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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

17 Coordinated Special Proceeding
18 Special Title (Rule 3.550)

19 LAOSD ASBESTOS CASES

20 JOEL HERNANDEZCUEVA, Deceased;

21 JOVANA COLLANTES, individually and as
22 her and successor-in-interest to JOEL
23 HERNANDEZCUEVA, deceased; JOANNA
24 HERNANDEZ, JOEL HERNANDEZ,
25 JENNY HERNANDEZ, NOHELY
26 HERNANDEZ, individually and as heirs to
27 JOEL HERNANDEZCUEVA, deceased,

28 Plaintiffs,

vs.

AMERICAN STANDARD, INC.; et al.

Defendants.

Coordinated Case No: JCCP 4674

*[Assigned for all pre-trial purposes to the
Honorable Hon. Laura A. Seigle, Dept. 15]*

LASC Case No.: BC475956
(Consolidated with BC558820)

OPERATIVE COMPLAINTS

Complaint Filed: September 25, 2014
Trial Date: December 12, 2022

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:
2 Plaintiffs JOVANA COLLANTES, JOANNA HERNANDEZ, JOEL HERNANDEZ, JR.,
3 JENNY HERNANDEZ, and NOHELY HERNANDEZ hereby lodge the operative
4 complaints as follows:

- 5 • Case No. BC475956 – Third Amended Complaint for Personal Injury (Survivorship) and
6 Wrongful Death – Asbestos filed on January 17, 2018; and
- 7 • Case No. BC558820 – Amended Complaint for Personal Injury (Survivorship) and
8 Wrongful Death (Including Demand for Jury Trial) filed on January 17, 2018.

9
10 DATED: November 8, 2022

FARRISE LAW FIRM, P.C.
DEAN OMAR & BRANHAM, LLP

By: /s/ Jordan Blumenfeld-James
Simona A. Farrise, Esq.
Benjamin H. Adams, Esq.
Jordan Blumenfeld-James, Esq.
Attorneys for Plaintiffs

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **FOR THE COUNTY OF LOS ANGELES**

13 Coordinated Special Proceeding
 14 Special Title (Rule 3.550)

Coordinated Case No. JCCP 4674

15 LAOSD ASBESTOS CASES

*[Assigned for all pre-trial purposes to the
 Honorable Steven J. Kleifield, Dept. 324]*

16 JOEL HERNANDEZCUEVA, Deceased;
 17 JOVANA COLLANTES, individually and as
 18 her and successor-in-interest to JOEL
 HERNANDEZCUEVA, deceased; JOANNA
 19 HERNANDEZ, JOEL HERNANDEZ, JENNY
 20 HERNANDEZ, NOHELY HERNANDEZ,
 21 individually and as heirs to JOEL
 HERNANDEZCUEVA, deceased,

LASC Case No. BC475956

THIS ACTION CONSTITUTES COMPLEX
 ASBESTOS LITIGATION – SUBJECT TO
 THE GENERAL ORDERS CONTAINED IN
 FILE

**THIRD AMENDED COMPLAINT FOR
 PERSONAL INJURY (SURVIVORSHIP)
 AND WRONGFUL DEATH – ASBESTOS**

DEMAND FOR JURY TRIAL

22 Plaintiffs,

CAUSES OF ACTION:

23 vs.

1. Negligence;
2. Strict Liability;
3. False Representation;
4. Intentional Tort/ Intentional Failure to Warn;
5. Premises Owner/ Contractor Liability;
6. Loss of Consortium;
7. Wrongful Death;
8. Survival Action

24 AMERICAN STANDARD, INC.; et al.

25 Defendants.

1 **GENERAL ALLEGATIONS**

2 COME NOW Plaintiffs, JOVANA COLLANTES, individually and as heir and successor-in-
3 interest to JOEL HERNANDEZCUEVA, deceased; JOANNA HERNANDEZ, JOEL HERNANDEZ,
4 JENNY HERNANDEZ, and NOHELY HERNANDEZ, individually and as heirs to JOEL
5 HERNANDEZCUEVA, deceased, complain of defendants and each of them, and allege:

6 1. Plaintiffs are the legal heirs of JOEL HERNANDEZCUEVA, deceased (hereinafter
7 referred to as the “Decedent”). The Decedent died from asbestos related mesothelioma on April 5, 2014
8 in Lakewood, California. He was 46 years old. The name of each plaintiff and the relationship to
9 Decedent is as follows:

