Amended Complaint, to the extent that it pertains to Defendant A-I-I, should be dismissed or stayed pending further FDA review of whether any warning must accompany, or other restrictions be placed upon the manufacture and sale of such products.

FIFTH DEFENSE

Each and every count of the Amended Complaint, to the extent the count pertains to Defendant A-I-I's manufacture and/or sale of pharmaceutical and/or cosmetic grade talc-containing products, is an unauthorized and improper attempt to enforce privately a claim under the Federal Food, Drug, and Cosmetic Act ("FFDCA"), 21 U.S.C. §§ 301-399(a) (2015).

SIXTH DEFENSE

Plaintiff has failed to join a party or parties necessary for a just adjudication of this matter against Defendant A-I-I and has further failed to state any reasons for such omission, and the Amended Complaint should therefore be dismissed as against Defendant A-I-I pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

SEVENTH DEFENSE

Defendant A-I-I states that Plaintiffs' claims against A-I-I are barred by the applicable statute(s) of limitations and repose and/or are otherwise time-barred.

EIGHTH DEFENSE

Defendant A-I-I states that Plaintiffs' claims against A-I-I are barred by estoppel or waiver.

NINTH DEFENSE

Defendant A-I-I states that Plaintiff is guilty of laches in bringing this action against A-I-I and is therefore barred from recovery from A-I-I.

TENTH DEFENSE

If Plaintiff is unable to identify the manufacturer or manufacturers of the products that allegedly caused injury, or fails to establish that any material or product manufactured and/or sold by Defendant A-I-I was contaminated by asbestos, each and every count in the Amended Complaint fails to state a claim upon which relief can be granted, for if relief were granted, such relief would constitute a taking of Defendant A-I-I's property for a public use without just compensation and would constitute a violation of Defendant A-I-I's rights under the state and federal constitutions.

ELEVENTH DEFENSE

Plaintiff's claims and causes of action are barred in whole or in part because none of the alleged acts or omissions of Defendant A-I-I was the proximate cause of the injuries and damages allegedly sustained by Plaintiff.

TWELFTH DEFENSE

Defendant A-I-I denies that any product manufactured or sold by A-I-I caused injury to Plaintiff.

THIRTEENTH DEFENSE

The injuries of which Plaintiff complains are wholly or partially caused by factors other than exposure to any material or product manufactured and/or sold by Defendant A-I-I.

FOURTEENTH DEFENSE

Plaintiff's injuries, if any, were the result of pre-existing medical conditions, lifestyles, exposures, accidents, and/or other causes that are completely unrelated to the alleged acts and/or omissions of Defendant A-I-I.

FIFTEENTH DEFENSE

If Plaintiff establishes that he was exposed to any asbestos-contaminated talc in any of the material or products manufactured or sold by Defendant A-I-I, such exposure was so minimal as to be insufficient to support any finding that the exposure caused Plaintiff's claimed injuries.

SIXTEENTH DEFENSE

Plaintiff's claims and causes of action, to the extent asserted against Defendant A-I-I, are barred in whole or in part because the product(s) manufactured or sold by Defendant A-I-I referred to in the Amended Complaint complied with all applicable federal, state and local rules, regulations, specifications, and laws.

SEVENTEENTH DEFENSE

Plaintiff's claims and causes of action, to the extent asserted against Defendant A-I-I, are barred in whole or in part because the product(s) manufactured or sold by Defendant A-I-I referred to in the Amended Complaint conformed with the then-existing industry standards and/or the "state

of the art” with respect to design, manufacture and sale, including with respect to any warning requirement.

EIGHTEENTH DEFENSE

Defendant A-I-I’s products were at all times of good and merchantable quality and fit for the ordinary purpose for which such products were used.

NINETEENTH DEFENSE

Defendant A-I-I states that, at all relevant times hereto, the state of medical and scientific knowledge and the state of art or the design and manufacture of talc-containing products was such that Defendant A-I-I neither knew nor should have known that its products presented a significant risk of harm to Plaintiff.

TWENTIETH DEFENSE

Defendant A-I-I had no duty to give instructions to Plaintiff or to warn Plaintiff of any hazards attendant to the contact with, use of or exposure to any material or product manufactured and/or sold by A-I-I.

TWENTY-FIRST DEFENSE

Plaintiff’s recovery is barred, diminished or reduced to the extent that Plaintiff is attempting to assert that Defendant A-I-I is liable as an agent, servant, employee and/or joint venturer, or as successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, alter ego, subsidiary, whole or partial owner, wholly or partially owned entity, or member of any group engaged in funding, researching, processing, constructing, analyzing, merchandising, supplying, studying, testing, designing, labeling, manufacturing, distributing, marketing, warning, warranting, rebranding, leasing, buying, selling, inspecting, or servicing of certain substances, the generic names of which are asbestos and/or products containing asbestos and talc and/or products containing talc.

A-I-I further alleges that it has no liability for the acts, omissions, or otherwise of any other defendant or any other entity because A-I-I did not become legally responsible for the acts,

omissions, obligations, or products of any such defendant or entity given the facts and circumstances of the pertinent transactions and never was, nor is, a successor-in-interest, a successor-in-liability, or an alternate entity for any other user, manufacturer, supplier, seller, or distributor of talc or talc-containing products or of asbestos or asbestos-containing products. A-I-I further denies that it is or was at any time a successor-in-interest, a successor-in-liability, or an alternate entity of “PINAUD, INC., BARBARA ALICE, INC., ED PINAUD, INC. ED PINAUD, NESTLE-LEMUR COMPANY, AND CLUBMAN” as alleged in the Amended Complaint. A-I-I denies liability for the acts, omissions, obligations, or products of any other defendant or entity and alleges that Plaintiffs’ successor-in-interest claims, if any, are barred.

TWENTY-SECOND DEFENSE

Plaintiff’s recovery against Defendant A-I-I is barred, diminished or reduced to the extent the Plaintiff received (or will receive) Workers’ Compensation payments for the injuries alleged in the Amended Complaint. To the extent any such payments have been made, Defendant A-I-I is entitled to an offset in the amount of all such benefits against any damages awarded to Plaintiff.

TWENTY-THIRD DEFENSE

Venue is improper under the equitable doctrine of forum non conveniens.

TWENTY-FOURTH DEFENSE

Defendant A-I-I denies that any material or product it manufactured or sold was defective or negligently mined, processed, manufactured, designed, tested, investigated, fashioned, packaged, distributed, delivered, and/or sold. If, however, there was any defect or negligence on the part of A-I-I, it is nonetheless not liable because it justifiably relied upon the inspections of its suppliers and certifications provided by those suppliers that the cosmetic and/or pharmaceutical grade talc furnished to A-I-I was free of asbestos contamination.

TWENTY-FIFTH DEFENSE

Any alleged negligence on the part of Defendant A-I-I was superseded by new and independent conduct by Plaintiff and/or other third parties. Such new and independent conduct included the negligence of third parties who owed a duty to Plaintiff and over whom Defendant A-

I-I had no control. Defendant A-I-I also could neither anticipate nor reasonably foresee such superseding conduct, which was the actual cause of the injuries allegedly sustained by Plaintiff.

TWENTY-SIXTH DEFENSE

Defendant A-I-I cannot be held liable under principles of strict tort liability because products manufactured and/or products which left Defendant A-I-I's possession did so prior to the enactment of relevant law regarding strict liability.

TWENTY-SEVENTH DEFENSE

Defendant A-I-I denies that the doctrine of strict liability in tort applies to the claims alleged against it.

TWENTY-EIGHTH DEFENSE

Defendant A-I-I specifically denies that any talcum powder product that it manufactured or sold was defectively designed because the manufacturing specifications for Defendant A-I-I's talcum powder products did not include asbestos.

TWENTY-NINTH DEFENSE

Defendant A-I-I denies that it manufactured, designed and/or sold any products referred to in Plaintiff's Amended Complaint which caused injury to Plaintiff. Notwithstanding, at all times and places mentioned in the Amended Complaint, Plaintiff and/or other persons without Defendant A-I-I's knowledge and approval redesigned, modified, altered, and used Defendant A-I-I's products contrary to instruction and contrary to the custom and practice of the industry. This redesign, modification, alteration, and use so substantially changed the product's character that if there was a defect in the product, which Defendant A-I-I specifically denies, such defect resulted solely from the redesign, modification, alteration, or other such treatment or change and not from any act or omission by this Defendant A-I-I. Therefore, said defect, if any, was created by Plaintiff and/or other persons, as the case may be, and was the direct and proximate cause of the injuries and damages, if any, that Plaintiff allegedly suffered.

THIRTIETH DEFENSE

Defendant A-I-I states that the utility of the products manufactured and sold by Defendant A-I-I outweigh the risk allegedly involved, and therefore, Plaintiff's claims are barred.

THIRTY-FIRST DEFENSE

Defendant A-I-I gave no special warranties, either express or implied, to Plaintiff or to anyone acting on Plaintiff's behalf. Further, to the extent that Plaintiff alleges any claim based upon a breach or breaches of express or implied warranties (allegations which Defendant A-I-I specifically denies), such claim is barred because at no time did Defendant A-I-I enter into any contract with Plaintiff and Plaintiff was not in privity of contract with Defendant A-I-I.

THIRTY-SECOND DEFENSE

Defendant A-I-I states that if there were implied warranties as alleged in the Amended Complaint (allegations which A-I-I specifically denies), Plaintiff was not within the scope of any such alleged warranties.

THIRTY-THIRD DEFENSE

If Defendant A-I-I or its agents or servants made any warranties, express or implied (allegations which A-I-I specifically denies), then A-I-I denies that it breached any of the warranties.

THIRTY-FOURTH DEFENSE

If Defendant A-I-I or its servants or agents made any express warranties (allegations which A-I-I specifically denies), then Plaintiff did not rely on the express representations or warranties.

THIRTY-FIFTH DEFENSE

Defendant A-I-I states that Plaintiff failed to give notice of the alleged breach of warranties within a reasonable time as required by applicable statutes, resulting in delay and prejudice to A-I-I in this case, and, therefore, Plaintiff cannot recover.

THIRTY-SIXTH DEFENSE

Defendant A-I-I states that Plaintiff is not a third-party beneficiary with reference to any alleged warranties, either express or implied, and therefore Plaintiff cannot recover in this action for any such claim.

THIRTY-SEVENTH DEFENSE

If Defendant A-I-I were to be held liable for breach of any warranty, its liability in any event has been terminated by the intervening acts, omissions or negligence of others over whom Defendant A-I-I had neither control nor the right of control, and for whose conduct Defendant A-I-I is not legally responsible.

THIRTY-EIGHTH DEFENSE

Defendant A-I-I denies that Plaintiff is entitled to the damages claimed or to the relief demanded from A-I-I.

THIRTY-NINTH DEFENSE

Plaintiff's claims against Defendant A-I-I are barred in whole or in part by Plaintiff's contributory and/or comparative fault, because the damages, if any, were legally caused by and are the result, in whole or part, of his own carelessness, recklessness, negligent acts and/or omissions, or failure to act reasonably. Accordingly, any recovery by Plaintiff against Defendant A-I-I is barred, or in the alternative, is comparatively reduced by Plaintiff's percentage of fault.

FORTIETH DEFENSE

At all times and places mentioned in the Amended Complaint, Plaintiff failed to make reasonable efforts to mitigate his injuries and damages, if any.

FORTY-FIRST DEFENSE

Defendant A-I-I states that if Plaintiff used tobacco products, such use contributed to any disease from which Plaintiff allegedly suffers. Further, the tobacco industry placed warnings in its products notifying the public of potential hazards associated with its use, which hazards Plaintiff knew or should have known may have adversely affected Plaintiff's health.

FORTY-SECOND DEFENSE

To the extent Plaintiff has released, settled, entered into an accord and satisfaction, or otherwise compromised his claims herein, said claims are barred by operation of law.

FORTY-THIRD DEFENSE

Defendant A-I-I is entitled to a credit or set off in the amount, if any, for which Plaintiff has settled, or should hereafter settle, or receives by way of judgment, whether in this action or any other, for any of Plaintiff's alleged injuries and damages.

FORTY-FOURTH DEFENSE

Any alleged injury or damage sustained as a result of the occupations of Plaintiff was an occupational injury and accordingly Defendant A-I-I is not liable or responsible for any occupational injury which was suffered or sustained by Plaintiff in the course of employment over a number of years.

FORTY-FIFTH DEFENSE

In the event Defendant A-I-I is held liable to Plaintiff, which liability is expressly denied herein, any other co-defendants are likewise held liable, Defendant A-I-I is entitled to percentage contribution of the total liability from said co-defendants in accordance with the principles of equitable indemnity and comparative contribution.

FORTY-SIXTH DEFENSE

Defendant A-I-I does not have and never has had a successor, successor-in-business, successor-in-product line or portion thereof, successor-in-interest, assignee, predecessor, predecessor-in-business, predecessor-in-product line or portion thereof, predecessor-in-interest, partner, subsidiary, whole or partial, or ownership or membership relationship with any entity or product upon which Plaintiff bases the allegations of liability, and has no direct or derivative liability for the actions or omissions of those entities, including but not limited to the alleged alternate entities and alleged predecessors in interest identified in Plaintiff's Amended Complaint.

FORTY-SEVENTH DEFENSE

Defendant A-I-I avails itself of and adopts such other defenses raised by any other defendants as may be applicable.

FORTY-EIGHTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent the loss or injury suffered by Plaintiff, if any, was caused by an idiosyncratic condition for which A-I-I could not have taken any steps to avoid.

FORTY-NINTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred as to any non-economic damages except those allocated to Defendant A-I-I in direct proportion to its percentage of fault, if any.

FIFTIETH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent Plaintiff consented to the acts and/or omissions of Defendant A-I-I as alleged in the Amended Complaint.

FIFTY-FIRST DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced in that Plaintiff, and/or his agents, expressly or impliedly waived any rights he may have had by his acts, conduct and/or omissions.

FIFTY-SECOND DEFENSE

Plaintiff's claims against Defendant A-I-I are barred in whole or in part on the grounds that Plaintiff knew, or in the exercise of ordinary care should have known, the risk of the injuries or damages alleged in the Amended Complaint, if any, and nevertheless did encounter the alleged known danger, and this undertaking proximately caused and contributed to the losses, injuries or damages, if any, alleged by Plaintiff.

FIFTY-THIRD DEFENSE

Plaintiff is barred from recovery in that if he sustained any loss or damage, such loss or damage was not directly or proximately caused by the acts or omissions of Defendant A-I-I.

FIFTY-FOURTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced in that other person(s) and/or entity(ies), whose true names and/or capacities are unknown to Defendant A-I-I, are in some manner responsible for or at fault in proximately causing the damage allegedly sustained by Plaintiff, and therefore the damages, if any, should be apportioned in proportion to the relative fault, if any, of each other person or entity, including but not limited to codefendants, settling and dismissed co-defendants, third-party defendants, bankrupt or insolvent entities, settling and other non-parties, and other responsible persons or entities.

FIFTY-FIFTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent that his alleged damages were caused by unforeseeable acts or omissions, and Defendant A-I-I exercised due care with respect to foreseeable acts and omissions.

FIFTY-SIXTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent his damages were proximately caused by an act of God.

FIFTY-SEVENTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent that the dangers, if any, associated with the product(s) and/or equipment referenced in the Amended Complaint constitute an unavoidably unsafe product or piece of equipment.

FIFTY-EIGHTH DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent that there is no possibility of an alternate safer design for the product(s) referenced in the Amended Complaint, and that the risk of danger, if any, is inherent in said product(s).

FIFTY-NINTH DEFENSE

Defendant A-I-I denies the existence of the dangerous condition as set forth in the Amended Complaint as to Defendant A-I-I. If, however, such dangerous condition did, in fact,

exist, Defendant A-I-I had no knowledge or adequate knowledge of it, having exercised reasonable care in inspecting its product(s).

SIXTIETH DEFENSE

Plaintiff's recovery is barred, diminished or reduced because he never justifiably relied on any alleged misrepresentation of Defendant A-I-I, nor did Defendant A-I-I influence subsequent purchase of, or use of product(s) referred to in the Amended Complaint.

SIXTY-FIRST DEFENSE

Plaintiff's recovery against Defendant A-I-I is barred, diminished or reduced to the extent the Amended Complaint seeks recovery under the theory of "enterprise," "industry-wide," "alternate" or "market share" (collectively referred to hereafter as "market share") liability, and furthermore, the essential elements of a cause of action premised on a market share theory of liability do not exist between Plaintiff and Defendant A-I-I.

SIXTY-SECOND DEFENSE

Plaintiff's recovery is barred, diminished or reduced to the extent that Plaintiff cannot show that any product made or sold by Defendant A-I-I in all reasonable medical probability, was a substantial factor in increasing the risk of bringing about the injuries or damages complained of by Plaintiff.

SIXTY-THIRD DEFENSE

Plaintiff's recovery is barred to the extent that Plaintiff's injuries occurred on a federal enclave or while working under the direction of a federal officer.

SIXTY-FOURTH DEFENSE

Plaintiff's claims are barred by the doctrines of res judicata and collateral estoppel, and by the rule against splitting a cause of action.

SIXTY-FIFTH DEFENSE

This Court lacks subject matter jurisdiction over each and every count contained in Plaintiff's Amended Complaint.

SIXTY-SIXTH DEFENSE

Defendant A-I-I states that the alleged injury or damage sustained as a result of the occupation of Plaintiff was an occupational injury, and, accordingly, Defendant A-I-I is not liable or responsible for any occupational injury which was suffered or sustained by Plaintiff in the course of employment over a number of years.

SIXTY-SEVENTH DEFENSE

Plaintiff's claims are barred because he failed to preserve or otherwise spoliated the evidence.

SIXTY-EIGHTH DEFENSE

Defendant A-I-I reserves the right to assert any and/or all applicable affirmative defenses which investigation, discovery or further information may reveal to be appropriate, and further, to assert any applicable matters of law while this action is pending.

SIXTY-NINTH DEFENSE

Any award of punitive damages would violate the constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

SEVENTIETH DEFENSE

In the alternative, Defendant A-I-I requests trial bifurcation on the issues of actual damages and punitive damages, pursuant to S.C. Code Ann. § 15-32-520. Further, Defendant A-I-I pleads all defenses, limitations on damages, and other privileges codified at S.C. Code Ann. §§ 15-32520 and 15-32-530.

SEVENTY-FIRST DEFENSE

Plaintiff is not entitled to recover punitive damages against Defendant A-I-I in any amount or in the amount sought in the Amended Complaint.

SEVENTY-SECOND DEFENSE

Liability may not be imposed upon Defendant A-I-I based on a theory of enterprise or market share liability. To the extent Plaintiff's claims are based upon such theories, they are barred.

SEVENTY-THIRD DEFENSE

Due to the state of medical and industrial art existing during the time period in which Plaintiff was allegedly was exposed to products manufactured, supplied or distributed by Defendant A-I-I and others, there was no generally accepted knowledge of any inherently dangerous characteristics of pharmaceutical and/or cosmetic grade talc or talc-containing products or of any alleged unsafe nature of such products when employed in a manner consistent with their intended use. Defendant A-I-I manufactured its products in conformity with the then-existing state of medical and scientific knowledge, and Plaintiff is not entitled to recover from Defendant A-I-I.

SEVENTY-FOURTH DEFENSE

The Court lacks personal jurisdiction over Defendant A-I-I.

SEVENTY-FIFTH DEFENSE

There is an insufficiency of process as to Defendant A-I-I.

SEVENTY-SIXTH DEFENSE

There is an insufficiency of service of process as to Defendant A-I-I.

SEVENTY-SEVENTH DEFENSE

Plaintiff and/or other related persons misused or improperly used the products manufactured and/or sold by Defendant A-I-I, and such misuse or improper use proximately caused or contributed to, in whole or in part, the alleged conditions described in the Amended Complaint and the alleged damages Plaintiff claims were sustained. Therefore, Defendant A-I-I is not liable for any injuries or damages claimed by Plaintiff.

SEVENTY-EIGHTH DEFENSE

To the extent Plaintiff's Amended Complaint asserts a demand for punitive damages, Defendant A-I-I specifically incorporates by reference any and all standards of limitations

regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

SEVENTY-NINTH DEFENSE

There has been no concert of action between Defendant A-I-I and any of the other named Defendants. The Defendants are not joint tortfeasors and, therefore, Defendant A-I-I may not be held jointly and severally liable with the other named Defendants.

EIGHTIETH DEFENSE

Plaintiff neither used nor was exposed to any product manufactured, sold, and/or supplied by Defendant A-I-I.

EIGHTY-FIRST DEFENSE

Plaintiff's Amended Complaint should be dismissed for its failure to comply with the requirements of Section 44-135-10, et. seq., of the South Carolina Code, also known as the "Asbestos and Silica Claims Procedure Act of 2006" as Plaintiff has failed to make the prima facie showing required by the Act. In the alternative, the case should not be placed on any active trial docket and should not be the subject of any discovery until Plaintiff complies with the provisions of the Act.

EIGHTY-SECOND DEFENSE

Plaintiff does not have standing to bring this claim pursuant to Section 15-5-150 S.C. Code Ann., also referred to as South Carolina's Door Closing Statute.

EIGHTY-THIRD DEFENSE

Defendant A-I-I hereby notifies the Court and all parties that under traditional South Carolina choice of law principles, the substantive law governing this action is determined by the laws of another state. Defendant A-I-I asserts that the injury complained of occurred outside of the State of South Carolina and therefore, under the doctrine of *lex loci delicti*, the law of the state in which the injury occurred, applies.

EIGHTY-FOURTH DEFENSE

This Court lacks both general and specific personal jurisdiction over Defendant A-I-I. Plaintiff cannot meet the requirements of the South Carolina Long Arm Statute or the traditional due process requirements to meet the requirements of personal jurisdiction over Defendant A-I-I.

EIGHTY-FIFTH DEFENSE

Any award of punitive damages against this Defendant shall not exceed the limits set forth in Section 15-32-530 of the South Carolina Code of Laws.

WHEREFORE, Defendant A-I-I requests that the Amended Complaint be dismissed, judgment entered in its favor and against Plaintiff, with costs assessed against Plaintiff.

This 8th day of December 2023.

FOX ROTHSCHILD LLP

s/Stephanie G. Flynn

Stephanie G. Flynn, SC Bar No. 16653

Nicolas J. Cherry, SC Bar No. 102671

Allyson R. Twilley, SC Bar No. 101884

FOX ROTHSCHILD LLP

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Attorneys for Defendant

American International Industries

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.	)	
	)	
Defendants.	)	

PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR LEAVE TO AMEND SUMMONS AND COMPLAINT

YOU WILL PLEASE TAKE NOTICE that on the tenth day hence, or as soon thereafter as counsel may be heard, pursuant to Rule 15 of the *South Carolina Rules of Civil Procedure*, Plaintiffs will move this Honorable Court for leave to file a second amended summons and complaint to add an additional Defendant. Plaintiffs' proposed Amended Summons and Complaint is attached hereto as Exhibit A and incorporated herein by reference.

Plaintiffs seek to amend the complaint to add an additional Defendant responsible for Mr. Perry's exposures to asbestos in South Carolina. Rule 15 provides that "leave [to amend the pleadings] shall be freely given where justice so requires." Rule 15 further instructs that "[w]hensoever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading." R. 15(a) and (c), *SCRCP*. Here, it has come to light that additional Defendants are responsible in part for Mr. Perry's exposures to asbestos in South Carolina, which Plaintiffs claim resulted in Mr. Perry's diagnosis of

mesothelioma. Rule 15 provides that “leave [to amend the pleadings] shall be freely given where justice so requires.” Plaintiffs have notified all counsel of record and there has been no objection to this Motion. No prejudice exists to current parties by adding an additional defendant responsible in part for Plaintiffs’ damages.

Respectfully submitted,

/s/ Charles W. Branham, III
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January 31, 2024
Dallas, Texas.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	
Plaintiffs,	)	
v.	)	In Re:
	)	Asbestos Personal Injury Litigation
AMERICAN INTERNATIONAL	)	Coordinated Docket
INDUSTRIES	)	
	)	
ATLAS TURNER INC.	)	
	)	
AVON PRODUCTS, INC.	)	<u>SECOND AMENDED SUMMONS</u>
	)	
BARRETTS MINERALS INC.	)	
	)	
BLOCK DRUG COMPANY, INC.	)	(Jury Trial Demanded)
	)	
BRENNTAG NORTH AMERICA, INC.	)	
	)	
BRENNTAG SPECIALTIES, LLC	)	
	)	
BRISTOL-MYERS SQUIBB COMPANY	)	
	)	
BUY-LOW GENERAL MERCHANDISE INC.	)	
	)	
C&S WHOLESALE GROCERS, LLC	)	
	)	
CALVIN KLEIN INC.	)	
	)	
CHANEL INC.	)	
	)	
CHARLES B. CHRYSTAL COMPANY, INC.	)	
	)	
CHATTEM, INC.	)	
	)	
COLGATE-PALMOLIVE COMPANY	)	
	)	
COLOR TECHNIQUES, INC.	)	
	)	
COSMETIC SPECIALTIES, INC.	)	
	)	
COTY INC.	)	

CVS HEALTH CORPORATION	)
	)
CVS PHARMACY, INC.	)
	)
EDC DRUG STORES, INC.	)
	)
ESTÉE LAUDER INC.	)
	)
ESTÉE LAUDER INTERNATIONAL, INC.	)
	)
THE ESTÉE LAUDER COMPANIES INC.	)
	)
FOOD LION, LLC	)
	)
GENUINE PARTS COMPANY	)
	)
GLAMOUR INDUSTRIES CO.	)
	)
HIMMEL MANAGEMENT CO. LLC	)
	)
HIMMEL MEDIA LLC	)
	)
HONEYWELL INTERNATIONAL, INC.	)
	)
IDELLE LABS, LTD.	)
	)
IMI FABI (DIANA) LLC	)
	)
IMI FABI (USA) INC.	)
	)
IMI FABI, LLC	)
	)
JANSSEN PHARMACEUTICALS, INC.	)
	)
JOHNSON & JOHNSON	)
	)
JOHNSON & JOHNSON HOLDCO (NA) INC.	)
	)
KENVUE INC.	)
	)
L'ORÉAL USA, INC.	)
	)
L'ORÉAL USA PRODUCTS, INC.	)
	)
LLT MANAGEMENT LLC	)
	)

LONG'S DRUGSTORES OF SOUTH	)
CAROLINA, INC.	)
	)
LTL MANAGEMENT LLC	)
	)
MINERALS TECHNOLOGIES INC.	)
	)
THE NESLEMUR COMPANY	)
	)
PIGGLY WIGGLY, LLC	)
	)
PNEUMO ABEX LLC	)
	)
PRESPERSE CORPORATION	)
	)
THE PROCTER & GAMBLE COMPANY	)
	)
PTI ROYSTON, LLC	)
	)
PTI UNION LLC	)
	)
RALPH LAUREN CORPORATION	)
	)
RITE AID OF SOUTH CAROLINA, INC.	)
	)
SHULTON, INC.	)
	)
SPECIALTY MINERALS INC.	)
	)
SUMITOMO CORPORATION OF	)
AMERICAS	)
	)
UNION CARBIDE CORPORATION	)
	)
VI-JON, LLC	)
	)
WALGREEN CO.	)
	)
WALMART INC.	)
	)
Defendants.	)
	)

SECOND AMENDED SUMMONS

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiffs' counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

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and

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ATTORNEYS FOR PLAINTIFFS

February 1, 2024

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL L. PERRY and
LONNIE L. LONG

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES, individually and as successor-
in-interest to PINAUD, INC., BARBARA
ALICE, INC., ED. PINAUD, INC. d/b/a ED.
PINAUD, and NESTLE-LE MUR COMPANY,
all for the CLUBMAN line of products

ATLAS TURNER INC.
f/k/a ATLAS ASBESTOS COMPANY LTD.

AVON PRODUCTS, INC.

BARRETT'S MINERALS INC.

BLOCK DRUG COMPANY, INC.
individually and as successor to THE GOLD
BOND STERILIZING POWDER CO. a/k/a
THE GOLD BOND CO.

BRENNTAG NORTH AMERICA, INC.
individually and as successor-in-interest to
MINERAL AND PIGMENT SOLUTIONS,
INC., as successor-in-interest to WHITTAKER,
CLARK & DANIELS, INC.

BRENNTAG SPECIALTIES, LLC
f/k/a BRENNTAG SPECIALTIES, INC.
f/k/a MINERAL AND PIGMENT
SOLUTIONS, INC., as successor-in-interest to
WHITTAKER, CLARK & DANIELS, INC.

BRISTOL-MYERS SQUIBB COMPANY

BUY-LOW GENERAL MERCHANDISE
INC.

C/A NO. 2023-CP-40-04072

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Mesothelioma

SECOND AMENDED COMPLAINT

(Jury Trial Demanded)

C&S WHOLESALE GROCERS, LLC)
 f/k/a C&S WHOLESALE GROCERS, INC.)
 individually and as successor-in-interest to)
 FLEMING COMPANIES, INC., successor-in-)
 interest to PIGGLY WIGGLY COMPANY)
)
CALVIN KLEIN INC.)
)
CHANEL INC.)
)
CHARLES B. CHRYSTAL COMPANY,)
INC.)
)
CHATTEM, INC.)
 individually and as successor to MARTIN)
 HIMMEL, INC., successor to BLOCK DRUG)
 COMPANY INC., successor to THE GOLD)
 BOND STERILIZING POWDER COMPANY)
 a/k/a THE GOLD BOND COMPANY,)
 successor to GOLD BOND)
 PHARMACEUTICAL CORPORATION)
)
COLGATE-PALMOLIVE COMPANY)
 individually and as successor-in-interest to)
 THE MENNEN COMPANY)
)
COLOR TECHNIQUES, INC.)
)
COSMETIC SPECIALTIES, INC.)
)
COTY INC.)
)
CVS HEALTH CORPORATION)
)
CVS PHARMACY, INC.)
)
EDC DRUG STORES, INC.)
 f/k/a KERR DRUG STORES, INC.)
)
ESTÉE LAUDER INC.)
)
ESTÉE LAUDER INTERNATIONAL, INC.)
)
THE ESTÉE LAUDER COMPANIES INC.)
)
FOOD LION, LLC)
)

GENUINE PARTS COMPANY)
 d/b/a NATIONAL AUTOMOTIVE PARTS)
 ASSOCIATION (NAPA))
)
GLAMOUR INDUSTRIES CO.)
 individually and as an S-corporation of)
 AMERICAN INTERNATIONAL)
 INDUSTRIES successor-in-interest to PINAUD,)
 INC., BARBARA ALICE, INC., ED. PINAUD,)
 INC. d/b/a ED. PINAUD, and NESTLE-LE)
 MUR COMPANY, all for the CLUBMAN line)
 of products)
)
HIMMEL MANAGEMENT CO. LLC)
 a/k/a HIMMEL GROUP, formerly d/b/a)
 MARTIN HIMMEL INC., individually and as)
 successor to BLOCK DRUG COMPANY INC.,)
 successor to THE GOLD BOND STERILIZING)
 POWDER CO. a/k/a THE GOLD BOND CO.)
)
HIMMEL MEDIA LLC)
 individually and as successor to BLOCK DRUG)
 COMPANY INC., successor to THE GOLD)
 BOND STERILIZING POWDER CO. a/k/a)
 THE GOLD BOND CO.)
)
HONEYWELL INTERNATIONAL, INC.)
 individually and as successor-in-interest to)
 ALLIED SIGNAL, INC., as successor to)
 BENDIX CORPORATION)
)
IDELLE LABS, LTD.)
)
IMI FABI (DIANA) LLC)
)
IMI FABI (USA) INC.)
)
IMI FABI, LLC)
)
JANSSEN PHARMACEUTICALS, INC.)
 individually and as successor-in-interest to)
 Johnson & Johnson subsidiaries named)
 JOHNSON & JOHNSON CONSUMER INC.,)
 both prior to and after its 2021 restructurings)
 and colloquially known as "Old JJCI" and "New)
 JJCI")
)

JOHNSON & JOHNSON)
)
 JOHNSON & JOHNSON HOLDCO (NA))
 INC., f/k/a JOHNSON & JOHNSON)
 CONSUMER INC., individually and as)
 successor-in-interest to Johnson & Johnson)
 subsidiary "Old JJCI")
)
 KENVUE INC.)
 individually and as successor-in-interest to)
 JOHNSON & JOHNSON CONSUMER INC.)
)
 L'ORÉAL USA, INC.)
)
 L'ORÉAL USA PRODUCTS, INC.)
)
 LLT MANAGEMENT LLC)
 f/k/a LTL MANAGEMENT LLC)
)
 LONG'S DRUGSTORES OF SOUTH)
 CAROLINA, INC.)
)
 LTL MANAGEMENT LLC)
)
 MINERALS TECHNOLOGIES INC.)
)
 THE NESLEMUR COMPANY)
 f/k/a THE NESTLE-LEMUR COMPANY)
)
 PIGGLY WIGGLY, LLC)
 a subsidiary of C&S WHOLESALE GROCERS,)
 INC. sued individually and as successor-in-)
 interest to FLEMING COMPANIES, INC.,)
 successor-in-interest to PIGGLY WIGGLY)
 COMPANY)
)
 PNEUMO ABEX LLC)
 individually and as successor-in-interest to)
 ABEX CORPORATION)
)
 PRESERSE CORPORATION)
)
 THE PROCTER & GAMBLE COMPANY)
 individually and as successor-in-interest to)
 SHULTON, INC.)
)
 PTI ROYSTON, LLC)

d/b/a PHARMA TECH INDUSTRIES)
f/k/a PHARMA TECH INDUSTRIES, INC.)
f/k/a BLACK CREEK CORPORATION)
)
PTI UNION LLC)
d/b/a PHARMA TECH INDUSTRIES)
individually and as successor-in-interest to)
PHARMA TECH INDUSTRIES, INC. f/k/a)
BLACK CREEK CORPORATION, as)
successor-in-interest to DIRECT)
PHARMACEUTICAL CORPORATION and as)
successor-in interest to ENVI DIVERSIFIED,)
INC. f/k/a PHARMA-TECH INDUSTRIES,)
INC.)
)
RALPH LAUREN CORPORATION)
)
RITE AID OF SOUTH CAROLINA, INC.)
)
SHULTON, INC.)
a subsidiary of THE PROCTER & GAMBLE)
COMPANY)
)
SPECIALTY MINERALS INC.)
)
SUMITOMO CORPORATION OF)
AMERICAS)
)
UNION CARBIDE CORPORATION)
)
VI-JON, LLC)
f/k/a VI-JON, INC. f/k/a CUMBERLAND)
SWAN)
)
WALGREEN CO.)
)
WALMART INC.)
)
Defendants.)
_____)

PLAINTIFFS' SECOND AMENDED COMPLAINT

Plaintiffs, MICHAEL L. PERRY and LONNIE L. LONG (hereinafter "Plaintiffs"), sue the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff Michael L. Perry has been diagnosed with mesothelioma caused by exposure to asbestos dust and fibers.

2. This Court has personal jurisdiction over Defendants because Plaintiffs' claims arise from Defendants' conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State;
- (e) Entering into a contract to be performed in whole or in part by either party in this State; and/or
- (f) Exposing Plaintiff to asbestos dust, fibers and/or particles generated from the ordinary and foreseeable use of the asbestos-containing products it sold, supplied, distributed, incorporated, and/or otherwise placed in the stream of commerce in the State of South Carolina and/or other states at times relevant to this action.

3. Every Defendant that has obtained a certificate of authority to transact business in South Carolina has thereby agreed that it is amenable to suit in this State. This Court may exercise general jurisdiction over such foreign corporations consistent with due process.

4. At all times material hereto, Defendants acted through their agents, servants or employees who were acting within the scope of their employment on the business of the Defendants.

5. The Defendants are corporations, companies or other business entities which, during all times material hereto, and for a long time prior thereto have been, and/or are now engaged, directly or indirectly, in the manufacturing, producing, selling, merchandising, supplying, distributing, installing, removing, and/or otherwise placing in the stream of commerce, asbestos-containing products. Courts of the State of South Carolina have personal jurisdiction over all Defendants.

6. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products, raw asbestos materials, raw asbestos talc, and/or asbestos-containing talc products for use in South Carolina, and other states, at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products, raw asbestos, raw asbestos talc, and/or asbestos-containing talc materials.

7. Plaintiffs' claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina and/or other states at times relevant to this action.

8. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business

in South Carolina exposed Plaintiff Michael L. Perry to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

9. Plaintiff Michael L. Perry was exposed to asbestos and/or asbestos-containing body talc products from his birth until approximately 2018 through his personal use, and his family's use, of asbestos-containing body talc products throughout his life, his use and his family's use of asbestos-containing body talc products. These asbestos-containing talcum products were designed, advertised, marketed, and sold as being appropriate for use in the ordinary course by Defendants identified above. It was foreseeable Defendants' asbestos-containing talcum products would be sold for personal use by individuals like Plaintiff Michael L. Perry on himself. Plaintiff Michael L. Perry was thereby exposed to defendants' asbestos-containing talcum products in the State of South Carolina and/or other states at times relevant to this action.

10. Plaintiff was further exposed to asbestos through his employment at various hotel locations where asbestos and asbestos-containing products were removed, replaced, and present in certain facilities.

11. Plaintiff was also exposed to asbestos-containing products at various times throughout his life from his non-occupation work maintaining his vehicles working with asbestos-containing friction products.

12. Plaintiff Michael L. Perry has suffered personal injuries as a proximate result of his regular and prolonged use of, inhalation, ingestion, absorption, and exposure to a variety of asbestos-containing products¹ where asbestos-containing talc was a constituent ingredient.

¹ As used throughout this complaint, the term "asbestos" shall be interpreted in the broadest sense and included, without limitation, non-regulated and non-commercial forms of asbestos (including non-fibrous asbestos), cleavage fragments, and transition/transitional fibers, without limitation as to fiber size, dimension, or ratio.

13. Plaintiff, Michael L. Perry, was exposed to asbestos through his personal daily use, and his family's use, of a variety of talc-based body products including, but not limited to, Ammens body powders, Avon body powders, Calvin Klein talc powder, Cashmere Bouquet talc powders, Chanel talc products, Clubman talc products, Coty talc products, Drakkar Noir talc powder, Estee Lauder talc products, Gold Bond body powders, Johnson and Johnson Baby Powder, Shower to Shower body powder, Mennen talc products, Old Spice talc products, Pinaud talc products, Polo talc powder, Stetson talc products, Walgreens body powders, Walmart body powders, and White Linen talcum powder, ("Talc Powder Products") throughout his life. These products were manufactured, marketed, sold and/or distributed by Defendants.

14. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in his complaint that provided asbestos-containing talc as a constituent ingredient to the Powder Products he used.

15. Each use of the Powder Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the products.

16. Plaintiff Michael L. Perry's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

17. Plaintiffs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

18. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other

acquisition resulting in a virtual destruction of Plaintiffs' remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiffs' remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
AMERICAN INTERNATIONAL INDUSTRIES	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LE MUR COMPANY, and CLUBMAN
ATLAS TURNER INC.	ATLAS ASBESTOS COMPANY LTD.
BLOCK DRUG COMPANY, INC.	THE GOLD BOND STERILIZING POWDER CO. and THE GOLD BOND CO.
BRENNTAG NORTH AMERICA, INC.	MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC.
BRENNTAG SPECIALTIES, LLC	BRENNTAG SPECIALTIES, INC., MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC
C&S WHOLESALE GROCERS, LLC	C&S WHOLESALE GROCERS, INC., FLEMING COMPANIES, INC. and PIGGLY WIGGLY COMPANY
CHATTEM, INC.	MARTIN HIMMEL, INC., BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER COMPANY, THE GOLD BOND COMPANY, and GOLD BOND PHARMACEUTICAL CORPORATION
COLGATE-PALMOLIVE COMPANY	THE MENNEN COMPANY

DEFENDANT	ALTERNATE ENTITY
EDC DRUG STORES, INC.	KERR DRUG STORES, INC.
GENUINE PARTS COMPANY	NATIONAL AUTOMOTIVE PARTS ASSOCIATION (NAPA)
GLAMOUR INDUSTRIES CO.	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LEMUR COMPANY, and CLUBMAN
HIMMEL MANAGEMENT CO. LLC	HIMMEL GROUP, MARTIN HIMMEL INC., BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER CO., and THE GOLD BOND CO.
HIMMEL MEDIA LLC	BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER CO., and THE GOLD BOND CO.
HONEYWELL INTERNATIONAL, INC	ALLIED SIGNAL, INC. and BENDIX CORPORATION
JANSSEN PHARMACEUTICALS, INC.	JOHNSON & JOHNSON CONSUMER INC.
JOHNSON & JOHNSON HOLDCO (NA) INC.	JOHNSON & JOHNSON CONSUMER INC.
KENVUE INC.	JOHNSON & JOHNSON CONSUMER INC.
LLT MANAGEMENT LLC	LTL MANAGEMENT LLC and JOHNSON & JOHNSON CONSUMER INC.
LTL MANAGEMENT LLC	JOHNSON & JOHNSON CONSUMER INC.
THE NESLEMUR COMPANY	THE NESTLE-LEMUR COMPANY
PIGGLY WIGGLY, LLC	C&S WHOLESALE GROCERS, INC., FLEMING COMPANIES, INC. and PIGGLY WIGGLY COMPANY

DEFENDANT	ALTERNATE ENTITY
PNEUMO ABEX LLC	ABEX CORPORATION
THE PROCTER & GAMBLE COMPANY	SHULTON, INC.
PTI ROYSTON, LLC	PHARMA TECH INDUSTRIES, PHARMA TECH INDUSTRIES, INC. and BLACK CREEK CORPORATION
PTI UNION LLC	PHARMA TECH INDUSTRIES, PHARMA TECH INDUSTRIES, INC., BLACK CREEK CORPORATION, DIRECT PHARMACEUTICAL CORPORATION, ENVI DIVERSIFIED, INC., and PHARMA-TECH INDUSTRIES, INC.
SHULTON, INC.	THE PROCTER & GAMBLE COMPANY
VI-JON, LLC	VI-JON, INC. and CUMBERLAND SWAN

19. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

20. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

21. As a direct and proximate result of the conduct as alleged within, Plaintiff Michael L. Perry suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

22. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Michael L. Perry incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Michael L. Perry's medical treatment is ascertained.

23. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff Michael L. Perry incurred, and will continue to incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs pray leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

SUCCESSOR LIABILITY ALLEGATIONS SPECIFIC TO DEFENDANTS
BRENNTAG NORTH AMERICA, INC. AND BRENNTAG SPECIALTIES, LLC
(APPLICABLE TO ALL CLAIMS FOR RELIEF)

24. From the 1890s through 2004, Whittaker, Clark & Daniels, Inc. ("WC&D") operated as a supplier of mineral products, with talc as its biggest seller and specialty:

- a. WC&D offered a diverse variety of talc products to, among others, the paint, rubber, pharmaceutical and cosmetic industries.
- b. WC&D sold talc from nearly all domestic and international talc sources, including talc sourced from Italy (Fontane mine), Montana (Treasure and Regal mines), North Carolina, New York, Alabama, Vermont, China, South Korea, China and Australia.

- c. WC&D maintained several branch offices, over a dozen warehouses throughout the United States and sales agents (or representatives) to aid its talc distribution scheme.
- d. WC&D sold talc directly to customers in located in South Carolina.
- e. WC&D was involved in the mining and processing of talc. From about 1947 to 1965, WC&D owned about 40% of the Fine Pigments Corporation involved in the processing of Montana talc. WC&D owned the Southern Talc Company. Beginning in the early 1960s, WC&D owned (all or most of) Pioneer Talc involved in the mining, processing and sale of Texas talc. From about December 1964 to November 1977, WC&D owned 49% of Metropolitan Talc Company (with the other 51% owned by Charles Mathieu, Inc. [“Mathieu”]) that ground/processed all of the talc from the Fontane mine in Val Chisone, Italy sold in the United States. In late 1980, WC&D formed a wholly-owned subsidiary, Clark Minerals, Inc. (“Clark”). WC&D sold the talc processed by Clark in upstate New York. Throughout 1981 to 1994, WC&D ‘s Clark milled and processed talc ore from Montana, North Carolina, Australia, South Korea and China.
- f. WC&D established close business relationships and entered talc distributorship agreements with a network of talc importers, miners and millers. WC&D sold talc from (a) Mathieu, including Italian talc (Fontane mine), Canadian talc (Henderson mine) and Alabama talc, (b) Cyprus Industrial Minerals Company (1979-1982), including Italian talc (Fontane mine), (c) Warner Corporation (f/k/a Hitchcock Corporation), including North Carolina talc, (d) Pfizer, Inc., including California and Montana talc (Treasure and Regal mines), (e) Barretts Minerals, Inc. (along with Specialty Minerals and Minerals Technologies, Inc.), including Montana talc (Treasure and Regal mines), (e) Luzenac beginning in about 1998, including talc from Italy (Fontane mine) and China (Guangxi region) and (f) Color Techniques.

25. Some of the corporate history relevant to Plaintiff’s claims against defendant

Brenntag Specialties, LLC alleged herein is as follows:

- a. In November 1998, Brenntag Inc. acquired WC&D, purchasing all (or nearly all) of its assets. WC&D continued operating the same business. By February 2004, Brenntag, Inc. was its sole owner or stockholder.
- b. Brenntag, Inc. was a vertically integrated corporate entity under its corporate parent, Brenntag Aktiengesellschaft (“Brenntag AG”), which was in turn a part of the Stinnes Group.
- c. Sometime in late 2003 to February 2004, Brenntag Inc. changed its name to Brenntag North America, Inc. Alternatively, Brenntag, Inc. merged into

Brenntag North America, Inc. or Brenntag North America, Inc. operated as the mere continuation of Brenntag Inc. As a non-exclusive example, a February 3, 2004 letter from WC&D's president (Theodore Hubbard) to a talc customer (Chanel) quoted Brenntag, Inc.'s president (Steve Clark) that the "old name" Brenntag, Inc. changed to the "new name" of Brenntag North America, Inc.

- d. In December 2003, both Mineral and Pigment Solutions, Inc. ("MPSI") and Brenntag North America, Inc. incorporated in Delaware. Brenntag North America, Inc. was the sole owner or stockholder of MPSI.
- e. In February 2004, MPSI acquired WC&D, purchasing all (or substantially all) of WC&D's assets. MPSI remained a subsidiary of Brenntag North America, Inc. WC&D immediately ceased its productive business operations. As described further herein, MPSI continued the business operations of WC&D; MPSI became a new hat for WC&D.
- f. The officers and directors of pre-February 2004 WC&D continued in their roles as officers and directors of the post-February 2004 MPSI, including the President (Theodore Hubbard), the Vice President (Thomas Gunstra), multiple other Vice Presidents, including Ray Rogers and Robert Przbylowski, corporate secretaries Edward Boyadjian and Julia Bonechi, lab manager Frank McGonigle and controller Bradley Owens.
- g. The operations of post-February 2004 MPSI were identical (or virtually identical) to the pre-February 2004 WC&D. MPSI continued with the same employees, offices, sales contracts and took ownership of WC&Ds pre-February 2004 real estate lease obligations.
- h. In or around July to August 2007, MPSI changed its name to Brenntag Specialties, Inc. Brenntag Specialties, Inc. remained a subsidiary of Brenntag North America, Inc. As described further herein, Brenntag Specialties, Inc. continued the business operations of WC&D and MPSI.
- i. In or around December 2019 to January 2020, Brenntag Specialties, Inc. changed its name to Brenntag Specialties, LLC. Brenntag Specialties, LLC continued the same business operations of WC&D, MPSI and Brenntag Specialties, Inc.
- j. From February 2004 to April 2023, WC&D engaged in no productive business activity (other than managing the defense and payment of claims of those injured from the former sales of WC&D products, including claims alleging injuries from mesothelioma caused or contributed by exposure to the talc WC&D sold).
- k. On or around April 26, 2023, WC&D filed for Chapter 11 bankruptcy. The Bankruptcy Court implemented a stay of litigation against WC&D shortly

thereafter. The Bankruptcy Court has not issued a stay of such litigation against defendant Brenntag Specialties, LLC.

26. Under South Carolina law and/or New Jersey substantive law, Brenntag Specialties, LLC (“BSL”), including under its former names (collectively, as MPSI, BSI and BSL from 2004 onward, “Defendant MPSI/BSL”), can be held liable as successor-in-interest for harm caused by WC&D’s talc pre-February 2004. Defendant MPSI/BSL was the (a) “mere continuation” of WC&D, (b) result of a “de facto merger” and (c) seller of the same product line(s):

- a. WC&D business operations continued uninterrupted following the February 2004 asset purchase transaction under a new name, as Defendant MPSI/BSL repeatedly acknowledged and admitted. As a non-exclusive example, WC&D’s president (and the soon-to-be MPSI president) Theodore Hubbard stated in a February 3, 2004 letter to a talc customer (quoting Brenntag, Inc.’s president) that (a) the “old name” WC&D will be changed to the “new name” MPSI, (b) the only difference between WC&D and MPSI will be the name and (c) “business will continue as usual with no reduction in jobs, no changes to any headquarter locations, no change in sales personnel or customer service locations. The phone and fax numbers you currently use will continue under the new entities.”
- b. Defendant MPSI/BSL held itself out as a continuation of WC&D and actively encouraged the perception in the eyes of the public.
- c. WC&D and Defendant MPSI/BSL maintained continuity in ownership. Brenntag, Inc. owned WC&D before the February 2004 transaction. Brenntag North America, Inc. owned MPSI after the February 2004 transaction.
- d. Per the same February 3, 2004 letter identified above, Brenntag, Inc. and Brenntag North America, Inc. were the same corporate entity with different names. More broadly, MPSI maintained the same position as WC&D vertically integrated within Brenntag AG’s broader corporate structure.
- e. WC&D and Defendant MPSI/BSL maintained continuity in employees. All (or virtually all) of WC&D employees continued working for Defendant MPSI/BSL after the February 2004 transaction. There was no change in the health insurance or 401(k) accounts of employees.
- f. WC&D and Defendant MPSI/BSL maintained continuity in leadership and management. Key management continuing in the same (or essentially the same) positions at WC&D before the February 2004 transaction and MPSI after the February 2004 transaction include (without limitation) Theodore

Hubbard (president), Robert Przbylowski (vice president), Bradley Owens (treasurer/controller), Thomas Grunstra (VP of marketing), H. Edward Boyadija (secretary) and Frank McGonigle (lab manager/technical services). As of February 12, 2004, the officers of WC&D consisted of Theodore Hubbard, Robert Przbylowski, Thomas Grunstra, Ray Rogers, H. Edward Boyadijan and Julia Bonechi. The same six individuals were also listed as officers of MPSI in February 2005, February 2006 and February 2007. James Doyle and Theodore Hubbard were listed as directors of WC&D as of February 12, 2004. By February 27, 2004, James Doyle and Theodore Hubbard were directors of MPSI.

- g. WC&D and Defendant MPSI/BSL maintained continuity in operating locations. For many years before and after the February 2004 transaction, WC&D and Defendant MPSI/BSL maintained (a) headquarters at 1000 Coolidge Street in South Plainfield, New Jersey and (b) regional offices and/or facilities in Norcross, Georgia, Plainfield, Illinois, Houston, Texas and Laguna Hills, California.
- h. WC&D and Defendant MPSI/BSL maintained continuity in general business purpose. Nothing about the nature of WC&D's business (and what its employees/management did on a day-to-day basis) changed after the February 2004 transaction. Defendant MPSI/BSL maintained business contracts to ensure continuity of business operations. WC&D and Defendant MPSI/BSL maintained the same suppliers (*e.g.*, Luzenac, Minerals Technologies), laboratory, business procedures, sales structures and distribution networks (as reflected/admitted, among other places, in the February 3, 2004 letter identified above).
- i. Defendant MPSI/BSL continued selling and distributing the product lines as WC&D before February 2004 transaction. As non-exclusive examples of talc grades and/or product numbers, Defendant MPSI/BSL continued selling 184 (French talc), 190 (Italian talc), 1745 (Montana talc), IMP 1887L, 2755 (Montana talc), 3465 Supra H and 5215 Olympic H. Defendant MPSI/BSL used the same designations as the pre-2004 WC&D entity and from the same sources as the pre-2004 WC&D entity. Some of these talc grade designations continued to carry the designation "WCD" after the 2004 asset sale, presumably to maintain the marketing/goodwill advantage developed by WC&D.
- j. From late 1998 to February 2004, WC&D letterhead repeatedly and/or consistently featured the name "Brenntag" and/or associated WC&D as "A Brenntag company."
- k. Defendant MPSI/BSL benefitted from the goodwill, recognizability and association with WC&D's business operations. After February 2004, Defendant MPSI/BSL continued distributing material safety data sheets, product data sheets, certificates of analysis, correspondence, brochures,

pamphlets and/or other literature (a) created by WC&D (prior to February 2004), (b) with the WC&D name and/or (c) in the same recognizable format as previously used by WC&D. After February 2004, Defendant MPSI/BSL repeatedly promoted products bearing WC&D names. As a non-exclusive example, a January 2008 Brenntag Specialties, Inc. product data sheet advertised the following talc or mineral products: Whittaker IMP 1887L, Whittaker IMP 1824L, Whittaker IMP 1889L, WCD 1745, Whittaker IMP 1823L, WCD 2755, WCD 2747, WCD 2457, Whittaker IMP 1820L, Whittaker 3328 and WCD 2749.

- I. Defendant MPSI/BSL sold talc directly to customers located in the State of South Carolina.

27. WC&D and Defendant MPSI/BSL (individually and as successor-in-interest to WC&D, as described above) made purposeful efforts to sell talc to large-scale product manufacturers that incorporated such talc into finished products that were marketed and sold nationally, including in the State of South Carolina:

- a. WC&D and Defendant MPSI/BSL promoted themselves (including in nationally-distributed trade publications) as having customer contacts, and the capability to distribute, talc throughout the nation. As a non-exclusive example, distribution agreements between Pfizer and WC&D state that WC&D has the “ability, facilities, personnel and technical qualifications to promote the sale [of Pfizer’s talc] as well as extend credit to its customers and to provide purchasers [of such talc] with satisfactory technical services and product deliveries.”
- b. WC&D and Defendant MPSI/BSL (a) knew the identity, scale and nationwide marketing and distribution scope (that included South Carolina) of the large-scale product manufacturer customers that it sold talc to and (b) intended such large-scale product manufacturers to specify WC&D and Defendant MPSI/BSL’s talc in their products (*i.e.*, WC&D and Defendant MPSI/BSL would become the exclusive supplier of talc for particular finished products or types of finished products sold with such a scale and scope). WC&D and Defendant MPSI/BSL (i) sought and solicited such product manufacturer accounts because of the scale and scope of their marketing and distribution, (ii) promoted particular talc grades that they sold as meeting the performance specifications of finished products (*e.g.*, body powder loose face powder, pressed face powder, blush, eye shadow) sold by such customers, (iii) provided talc samples and/or information to the large-scale product manufacturers to meet their quality control and/or raw material approval processes, (iv) entered supply contracts (*i.e.*, all the talc needed for a particular product or type of product) with such customers and (v) maintained regular correspondence with such large-scale product

manufacturers regarding the packaging, delivery, price and quality (*e.g.*, MSDS, Certificates of Analysis).

- c. WC&D and Defendant MPSI/BSL joined, attended, advertised in and/or participated in (a) nationwide industry organizations (*e.g.*, the CTFA/PCPC), (b) nationally-distributed trade publications (*e.g.*, magazines, newsletters) and (c) trade shows and conferences. WC&D and Defendant MPSI/BSL did so to, among other reasons, remain informed about the nature of the market for talc in the cosmetic and personal care industries, solicit and promote business with such large-scale product manufacturers and contribute to industry efforts to influence federal regulations impacting talc.

28. WC&D and Defendant MPSI/BSL (individually and as successor-in-interest to WC&D, as described above) sold talc that was incorporated in finished products that Plaintiff and/or Plaintiff's family members purchased and used, including in the State of South Carolina:

- a. Throughout at least the 1970s to the 2010s, WC&D and Defendant MPSI/BSL consistently sold substantial quantities of talc to the entities making Cover Girl products (Noxell, Procter & Gamble ["Noxell/P&G"]), including at its manufacturing site in Maryland and to contract manufacturers (*e.g.*, Sterigenics in New Jersey).
- b. Throughout at least the 1970s to 2010s, WC&D and Defendant MPSI/BSL consistently sold substantial quantities of talc to Revlon, including at its manufacturing sites in North Carolina, New Jersey and Arizona.
- c. Throughout the 1970s to 2010s, WC&D and Defendant MPSI/BSL consistently sold substantial quantities of talc to Estee Lauder, Avon and the entities making Maybelline products.

29. WC&D and Defendant MPSI/BSL (a) possessed specific knowledge that the talc it sold (which became incorporated in products Plaintiff used contained asbestos, (b) knew that inhaling such asbestos can cause mesothelioma and (c) failed to warn:

- a. WC&D and Defendant MPSI/BSL always remained at the forefront of talc industry knowledge and always held themselves out as experts on the properties of talc. WC&D promoted itself as "The Talc House."
- b. By 1941, WC&D knew that tremolite occurred as an accessory mineral to, and frequently grew alongside, talc.
- c. By 1957, WC&D knew of the association between talc and asbestos (or that asbestos occurred as an accessory mineral to talc). In its own promotional

bulletin, WC&D (a) referred to one of its talc grades as “halfway between a talc and an asbestos,” (b) recognized that “a mineralogically pure talc is an extreme rarity” and (c) referred to some talc sources as containing tremolite with “fibrous” characteristics.

- d. By 1971, WC&D was aware that asbestos can occur in talc intended to be used in cosmetic products (e.g., body powders, face powders). WC&D attended an August 1971 FDA-sponsored conference on analytical techniques to identify asbestos in talc that discussed the issue.
- e. By 1972-1973, WC&D had repeatedly received information that talc from the Fontane mine in Italy (e.g., Talc 1615), a talc that WC&D sold, contained asbestos. WC&D received test results by its consultant E.S. Laboratories (chrysotile in Talc 1615), its consultant Dr. Lewin (tremolite in Coty Airspun containing WC&D-supplied Talc 1615 tremolite fibers in Talc 1615), its consultant Ernest Fullam (tremolite fibers and chrysotile in Talc 1615) and the CTFA round robin.
- f. By 1972-1973, WC&D received information that talc from the Treasure and Regal mines in Montana contained asbestos. WC&D received test results by its consultant E.S. Laboratories (chrysotile in Talc 1745), its consultant Ernest Fullam (tremolite fibers and chrysotile in Pfizer-sourced Montana talc) and the CTFA round robin.
- g. WC&D distributed raw chrysotile asbestos from Asbestos Corporation Limited from the 1930s through the early- to mid-1970s. As a seller of raw asbestos, WC&D held the obligation of being an expert on asbestos and remaining abreast of the scientific literature on the dangers of asbestos.
- h. WC&D admitted that it became generally aware of asbestos dangers in the late 1960s. WC&D learned that asbestos can cause (a) asbestosis in the late 1960s and (b) mesothelioma by 1971. By 1974, WC&D management received information that relatively short or brief exposures to asbestos can cause mesothelioma.
- i. In 1972, WC&D received an industry news bulletin that inhaling asbestos in talc presents a risk of cancer. In 1973, WC&D attended a meeting discussing Dr. Kleinfeld’s published mortality study showing increased risk of lung cancer and a mesothelioma in upstate New York talc workers.
- j. WC&D failed to test the talc that it sold (a) until August 1971, (b) for the presence of actinolite asbestos or anthophyllite asbestos, (c) with adequate frequency, as reflected in a March 1976 FDA memorandum expressing “great concern” with WC&D’s “limited effort to control the quality of their cosmetic talc” and (d) with methods capable of detecting asbestos at concentrations below 0.5-1.0% by weight. WC&D repeatedly received information about transmission electron microscopy, including at the FDA-sponsored conference in August 1971, in an industry newsletter in March

1972 and in frequent CTFA meetings. By choosing to less sensitive/powerful methods, WC&D made the conscious choice to accept, tolerate and overlook up to 0.5-1.0% by weight.

- k. WC&D and Defendant MPSI/BSL failed to warn. WC&D and Defendant MPSI/BSL (a) never placed a label, caution or warning on any of the talc products that it sold stating that it contained asbestos (or otherwise communicated that to the public), (b) never provided customers or the public the information that WC&D and Defendant MPSI/BSL received and possessed regarding findings of asbestos minerals, fibrous tremolite and/or asbestos in the talc that it sold and (c) never warned that exposure to the asbestos-containing talc products it sold can cause mesothelioma.
- l. WC&D made false statements to the FDA and others regarding the composition of its talc (as not containing asbestos). As a non-exclusive example, in March 1976 correspondence to the CTFA (that WC&D knew would be forwarded to the FDA), WC&D stated that neither asbestos minerals nor asbestos had been detected in the talc that WC&D sold. As described above, this statement is demonstrably false.

SUCCESSOR LIABILITY ALLEGATIONS SPECIFIC TO DEFENDANTS
JOHNSON & JOHNSON, JOHNSON & JOHNSON HOLDCO (NA) INC.,
KENVUE INC., JANSSEN PHARMACEUTICALS, INC., LTL MANAGEMENT LLC,
and LLT MANAGEMENT LLC
(APPLICABLE TO ALL CLAIMS FOR RELIEF)

30. From the 1890s to December 1978, defendant Johnson & Johnson alone designed, manufactured, marketed, distributed, and sold talc-containing Johnson's Baby Powder in the United States, including in South Carolina, where Plaintiff was exposed to their products:

- a. Johnson & Johnson was incorporated in 1887 and began selling Johnson's® Baby Powder in 1894, launching its baby care line of products.
- b. In September 1965, Johnson & Johnson's wholly-owned subsidiary Docrom, Inc., was incorporated in Vermont for the purpose of acquiring Eastern Magnesia Talc Co., Inc.
- c. Immediately thereafter, Docrom changed its name to Eastern Magnesia Talc Co. and then in September 1967, to Windsor Minerals, Inc.
- d. Throughout late 1967 to about January 1989, Johnson & Johnson's subsidiary Windsor Minerals, Inc. mined and processed Vermont talc (including from the Hammondsville, Argonaut, Rainbow, and Hamm mines) that was incorporated into Johnson's Baby Powder.

- e. In 1972, Johnson & Johnson established a formal operating division for its baby products business. Johnson & Johnson transferred all its assets and liabilities associated with the baby products division to Johnson & Johnson Baby Products.
- f. Johnson & Johnson Baby Products remained an operating division (rather than a separate or independent subsidiary) through at least December 1978.

31. From at least January 1979 through October 2021, “Old JJCI” designed, manufactured, marketed, distributed, and sold talc-containing Johnson’s Baby Powder, including in South Carolina, where Plaintiff purchased and used their products:

- a. In about January 1979, Johnson & Johnson transferred the assets associated with its baby products division to Johnson & Johnson Baby Products.
- b. In 1981, Johnson & Johnson Baby Products transferred all its assets, except those assets allocated to its diaper programs, to Omni Education Corporation (“Omni”), a wholly owned subsidiary of Johnson & Johnson Baby Products. In turn, Omni assumed all liabilities of Johnson & Johnson Baby Products except those liabilities related to its diaper program.
- c. Immediately following the transaction, Johnson & Johnson Baby Products merged into another subsidiary of Johnson & Johnson and was renamed Personal Products Company, and Omni changed its name to Johnson & Johnson Baby Products Company.
- d. In 1988, Johnson & Johnson Baby Products Company transferred all its assets for its baby products business to Johnson & Johnson Dental Products Company, which assumed all of its liabilities and was renamed Johnson & Johnson Consumer Products, Inc.
- e. In 1997, Johnson & Johnson Consumer Products, Inc. changed its name to Johnson & Johnson Consumer Companies, Inc.
- f. In 2015, J&J Consumer Companies merged with and into an affiliate, which then merged into McNeil-PPC, Inc. The resulting entity was renamed Johnson & Johnson Consumer Inc. (including all former names and historical forms from at least 1979 to October 2021, “Old JJCI”). Johnson & Johnson was the parent of subsidiary Old JJCI.

32. Johnson & Johnson (the parent) holds responsibility (along with Old JJCI and the New J&J Defendants) for Johnson’s Baby Powder at all times of its manufacture.

33. Johnson & Johnson is directly liable for its own wrongful conduct after January 1979, as described below and throughout this Complaint.

34. Johnson & Johnson and Old JJCI intermingled and disregarded their separate corporate status.

35. Johnson & Johnson exercised pervasive control over Old JJCI pertaining to the composition, testing, safety and labeling of, and public relations regarding, their talc-containing products, resulting in the continued sale of asbestos-containing Johnson's Baby Powder without warnings and Mr. Johnson's exposure (and injuries) therefrom:

- a. Johnson & Johnson (*not* Old JJCI) owned the Vermont talc mines that sourced Johnson's Baby Powder and other products.
- b. In 1967-1989, Johnson & Johnson exercised control over all key decisions in WMI's operations. As examples, it required WMI to submit approval for ore sources and report directly regarding testing of its ore for asbestos.
- c. In January 1989, Johnson & Johnson (*not* Old JJCI) (a) sold the talc mines to Cyprus Mines Corp. ("CMC"), (b) entered a supply agreement, (c) enforced strict quality control over CMC and (d) agreed to indemnify CMC for any liabilities arising from the sale or use of such talc.
- d. Johnson & Johnson sold WMI in 1989 and assumed WMI's liabilities.
- e. During and after January 1979, Johnson & Johnson (the parent) remained actively involved in, and exercised control over, the manufacturing process of Johnson's Baby Powder. Johnson & Johnson oversaw, and was regularly copied on routine correspondence regarding, talc processing, packaging and quality control of the talc in Johnson's Baby Powder. Johnson & Johnson attended and participated in meetings with, and audits of, contract manufacturer Pharma Tech Industries, Inc. after 2005.
- f. Johnson & Johnson admitted under oath that, *not* Old JJCI, but "Johnson & Johnson corporate in New Brunswick made all health and safety policy decisions with regard to asbestos and talc products."
- g. Johnson & Johnson required approval of Old JJCI's labeling decisions. Per sworn testimony, Johnson & Johnson (the parent), *not* Old JJCI, had authority to put warnings on Johnson's Baby Powder. As an example, in response to inquiries in 2008-2009, Johnson & Johnson instructed Old JJCI to not to place cautions on Johnson's Baby Powder.

- h. After January 1979, Johnson & Johnson (the parent) controlled public relations on the composition and safety of Johnson's Baby Powder. Johnson & Johnson (a) drafted and published statements defending the composition and safety of the talc in Johnson's Baby Powder (including, as non-exclusive examples, in February 1998, October 2000 and May 2016), (b) received advance copies of media statements and (c) operated websites that provided false and misleading information.
- i. Johnson & Johnson (the parent) directed and controlled litigation strategy on Johnson's Baby Powder (and thus the control of public information). Johnson & Johnson in-house counsel (Frank Bolden) attended depositions in the *Westfall* case and received correspondence on testing of talc ores for asbestos. Johnson & Johnson implemented litigation holds and document retention policies. Johnson & Johnson personnel (e.g., Mr. Ashton) made false and misleading statements in sworn statements.
- j. After January 1979, Johnson's Baby Powder bottles bore the Johnson & Johnson name and trademarks. By design and intention, the public perceived Johnson's Baby Powder as a Johnson & Johnson product.
- k. After January 1979, Johnson & Johnson (the parent) (a) engaged in efforts to promote Johnson's Baby Powder and (b) sought to benefit from the "emotional bond," recognizability and goodwill developed from the baby products line, including Johnson's Baby Powder. Numerous memoranda, including in power points in April 1997, August 1997 and June 2010, reflect Johnson & Johnson's conscious strategy of seeking to benefit from Johnson's Baby Powder, referring to it as their "flagship product" and "golden egg" that "feed[s] the goose" and "lead[s] the flock."
- l. The Johnson & Johnson Board met in June 2017 to discuss reputational risk from information becoming public about Johnson's Baby Powder.

36. In October 2021, Johnson & Johnson and/or Old JJCI devised and implemented a plan with the objective of eliminating (or substantially reducing) liability for harm caused by its talc products:

- a. In October 2021, Old JJCI underwent a series of corporate restructuring transactions in which it split itself into two separate entities through a "divisive merger," known as the "Texas Two Step."
- b. The transactions were intended to isolate the talc liabilities of Old JJCI into a newly-invented company created by J&J called LTL Management, LLC ("LTL"). LTL stands for "Legacy Talc Liability."
- c. LTL has held no productive business assets and has served no productive business purpose. LTL receives *de minimus* revenue streams.

- d. As part of the Texas Two Step, virtually all of the assets of Old JJCI were transferred to a new corporate entity bearing the same name, “Johnson & Johnson Consumer Inc.” (“New JJCI”). New JJCI continued the business operations as Old JJCI. Old JJCI ceased to exist.
- e. Immediately thereafter in October 2021, LTL was put into a Chapter 11 Bankruptcy wherein LTL and other Johnson & Johnson entities sought the protection of the Bankruptcy Code’s processes to (a) stay of all pending litigation and (b) force an aggregate resolution of present and future talc/asbestos liabilities that would foreclose jury trials and reduce the compensation owed.
- f. The Bankruptcy Court presiding over LTL’s first bankruptcy case stayed and enjoined all litigation for the harm caused by Johnson’s Baby Powder against (a) the debtor LTL, (b) Johnson & Johnson and New JJCI and (c) various other entities, including PTI Royston, LLC.
- g. The United States Court of Appeals for the Third Circuit held on January 30, 2023 that the bankruptcy filing by LTL was not proper and/or made in bad faith. Ultimately, on April 4, 2023, the lower Bankruptcy Court formally dismissed the first LTL bankruptcy case.
- h. On April 4, 2023, a few hours after the first LTL bankruptcy dismissal, LTL filed a second petition for bankruptcy in the same court.
- i. On July 28, 2023, the Bankruptcy Court in the second LTL case issued an opinion granting motions to dismiss as filed in bad faith. The Bankruptcy Court formally dismissed the second bankruptcy on August 11, 2023.

37. During the appeal process for the first LTL bankruptcy, New JJCI transferred its business to defendant Kenvue Inc.:

- a. The business operations of Old JJCI before the October 2021 “Texas Two Step” continued uninterrupted and unchanged (aside from *de minimus* revenue streams to LTL) in New JJCI after October 2021.
- b. On December 16, 2022, New JJCI changed its name to defendant Johnson & Johnson Holdco (NA) Inc. (“New JJCI/Holdco”).
- c. In January 2023, the business assets of New JJCI/Holdco were transferred to defendant Janssen Pharmaceuticals, Inc. (“Janssen”).
- d. Around February 2023, Janssen transferred the productive assets of the consumer business it recently received (from New JJCI/Holdco) to another Johnson & Johnson subsidiary, Kenvue, Inc. (“Kenvue”).
- e. The Bankruptcy Court barred Plaintiffs from naming (a) New JJCI, New

JJCI/Holdco, Janssen and Kenvue until at least April 20, 2023 and (b) LTL Management, LLC until August 11, 2023.

38. Under South Carolina and/or New Jersey substantive law, defendants New JJCI/Holdco, Janssen and Kenvue (collectively, “New J&J Defendants”) are the successors-in-interest to Old JJCI. The New J&J Defendants, culminating in Kenvue, are the (a) “mere continuation” of Old JJCI, (b) result of a “de facto merger,” (c) result of transactions made fraudulently (or in bad faith) to escape liability (recognized, as a matter of law, by the Third Circuit) and (d) manufacturers, marketers and sellers of the same “product lines:”

- a. Kenvue has admitted to being the “mere continuation” of Old JJCI’s business. As non-exclusive examples: Thibaut Mongon, Kenvue’s CEO, gave sworn testimony that Kenvue has held itself out as the continuation of Old JJCI. He also stated that the business operations of Old JJCI and New JJCI remained the same before and after the October 2021 Texas Two Step. In public SEC filings, Kenvue acknowledged that it is a continuation of Old JJCI in (a) comparing its 2023 financial performance to 2018-2021 (*i.e.*, before Kenvue was created), (b) referring to its pre-existence “heritage” (*e.g.*, “We have a world class, global portfolio of iconic and modern brands that has been built over the last 135 years and is trusted by generations of consumers”) and (c) stating “[w]e have historically operated as part of Johnson & Johnson.”
- b. By design, the public perceives Kenvue as the continuation of Old JJCI.
- c. Old JJCI and the New J&J Defendants (culminating in Kenvue) maintained continuity in leadership and management. In public SEC filings, Kenvue stated that its “senior leadership team ... effectively transformed our business since taking the helm in 2019...” In other words, the same management team started with Old JJCI and continued the same roles in New JJCI in October 2021 through Kenvue in 2023. Mr. Mongon held the same position of CEO in Old JJCI and Kenvue. Other non-exclusive examples of leadership personnel holding the same (or substantially similar) roles in Old JJCI to Kenvue include Paul Ruh, Meri Stevens, Donna Lorenson, Dr. Caroline Tillett, Kathy Widmer, Jan Meurer, Manoj Raghunandan and/or Natasha Zuyez.
- d. Old JJCI and the New J&J Defendants (culminating in Kenvue) maintained continuity of its employee workforce. All (or virtually all) of the employees of Old JJCI continued working for the New J&J Defendants, culminating in Kenvue. The same employees continued performing the same duties reporting to the same supervisors.

- e. Old JJCI and the New J&J Defendants (culminating in Kenvue) maintained continuity in ownership as a result of a stock swap in which owners of shares of Johnson & Johnson became owners of Kenvue.
- f. The New J&J Defendants (culminating in Kenvue) continued using the same operating business locations. Kenvue has the same headquarters of Old JJCI at 199 Grandview Road, Skillman, New Jersey. Kenvue operates the same manufacturing, marketing and research sites.
- g. To ensure no interruption in day-to-day business operations from Old JJCI to the New J&J Defendants (culminating in Kenvue), a “Separation Agreement” provided for and/or included (a) the transfer of contracts, permits, licenses and other rights previously held by Old JJCI, (b) a Transition Manufacturing Agreement and (c) a Transition Services Agreement. Contracts with raw material and other suppliers, contract manufacturers and customers were transferred. The information technology systems of Old JJCI were transferred to Kenvue.
- h. Old JJCI and the New J&J Defendants (culminating in defendant Kenvue) maintained continuity in general business purpose. The New J&J Defendants make, market and sell the same product lines as Old JJCI. In public filings, Kenvue designates the same business segments as Old JJCI.
- i. Old JJCI and the New J&J Defendants (culminating in defendant Kenvue) maintained continuity in its customer base. Kenvue sells the same volume to the same geographic areas and customer demographic as Old JJCI.
- j. The New J&J Defendants continued designing, manufacturing, marketing, distributing and selling Johnson’s Baby Powder from October 2021 to the present. The New J&J Defendants continue to sell talc-containing Johnson’s Baby Powder overseas. In a September 6, 2023 public filing, Kenvue referred to “... Kenvue’s historic or *current* sale of talc or talc-containing products” and “talc-based Johnson’s Baby Powder will be discontinued in 2023” (*i.e.*, it is not yet discontinued). Talc-containing Johnson’s Baby Powder remains available for purchase in the United States at retail stores and online. Cornstarch Johnson’s Baby Powder is merely a different formula than the talc variety, but serves the same function, is applied the same way and has the same appearance.
- k. The New J&J Defendants (culminating in defendant Kenvue) benefit and profit from the goodwill, research, recognizability and brand loyalty of Old JJCI, including as to Johnson’s Baby Powder. They benefit from receiving (or having license to use) trademarks and other intellectual property rights of Johnson & Johnson royalty-free.
- l. Kenvue acknowledged and admitted in public SEC filings that it may be held accountable for the harm caused by the talc-containing products made and sold by Old JJCI. Kenvue admitted that “it is also possible that various

parties will seek to bring and will be successful in bringing claims against us, including by raising allegations that we are liable for the Talc-Related Liabilities.” Kenvue also acknowledged that it is “responsible for all liabilities on account of or relating to harm arising out of, based upon, or resulting from, directly or indirectly, the presence of or exposure to talc or talc-containing products sold outside the United States or Canada.”

- m. The New J&J Defendants continue the same public relations campaign that includes false statements and misrepresentations about the asbestos content and health risks associated with the same talc-containing products (sold by Johnson & Johnson, Old JJCI and the New J&J Defendants) designed to influence regulators and public opinion.

39. Before and during the time of Plaintiff’s use of J&J’s talc products (from 1960s to 2023, defendants Johnson & Johnson, New JJCI (Holdco), Janssen and Kenvue (collectively, “J&J”) possessed specific knowledge that the talc in its products contained asbestos and inhaling such asbestos can cause fatal diseases, including mesothelioma. In other words, J&J knew the danger inherent in Johnson’s Baby Powder:

- a. Before and during the time Plaintiff used J&J’s talc products, J&J knew that asbestos exposure, including asbestos exposure from inhaling asbestos-containing talc, can cause fatal diseases such as mesothelioma.
- b. Johnson’s Baby Powder (“JBP”) sold in the United States contained (a) Windsor 66 (talc sourced from the Hammondsville, Argonaut, Rainbow, and Hamm Vermont mines) in 1967 to late 1979 and mid-1980 to 2003, (b) Supra (talc sourced from the Fontane mine in Italy) in late 1979 to mid-1980 and (c) talc from the Guangxi, China reason from 2003 onward.
- c. Before and during the time Plaintiff used J&J’s talc products, J&J knew of the association of talc and asbestos.
- d. Throughout the late 1960s to the 2000s, J&J repeatedly received information from its own consultants that the talc from the Vermont talc sources that it used in Johnson’s Baby Powder contained asbestos.
- e. Before and during the time Plaintiff used J&J’s talc products, J&J regularly recognized (internally or behind closed doors) the presence of tremolite and actinolite, including in their fibrous/asbestos varieties, in the talc used in Johnson’s Baby Powder.
- f. Before and during the time Plaintiff used J&J’s talc products, J&J knew that consumers like (and including) Plaintiff would inevitably inhale talc dust/powder (and therefore asbestos fibers) when using its products.

40. Despite all of the information that J&J knew and recognized (as described above), J&J (a) failed to warn, (b) failed to implement substitutes (*e.g.*, corn starch) and (c) failed to adequately test and accurately report the presence of asbestos in its talc:

- a. J&J never warned. J&J never placed any sort of label on its products indicating they contained asbestos. J&J always told the public that there has never been a single asbestos fiber in its products.
- b. J&J never affixed warnings stating that its products can cause cancer and mesothelioma.
- c. Before 2016-2017, J&J never disclosed or otherwise reported to the public the hundreds of findings of asbestos minerals, fibrous tremolite/actinolite and/or asbestos that J&J received and/or knew about.
- d. J&J failed to develop and fully implement a safer alternative to talc in Johnson's Baby Powder.
- e. J&J failed to adequately test the talc in Johnson's Baby Powder for the presence of asbestos.
- f. J&J designed its reporting methodology to yield negative results rather than accurate results.
- g. J&J promoted regulations that called for less sensitive/powerful methods of detecting asbestos in talc.

41. J&J made false statements and concealed evidence that it possessed regarding the presence of asbestos in the talc in Johnson's Baby Powder:

- a. J&J believed that Johnson's Baby Powder was its "flagship product." In numerous internal documents, J&J referred to Johnson's Baby Powder as its "sacred cow" and "golden egg."
- b. J&J recognized that its businesses (a) benefited from the "emotional trust" and perception of "safety" developed from an "infant bond" with J&J's baby product line, including Johnson's Baby Powder and (b) would be adversely impacted by the reputational damage of its flagship product being associated with cancer.
- c. J&J engaged in a pattern of making false statements to government entities, courts and the American public.

- d. Discussions between the FDA and the CTFA subcommittee occurred throughout the early- to mid-1970s when the FDA was considering regulating and overseeing asbestos in cosmetic talc products.
- e. The FDA eventually asked CTFA subcommittee members to send the FDA their own internal test results.
- f. The FDA would use that information to evaluate the composition of popular cosmetic talc products and the frequency and the quality of industry's internal testing programs.
- g. CTFA members knew the FDA would base its decision on whether and how to regulate the industry on the information that members provided.
- h. J&J gave its response in writing on March 15, 1976. J&J told the FDA that, by XRD, DTA and TEM analysis, no asbestos had ever been found. J&J also asserted that "no amphiboles or serpentine minerals have been detected." As described above, these statements were demonstrably false.
- i. J&J knew the statements were false when it made them.
- j. J&J made many other false statements to the FDA and other government/regulatory bodies. For example, in October 1971, J&J knew about, approved of and ratified its consultant, McCrone, purposely omitting findings of asbestos in reports to be submitted to the FDA. J&J wrote to McCrone that presenting the truth "would only tend to confuse the issue perhaps with the FDA." Despite numerous findings of chrysotile asbestos by multiple analysts, J&J told FDA representatives in February 1975 that no cosmetics talcs (from J&J or otherwise) contain chrysotile. In response to a Citizens Petition to J&J and others regarding ovarian cancer risk, J&J told the FDA in 1995 that it had confirmed "the absence of asbestiform minerals." When editing J&J's website in 2016, J&J acknowledged internally that it "cannot say our talc-based consumer products have always been asbestos free." But, in March 2016, J&J represented to the FDA that no asbestos structures had ever been found in J&J's talc-based products by any testing method.
- k. J&J engaged in a pattern of manipulating and destroying evidence. In an October 1972 report, McCrone found tremolite asbestos in J&J talc products. J&J made a handwritten note stating: "DO NOT USE THIS REPORT." The report was then revised to remove the quantification of asbestos found. In March 1978, the CTFA conducted a "round robin" in which committee members tested each other's samples. When the results distributed amongst members showed which members' products contained asbestos, a J&J employee (and then-chairmen of the CTFA committee) instructed members to "destroy your copy of the table" containing the results. J&J and its consultant, McCrone, established a protocol where McCrone segregated positive findings. For example, in 1986, under

McCrone Project No. ME-2275 and Purchase Order WS-0503, McCrone authored two separate reports of test results. The first stated all samples contained “no quantifiable” amounts of asbestos with three samples noticeably missing from the numbering sequence of samples. The second report showed the three talc samples each contained chrysotile asbestos.

- l. Since 1969, J&J knew of the potential for litigation arising from the inhalation of its talc products.
- m. Despite knowing the potential for litigation since 1969 and being involved in ongoing litigation from the 1970s onward, J&J failed to make any systematic effort to collect potentially responsive or relevant documents until the mid-1990s.
- n. J&J failed to institute a litigation hold and records retention policy until at least 1997. J&J (a) failed to maintain the underlying data (e.g., data on the chemistry, crystal structure and shape of structures) for virtually all of the testing reports from its consultants that J&J claims show non-detects (thereby limiting Plaintiff’s ability to challenge or contest those results), (b) failed to maintain vintage samples of Johnson’s Baby Powder and (c) failed to maintain information on blanks in sample testing (limiting Plaintiff’s ability to refute J&J’s specious claims of laboratory contamination).
- o. In litigation in the 1980s onward, J&J was repeatedly asked whether there exists “any evidence” that the talc in Johnson’s Baby Powder contained asbestos.
- p. J&J cannot identify a single case prior to 2017 in which it disclosed evidence related to testing of Johnson’s Baby Powder (or the sources of talc in Johnson’s Baby Powder) for the presence of asbestos. J&J repeatedly made false statements in discovery responses that there was “no evidence” of asbestos (or even the mineral tremolite) in such talc.

SUCCESSOR LIABILITY ALLEGATIONS SPECIFIC TO DEFENDANTS
IMI FABI (USA) INC., IMI FABI, LLC AND IMI FABI (DIANA) LLC
(APPLICABLE TO ALL CLAIMS FOR RELIEF)

42. Plaintiffs herein refers to (a) “Fabi Group” as the collective IMI Fabi entities identified below (or entities otherwise owned by identified below) and (b) “Fabi USA Defendants” as the Defendants IMI Fabi (USA), Inc., IMI Fabi, LLC and IMI Fabi (Diana), LLC (each as a collective term). Fabi Group mines, processes, designs, markets and sells talc sourced from Italy, Australia, China, Pakistan and Brazil to customers all over the world:

- a. Fabi Group began in the 1950s when Corrado Fabi's father established Industria Mineraria Italiana S.r.l. ("IMI Fabi S.r.l."). Its name changed to IMI Fabi S.p.a. years later.
- b. IMI Fabi S.p.a. mines talc from multiple mines near Sondrio and Sardinia, Italy.
- c. It processes the talc at a facility near Sondria, Italy. In Polstalesio, Italy, IMI Fabi S.p.a. processes talc imported from China and Mt. Seabrook, Australia.
- d. IMI Fabi S.p.a. maintains business addresses in Milan, Italy and a quality assurance laboratory in Polstalesio, Italy.
- e. In about 1996, IMI Fabi S.p.a. entered a joint venture (50% ownership) with Unimin Talc Pty Ltd. to mine and process talc from Mt. Seabrook, Australia.
- f. Talc sourced from the Mt. Seabrook, Australian mine was marketed under the HiTalc brand name. In 2011, IMI Fabi (Australia) Pty. Ltd. acquired the remaining interest.
- g. In about the mid-1990s, IMI Fabi S.p.a. (Corrado Fabi) partnered with Dr. Wilhelm Schober of Austria to form HiPro Trading GmbH and HiTalc Marketing and Technology GmbH. HiTalc Marketing and Technology provided processing technology and marketing expertise the Fabi Group. HiPro Trading served as an export organization for Fabi Group entities.
- h. As described in greater detail below, in 1998, IMI Fabi S.p.a. (formerly IMI Fabi S.r.l.) attained a 40% interest in Zemex Fabi Benwood, LLC to process and market its Australian at a plant in Benwood, West Virginia.
- i. Through a series of transactions culminating in 2001, the "Fabi USA Defendants" formed with full ownership of the West Virginia site and former Clark/Suzorite site in New York.

43. The origins of the West Virginia and New York talc facilities begin before the Fabi USA Defendants were formally created in 1999 to 2001:

- a. WC&D created a subsidiary, Clark Minerals, Inc. ("Clark") that processed talc near Natural Bridge (Diana), New York, including ore from Montana, North Carolina, Australia, South Korea and China. In 1981-1994, WC&D sold such talc as grades 141, 643, 1623, 1625, 1626, 1629, 3355.
- b. In December 1994, WC&D sold Clark to Suzorite Mineral Products, Inc. ("Suzorite"), a subsidiary of Zemex Corporation. Suzorite purchased all of Clark's assets, including property, business contracts and trade names.

- c. After December 1994, Suzorite continued the same business operations of Clark, processing talc from the same sources to make the same talc grades for sale to the same customers. COAs and other correspondence referred to Suzorite as the “Clark Plant.” From December 1994 to March 1998, Suzorite entered distribution contracts with WC&D.
- d. In 1995, Suzorite acquired Benwood Limestone Co. in West Virginia and constructed a talc processing facility there.
- e. Zemex Fabi Benwood, LLC was created in North Carolina in December 1997. Suzorite was its sole member.
- f. From January 1998 to March 2001, Suzorite owned 60% of Zemex Fabi Benwood, LLC. IMI Fabi S.r.l. owned the other 40%.
- g. Zemex Fabi-Benwood, LLC consisted of three Suzorite managers and two IMI Fabi S.r.l. managers (Corrado Fabi, Dr. Wilhelm Schober).
- h. Under the Zemex Fabi Benwood, LLC operating agreement, Suzorite managed the West Virginia plant. Zemex Industrial Minerals, Inc., a subsidiary of Zemex Corp., provided loans. IMI Fabi S.r.l. provided (a) access to the talc source (its Mt. Seabrook, Australian ore) and (b) product development and technical support (Dr. Wilhelm Schober).
- i. On April 1, 1998, Suzorite (and/or Zemex Industrial Minerals) entered a Distributor Agreement with Cosmetic Specialties, Inc. (“CSI”) for CSI to sell talc from the New York plant to the cosmetic industry.
- j. Suzorite sought CSI after its contract ended with WC&D. Ronald Grexa, president of CSI, worked in technical sales of talc since 1970.

44. By April 2001, “Fabi USA Defendants” owned and operated talc operations in based in Benwood, West Virginia and Natural Bridge (Diana), New York:

- a. IMI Fabi (USA), Inc. incorporated in Delaware on January 26, 1999.
- b. On January 23, 2001, “ZFB-1, LLC” and “ZFB-2, LLC” formed in North Carolina. Suzorite was the sole member/owner of both entities (per corrected filings on March 7, 2001).
- c. In March 2001, Suzorite conveyed (a) the tangible and intangible assets associated with the Natural Bridge (Diana), New York real property and talc processing facility to ZFB-1, LLC and (b) its ownership interest (100%) in ZFB-1, LLC to Zemex Fabi Benwood, LLC.
- d. In March 2001, Zemex Industrial Minerals, Inc. conveyed its (or Suzorite’s) Distributor Agreement with Cosmetic Specialties, Inc. (“CSI”).

- e. In March 2001, Suzorite conveyed (a) the Benwood, West Virginia real property to ZFB-2, LLC and (b) its ownership interest (100%) in ZFB-2, LLC to Zemex Fabi Benwood, LLC.
- f. Thus, by March 2001, Zemex Fabi Benwood, LLC owned the property and other assets associated with the Natural Bridge (Diana), New York (ZFB-1, LLC) and Benwood, West Virginia (ZFB-2, LLC) talc operations.
- g. On March 23, 2001, Suzorite assigned its 60% ownership interest in Zemex Fabi Benwood, LLC to IMI Fabi (USA), Inc.
- h. Thus, by the March 23, 2001, Suzorite no longer held any ownership interest in Zemex Fabi Benwood, LLC. IMI Fabi (U.S.A.), Inc. owned 60% and IMI Fabi S.p.a. owned 40% (obtained in 1998, per above).
- i. On April 6, 2001, ZFB-1, LLC changed its name to IMI Fabi (Diana), LLC. It listed IMI Fabi, LLC as its sole member/owner.
- j. On April 6, 2001, Zemex Fabi-Benwood, LLC changed its name to “IMI Fabi, LLC.”
- k. In the April 6, 2001 filing, IMI Fabi, LLC (f/k/a Zemex Fabi Benwood, LLC) listed its sole member/owner as IMI Fabi (USA), Inc. (with Corrado Fabi as president). However, per the 1998 transactions described above, IMI Fabi S.p.a. owned 40% of IMI Fabi, LLC.

45. Before and after the April 2001 transactions, the Natural Bridge (Diana), New York and Benwood, West Virginia talc operations continued uninterrupted:

- a. After April 2001, the “Fabi USA Defendants” facility in Natural Bridge (Diana), New York processed primarily imported Chinese talc ore (including the Liaoning and Guangxi regions).
- b. After April 2001, “Fabi USA Defendants” continued selling talc under the same product numbers as Suzorite and Clark, including talc grades or product numbers 141, 643, 1623, 1625, 1626, 1629, 1656, 3355.
- c. The Benwood, West Virginia plant operated by IMI Fabi, LLC continued processing Australian talc ore and selling talc for industrial applications.
- d. After April 2001, the Fabi USA Defendants continued their contractual relationship with CSI as its sales agent and representative. CSI acted as a (a) sales commission distributor and (b) stocking distributor.
- e. Acting on behalf of the Fabi USA Defendants, CSI (a) interacted with the cosmetic and personal care industry to gain information about prospective customers (product manufacturers), including their talc suppliers, ore

sources of talc and brand names they used, the specific properties of such talc and the prices charged, (b) evaluated set off talc products that the Fabi USA Defendants sold, (c) contacted prospective customers, (d) introduced the Fabi USA Defendants' talc products as set offs and (e) provided technical data sheets, talc samples and other information requested by the purchasing, quality control, etc. departments of the product manufacturer. The Fabi USA Defendants participated in each part of the above-described process, maintaining a continuous dialogue with CSI and, at times, making direct contact with product manufacturers.

- f. Through at least early 2023, IMI Fabi, LLC and IMI Fabi (Diana), LLC both remained active, ongoing concerns.
- g. Limited liability company annual reports submitted by IMI Fabi (Diana), LLC in North Carolina continued to refer to its business purpose as processing and manufacturing talc.
- h. Directly and through distributors/sales agents, IMI Fabi (Diana), LLC and IMI Fabi, LLC sold talc throughout the United States, including in South Carolina.
- i. Fabi Group, including the Fabi USA Defendants, became one of the leading talc suppliers in North America.

46. The Fabi USA Defendants (a) sold directly to large-scale product manufacturers and (b) made purposeful efforts to enter distribution agreements with distributors (including, but not limited to, CSI) to promote and sell the Fabi USA Defendants' talc to large-scale product manufacturers that incorporated the Fabi USA Defendants' talc into finished products that were marketed and sold nationally, including in South Carolina:

- a. The Fabi USA Defendants contracted with CSI because of CSI's customer contacts and experience. The Fabi USA Defendants gave CSI express and implied authority to act on their behalf.
- b. To gain new accounts/customers for the Fabi USA Defendants, CSI (a) interacted with the personal care industry to gain information about prospective customers' suppliers and needs, (b) evaluated set off talc products, (c) contacted prospective customers, (d) introduced the Fabi USA Defendants' talc products as set offs, (e) provided technical data sheets, talc samples and other information (*e.g.*, questionnaires) requested by the purchasing, quality control, etc. departments of the product manufacturers and (f) negotiated the price, delivery terms, etc.

- c. The Fabi USA Defendants participated in each part of the above process to gain new customers/accounts. They maintained a continuous dialogue with CSI and, at times, product manufacturers directly.
- d. After the Fabi USA Defendants obtained a new account, they maintained contact with such finished product manufacturers, including (a) receiving and signing purchase orders stating the talc's destination, (b) directly sending (*e.g.*, by fax) the product manufacturers signed purchase orders and certifications that the lot satisfied performance specifications, (c) marked individual talc bags according to the large-scale product manufacturers' specifications, including providing part numbers (*e.g.*, 802980 for Imifabi 141 to Procter & Gamble) and code name(s) (*e.g.*, "Arbit 098061" for Imifabi 141 to Revlon) and (d) arranged pallets per their specifications (*e.g.*, a placard "For Revlon").
- e. Fabi USA Defendants promoted talc grades for specific product types.
- f. Fabi Group, including the Fabi USA Defendants, (a) joined and participated in international industry trade organizations (*e.g.*, the Industrial Minerals Association), (b) spoke at conferences (*e.g.*, Dr. Shoher) and (c) attended trade conferences (*e.g.*, Cosmetics Global). Fabi USA Defendants remained informed about the talc market.

47. The Fabi USA Defendants, each directly and through distributors, sold talc that was incorporated in finished products that Plaintiff and/or Plaintiff's family purchased and used in South Carolina:

- a. Throughout at least 2001 to the 2010s, the entities making Cover Girl products (Noxell, Procter & Gamble ["Noxell/P&G"]) consistently purchased substantial quantities of Fabi USA Defendants talc products that Plaintiff and/or Plaintiff's family purchased and used in South Carolina.
- b. Throughout at least 2001 to the 2010s, Revlon consistently purchased substantial quantities of talc sourced from of Fabi USA Defendants, including at Revlon's manufacturing sites in North Carolina and Arizona for use in Revlon's cosmetic talc products Plaintiff and/or Plaintiff's family purchased and used in South Carolina.
- c. Beginning in about 2010, Vi-Jon, Inc. listed IMI Fabi, LLC as an "approved supplier" for Vi-Jon raw material specification 4000000789 ("talc"). Vi-Jon manufactured talc-containing body powder products in Smyrna, Tennessee that Plaintiff and/or Plaintiff's family purchased and used in South Carolina.

48. Throughout the 2000s, the Fabi USA Defendants sent talc samples to E.S. Laboratories in Campobello, South Carolina for analysis of their asbestos mineral and asbestos content.

49. IMI Fabi, LLC (parent) can be held responsible as the “alter ego” of IMI Fabi (Diana), LLC (subsidiary). Likewise, IMI Fabi (USA), Inc. (parent) can be held responsible as the “alter ego” of IMI Fabi, LLC and IMI Fabi (Diana), LLC (subsidiaries). The Fabi USA Defendants (as part of the broader Fabi Group) operated as a single or common business enterprise that regularly intermingled the assets and personnel of the entities:

- a. Since their formal creation between January 1999 to April 2001, the Fabi USA Defendants have shared the same (or substantially the same) common ownership as vertically integrated within the Fabi Group.
- b. In public filings since their inception in 2001, both IMI Fabi (USA), Inc. and IMI Fabi, LLC identified Corrado Fabi as the President.
- c. Corrado Fabi served as President and/or CEO of IMI Fabi S.p.a. and all (or substantially all) of the Fabi Group entities.
- d. From about 2001-2002 to 2014, both IMI Fabi, LLC and IMI Fabi (Diana), LLC identified Scott Baker as the “manager” for both entities.
- e. In public filings from about mid-2001 to about 2015, both IMI Fabi, LLC and IMI Fabi (Diana), LLC listed their principal business address as Second & Marshall Street, Benwood, West Virginia. Thereafter, both entities identified 209 Marshall Street, Benwood, West Virginia.
- f. Beginning in about mid-2001, talc Purchase Orders with IMI Fabi (Diana), LLC provided the vendor address at Second & Marshall Street, Benwood, West Virginia (the same address used by IMI Fabi, LLC).
- g. Beginning in late 2001, IMI Fabi, LLC and IMI Fabi (Diana), LLC listed the same registered agents at the same locations.
- h. Fabi Group entities, including the Fabi USA Defendants, frequently shared common employees. Employees of one entity rendered services on behalf of (or for the benefit of) another entity. IMI Fabi, LLC and IMI Fabi (Diana), LLC always (or almost always) provided the same phone numbers for customer service, quality assurance and sales.
- i. The Fabi Group entities were inter-related and co-dependent.

- j. IMI Fabi (USA), Inc. generated no business revenue and conducted no business. No separate corporate records exist, including (but not limited to) minutes, ledgers, profit-and-loss statements and check registers.
- k. Fabi Group entities, including the Fabi USA Defendants, used the same logo. The logo consists of "IMIFABI" in capital letters with an oval surrounding it. Fabi Group members receive detailed instructions on the logo's appearance's shape, colors, sizes and fonts.
- l. Reflecting common control, at any given time period, the COAs and MSDS regularly used by IMI Fabi S.p.a., IMI Fabi, LLC and IMI Fabi (Diana), LLC shared (substantially) the same form and format.
- m. IMI Fabi S.p.a. exerted pervasive control over policies regarding asbestos in talc in the Fabi Group entities, including the Fabi USA Defendants.
- n. The Fabi USA Defendants failed to observe their separate legal status, even in public filings.
- o. IMI Fabi (Diana), LLC failed to observe corporate formalities.
- p. Other persons and entities that interacted with Fabi Group regarded it as a single business enterprise.

50. The Fabi USA Defendants can be held liable for the conduct of, and talc sold by, Suzorite and/or Zemex Industrial Minerals, Inc. (referred to collectively as "Suzorite") in 1994-2001. The Fabi USA Defendants' liability as successors-in-interest to those entities include that the Fabi USA Defendants are the (a) "mere continuation" of Suzorite, (b) result of a "de facto merger" and (c) manufacturers, marketers and suppliers of the same product line(s):

- a. Suzorite's talc operations from the Natural Bridge (Diana) continued uninterrupted following the March/April 2001 transactions.
- b. After the March/April 2001 transactions, the Fabi USA Defendants held themselves out as the continuation of Suzorite. The Fabi USA Defendants referred to the New York site in submissions to regulatory agencies as "formerly known as Suzorite Minerals Products, Inc." An IMI Fabi (Diana), LLC MSDS from April 2001 (a) referred to its products collectively as "Clark Talc" and (b) identified the "previous issue" of the MSDS as from November 2000 (before IMI Fabi (Diana), LLC existed). After the March/April 2001 transactions, Suzorite and the Fabi USA Defendants used the same COA, MSDS and correspondence format.

- c. Suzorite and the Fabi USA Defendants maintained continuity in management and employees. Scott Baker and Michael Brown frequently signed Suzorite correspondence as "Plant Manager." After the March/April 2001 transactions, Michael Brown continued signing COAs, MSDS, etc. as "Plant Manager" for IMI Fabi (Diana), LLC. In annual reports, Scott Baker signed as "Manager" of IMI Fabi (Diana), LLC.
- d. The Fabi USA Defendants operated from the same locations. Before and after the March/April 2001 transactions, they used addresses at (a) P.O. Box 398, Natural Bridge, NY, (b) Rt. #3 & Old Harrisville Road, Natural Bridge, NY, (c) Charlotte, NC and (d) Second & Marshall Street, Benwood, WV. The phone numbers remained the same.
- e. Before and after the March/April 2001 transactions, Suzorite and the Fabi USA Defendants maintained the same day-to-day operations. The Fabi USA Defendants maintained business contracts (*e.g.*, consulting agreements, letter agreements) to ensure continuity of business operations. The Fabi USA Defendants continued the same distributor agreements in West Virginia and the same sales agent (CSI) for New York.
- f. The Fabi USA Defendants continued selling the same product lines as Suzorite, including product numbers as 140, 141, 643, 1623, 1625, 1626, 1629 and 3355. Acting as the sales agent of the Fabi USA Defendants, CSI wrote Revlon in May 2003 to compare old product names (*e.g.*, "Suzorite 141 B.C.") to the new product names (*e.g.*, "Imifabi 141 B.C.") for then-active Revlon internal codes (*e.g.*, "Arbit").

51. Fabi Group, including the Fabi USA Defendants (a) possessed actual knowledge that the talc it sold (which became incorporated in products that Plaintiff used) contained asbestos, (b) knew that inhaling such asbestos can mesothelioma and (c) failed to warn.

SUCCESSOR LIABILITY ALLEGATIONS SPECIFIC TO DEFENDANT
PTI ROYSTON, LLC
(APPLICABLE TO ALL CLAIMS FOR RELIEF)

Some of the corporate history relevant to Plaintiffs' claims against defendant PTI Royston, LLC alleged herein is as follows:

52. From at least 1990 to present, Pharma Tech Industries, Inc. and/or PTI Union, LLC owned and operated a talc product manufacturing and packaging plant in Union, Missouri ("Union MO Plant").

- a. In March 1984, Direct Pharmaceutical Corporation applied for the authority to transact business in Missouri for the purpose of “operat[ing] a pharmaceutical repackaging facility.” Direct purchased the Union MO Plant from Envi Diversified and began operating it. Edward T. Noland, Sr. became a Director in 1987 and President in 1989.
- b. On around June 20, 1990, Black Creek Corporation formed in Missouri.
- c. On June 22, 1990, Black Creek Corporation acquired the Union MO Plant.
- d. On around June 26, 1990, the shareholders of Black Creek Corporation adopted an amendment to change its name “Pharma Tech Industries, Inc.”
- e. Beginning in mid-1990, Pharma Tech Industries, Inc. operated the Union MO Plant with Edward T. Noland, Sr. as President.
- f. On April 1, 2008, Black Creek Corporation f/k/a Pharma Tech Industries, Inc. and PTI Union, LLC d/b/a Pharma Tech Industries entered into a purchase agreement where PTI Union, LLC d/b/a Pharma Tech Industries acquired substantially all of Black Creek Corporation’s assets including but not limited to the Union, MO Plant, business contracts with customers/accounts, equipment, trade name, and goodwill.
- g. Per the April 1, 2008, purchase agreement, PTI Union, LLC acquired all (or substantially all) of Black Creek Corporation’s assets, including the Union MO Plant, equipment, trade names, goodwill and business contracts. PTI Union, LLC maintained all (or virtually all) of the same leadership personnel, employees, operating procedures, suppliers/vendors, logos, etc. The Union MO Plant remained the same.
- h. After April 2008, Black Creek Corporation ceased productive operations and dissolved in December 2012.
- i. From 2013 onward, PTI Union, LLC continued renewing the fictitious name “Pharma Tech Industries.”

53. In mid-2005, Pharma Tech Industries, Inc. entered contracts with Johnson & Johnson to (a) acquire its Royston, Georgia plant (“Royston GA Plant”) and (b) manufacture all Johnson’s Baby Powder sold in the United States:

- a. By 1998, Pharma Tech Industries, Inc. began soliciting Johnson & Johnson to serve as its contract manufacturer.
- b. On April 4, 2005, Pharma Tech Industries, Inc. entered an Asset Purchase Agreement (“APA”) with Johnson & Johnson Consumer Companies (“JJCCI”) for the Royston GA Plant.

- c. On August 29, 2005, Pharma Tech Industries, Inc. (“Manufacturer”) and JJCCI (“Buyer”) entered a Manufacturing & Supply Agreement (“MSA”).
- d. Under the August 2005 MSA, Pharma Tech Industries, Inc. agreed to manufacture all Johnson’s Baby Powder sold in the U.S.
- e. JJCCI chose Pharma Tech Industries, Inc. for its “unique talent.”
- f. The August 2005 MSA held Pharma Tech Industries, Inc. responsible for inspecting raw materials (talc) for quality and compliance.

54. By contract, Pharma Tech Industries, Inc. (a) remained responsible for the Royston GA Plant and (b) directed PTI Royston, LLC’s operations:

- a. On June 3, 2005, Broadview Investments, LLC formed in Delaware.
- b. On June 16, 2005, PTI Royston, LLC formed in Delaware. Broadview Investments, LLC was the sole manager.
- c. On July 18, 2005, PTI Royston, LLC filed a certificate of authority to transact business in Georgia as “Pharma Tech Industries.”
- d. Thereafter, Pharma Tech Industries, Inc. assigned the August 2005 MSA to PTI Royston, LLC doing business as “Pharma Tech Industries.”
- e. Pharma Tech Industries, Inc. entered two Guaranty Agreements with JJCCI, under which it agreed to maintain “primary, direct and immediate responsibility for PTI Royston, LLC.”
- f. PTI Royston continued doing business as “Pharma Tech Industries” at the Royston GA Plant and offices in Athens, Georgia.

55. PTI Union, LLC, individually and as successor to Black Creek Corporation and PTI Royston, LLC operated as a single or common enterprise, exhibiting a confused intermingling of activity without regard for their nature as separate entities:

- a. PTI Union and PTI Royston shared common ownership as privately held sister companies owned by Broadview Investments, LLC.
- b. Before contracting with Pharma Tech Industries, Inc. to produce Johnson’s Baby Powder, JJCCI evaluated Pharma Tech Industries, Inc.’s (a) performance record and (b) financial stability through a complete financial audit. The MSA stated that JJCCI chose Pharma Tech Industries, Inc. because of its “unique talent, experience and particular attributes.” Consequently, JJCCI insisted that Pharma Tech Industries, Inc. (and *not* PTI

Royston) remained responsible and liable to JJCCI for obligations under the APA and MSA. To accomplish this objective, JJCCI required that Pharma Tech Industries, Inc. enter two Guaranty Agreements with JJCCI. Pharma Tech Industries, Inc. agreed to maintain “primary, direct and immediate responsibility for” PTI Royston. Further, the APA and MSA contain provisions (a) allowing JJCCI to reject the assignment of the Royston GA Plant (or buy it back) and (b) require notices be sent to Edward T. Noland, Sr. Thus, by *contractual obligation*, PTI Royston served at the direction of Pharma Tech Industries, Inc.

- c. PTI Union and PTI Royston held themselves out as one single company headquartered in Union, Missouri. They shared the (a) same fictitious name (“Pharma Tech Industries”), (b) same letterhead and formatting for correspondence and other form document, (c) same website (which continues to identify as one entity) and (d) same eBulletins.
- d. Their largest suppliers (Luzenac America, MTI/SMI/BMI) and customers (Johnson & Johnson) referred and considered them one entity.
- e. PTI Union and PTI Royston instructed its talc supplier to use the same employer identification numbers for both plants.
- f. PTI Union and PTI Royston employed unified administrative control of business functions. In meetings with Chattem (one of its largest customers), PTI Union characterized its management structure as one integrated organization led by Ted Noland, Jr.
- g. PTI Union and PTI Royston shared common leadership. As non-exclusive examples: Ted Noland, Jr. (described above) and Curtis Coile (Executive Vice President of Manufacturing and Quality) worked at both.
- h. PTI Union and PTI Royston shared common policies, software, IT systems, standard operating procedures and resources.
- i. PTI Union, PTI Royston and Pharma Tech Industries, Inc. used the same counsel (Thomas Benson) for the various described transactions above in at least 2005 to 2008.

56. PTI Royston, LLC (d/b/a Pharma Tech Industries) is liable as the successor-in-interest in harm caused by Black Creek Corporation (f/k/a Pharma Tech Industries, Inc.). PTI Royston, LLC was/is the (a) “mere continuation” of Black Creek Corporation, (b) result of a “de facto merger” and (c) manufacturer of the same product line(s).

57. The Johnson's Baby Powder Plaintiff was exposed to after August 2005 was manufactured, bottled, labeled and packaged by the "Pharma Tech Business:"²

- a. From August 2005 to after 2013, PTI Royston, LLC (d/b/a Pharma Tech Industries) served as the exclusive manufacturer of Johnson's Baby Powder. During this period, PTI Royston used talc from Guangxi, China. PTI Royston packaged millions of such bottles per year.
- b. The Pharma Tech Business possessed actual knowledge of the geographic distribution (nationwide, including Oregon) of the Johnson's Baby Powder that it manufactured and packaged.
- c. The Pharma Tech Business (a) negotiated for lower prices with talc suppliers, (b) evaluated potential offset talc products, (c) recommended alternate talc products based on price and production advantages and (d) tested and inspected raw materials to ensure quality.
- d. The Pharma Tech Business promoted itself, and continues to promote itself, as providing "turkey solutions" with expertise in "formula development," safety oversight and regulations.
- e. The Pharma Tech Business (a) promoted itself in eBulletins that it distributed throughout the industry (including Oregon) and (b) attended industry trade shows and conferences.

58. In addition to the above, all named Defendants have knowledge and information not available to Plaintiff—to determine whether they have, or may have, liability, whether directly or by operation of law, for the asbestos-containing products identified above and/or in the course of discovery. Therefore, if evidence that Plaintiff was exposed to an asbestos-containing product for which any Defendant has liability, may have liability, or by operation of law may have liability, Plaintiff asserts all of the allegations herein against said Defendants in relation to said asbestos-containing products.

² At times herein, Plaintiff refers to the "Pharma Tech Business" as collectively (a) Black Creek Corporation (f/k/a Pharma Tech Industries, Inc.) before April 2008, (b) PTI Union, LLC after April 2008 and (c) PTI Royston, LLC.

THE PARTIES

59. Plaintiffs, Michael L. Perry and Lonnie L. Long, are currently residents of the State of South Carolina. Plaintiff Michael L. Perry was exposed to asbestos during the course of his career at various job sites, including but not limited to, locations in South Carolina and Illinois.

60. Plaintiff Michael L. Perry was also exposed to asbestos from his personal use, and his family's use, of asbestos-containing talc-based powder products throughout his life in his Illinois, Florida and South Carolina homes beginning in the 1960s. The dust and fibers from the asbestos-containing talc products permeated his person and clothes. As a direct and proximate result of Michael L. Perry's inhalation and ingestion of dust particles and fibers, he was diagnosed with Mesothelioma on or about July 7, 2023.

61. Defendant, **AMERICAN INTERNATIONAL INDUSTRIES**, individually and as successor-in-interest to PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC. d/b/a ED. PINAUD, and NESTLE-LE MUR COMPANY, all for the CLUBMAN line of products, was and is a California General Partnership with its principal place of business in California. At all times material hereto, AMERICAN INTERNATIONAL INDUSTRIES was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products and Pinaud talc products used by Plaintiff and others living in the same household with Plaintiff. AMERICAN INTERNATIONAL INDUSTRIES is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this

Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

62. Defendant, **ATLAS TURNER INC.**, f/k/a ATLAS ASBESTOS COMPANY LTD., was and is a Canadian corporation with its principal place of business in Canada. At all times material hereto, ATLAS TURNER INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos, asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, raw asbestos fibers sold to various manufacturers of asbestos products including, but not limited to, asbestos friction, drywall, fireproofing, and insulation products. ATLAS TURNER INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

63. Defendant, **AVON PRODUCTS, INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, AVON PRODUCTS, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Avon talc products used by Plaintiff and others living in the same household with Plaintiff. AVON PRODUCTS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and

distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

64. Defendant, **BARRETT'S MINERALS INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BARRETT'S MINERALS INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products used by Plaintiff and others living in the same household with Plaintiff. BARRETT'S MINERALS INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

65. Defendant, **BLOCK DRUG COMPANY, INC.**, individually and as successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a New Jersey corporation with its principal place of business in Pennsylvania. At all times material hereto, BLOCK DRUG COMPANY, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Gold Bond talc products used by Plaintiff and others living in the same household with Plaintiff. BLOCK DRUG COMPANY, INC. is sued as a

Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

66. Defendant, **BRENNTAG NORTH AMERICA, INC.**, individually and as successor-in-interest to MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, BRENNTAG NORTH AMERICA, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson, Cashmere Bouquet talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. BRENNTAG NORTH AMERICA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

67. Defendant, **BRENNTAG SPECIALTIES, LLC** f/k/a BRENNTAG SPECIALTIES, INC. f/k/a MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware limited liability company with its principal place of business in New Jersey. At all times material hereto,

BRENNTAG SPECIALTIES, LLC was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson, Cashmere Bouquet talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. BRENNTAG SPECIALTIES, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

68. Defendant, **BRISTOL-MYERS SQUIBB COMPANY**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BRISTOL-MYERS SQUIBB COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. BRISTOL-MYERS SQUIBB COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this

Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

69. Defendant, **BUY-LOW GENERAL MERCHANDISE INC.**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, BUY-LOW GENERAL MERCHANDISE INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Powder Products including Johnson & Johnson and Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. BUY-LOW GENERAL MERCHANDISE INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury, occurred in the State of South Carolina.

70. Defendant, **C&S WHOLESALE GROCERS, LLC** f/k/a C&S WHOLESALE GROCERS, INC., individually and as successor-in-interest to FLEMING COMPANIES, INC. successor-in-interest to PIGGLY WIGGLY COMPANY, was and is a Delaware limited liability company with its principal place of business in New Hampshire. At all times material hereto, C&S WHOLESALE GROCERS, LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited

to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. C&S WHOLESALE GROCERS, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

71. Defendant, **CALVIN KLEIN INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, CALVIN KLEIN INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Calvin Klein talc powder, used by others living in the same household with Plaintiff. CALVIN KLEIN INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

72. Defendant, **CHANEL INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, CHANEL INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Chanel talc products,