10 <u>Name</u>	11 <u>Relationship</u>
12 JOVANA COLLANTES	Surviving Spouse of Decedent and successor-in- 13 interest to JOEL HERNANDEZCUEVA, deceased
14 JOANNA HERNANDEZ	Minor daughter of Decedent
15 JOEL HERNANDEZ	Minor son of Decedent
16 JENNY HERNANDEZ	Minor daughter of Decedent
17 NOHELY HERNANDEZ	Daughter of Decedent

18 2. Plaintiff JOVANA COLLANTES brings this action on her own behalf and as successor-
19 in-interest to JOEL HERNANDEZCUEVA, deceased. Plaintiffs JOANNA HERNANDEZ, JOEL
20 HERNANDEZ, JENNY HERNANDEZ, and NOHELY HERNANDEZ bring this action individually.
21 Plaintiffs are collectively referred to as “plaintiffs” or “plaintiff” herein. Plaintiffs know of no other
22 parties who should be named as a plaintiff herein.

23 3. Decedent JOEL HERNANDEZCUEVA’s purported adult son, OMAR MALDONADO,
24 is allied in interest with plaintiffs, but refuses to join as a coplaintiff. As such, he is involuntarily joined
25 as a nominal defendant so that all of Decedent’s heirs are before the court in the same action.

26 4. The true names and capacities, whether individual, corporate, associate, governmental or
27 otherwise, of DOES 1-350, inclusive, are unknown to Plaintiffs at this time, who therefore sue said
28 Defendants by such fictitious names. When the true names and capacities of said Defendants have been
ascertained, Plaintiffs will amend this complaint accordingly. Plaintiffs are informed and believe, and

1 thereon allege, that each Defendant designated herein as a DOE is responsible, negligently or in some
2 other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and
3 damages proximately to the Plaintiffs, as hereinafter alleged.

4 5. At all times herein mentioned, each of the Defendants was the agent, servant, employee
5 and/or joint venture of his co-Defendants, and each of them, and at all said times each Defendant was
6 acting in the full course and scope of said agency, service, employment and/or joint venture.

7 6. Plaintiffs are informed and believe, and thereon allege that at all times herein mentioned,
8 Defendant E.F. BRADY COMPANY, INC. and DOES 1-350, inclusive, were individuals, corporations,
9 partnerships and/or unincorporated associations organized and existing under and by virtue of the laws
10 of the State of California, or the laws of some other state or foreign jurisdiction, and that said
11 Defendants, and each of them, were and are authorized to do and are doing business in the State of
12 California, or the laws of some other state or foreign jurisdiction, and that said Defendants, and each of
13 them, were and are authorized to do and are doing business in the State of California, and that said
14 Defendants have regularly conducted business in the County of Los Angeles, State of California.

15 7. All individuals, corporations, partnerships and/or unincorporated associations organized
16 and existing under and by virtue of the laws of the State of California, or the laws of some other state or
17 foreign jurisdiction listed above in Paragraph 3 shall collectively be called "DEFENDANTS".

18 8. At all times herein mentioned, all DEFENDANTS, successor in business, successor in
19 product line or a portion thereof, parent, subsidiary, wholly or partially owned by, or the whole or partial
20 owner of or member in an entity researching, studying, manufacturing, fabricating, designing,
21 modifying, labeling, assembling, distributing, leasing, buying, offering for sale, supplying, selling,
22 inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-
23 branding, manufacturing for others, packaging and advertising a certain substance, the generic name of
24 which is asbestos, and other products containing said substance shall hereinafter collectively be called
25 "DEFENDANTS". This includes the true names and capacities, whether individual, corporate,
26 associate, or otherwise, of DOES 1-299, inclusive, that are unknown to Plaintiffs at this time, who
27 therefore sue said DEFENDANTS by such fictitious names.

28 9. At all times herein mentioned, all DEFENDANTS who owned, was a successor,

1 successor-in-business, assign, predecessor, predecessor-in-business, parent, subsidiary, wholly or
2 partially owned by, or the whole or partial owner of an premise containing certain asbestos-containing
3 insulation, other building materials, products and toxic substances that were constructed, installed,
4 maintained, used, replaced, repaired, or removed on the respective premises or owned, leased,
5 maintained, managed and/or controlled by them shall hereinafter collectively be called “PREMISES
6 DEFENDANTS/CONTRACTOR DEFENDANTS”. This includes the true names and capacities,
7 whether individual, corporate, associate, or otherwise, of DOES 300-350, inclusive, that are unknown to
8 Plaintiffs at this time, who therefore sue said PREMISES DEFENDANTS/CONTRACTOR
9 DEFENDANTS by such fictitious names.

10 **FIRST CAUSE OF ACTION**

11 (Negligence)

12 (BY PLAINTIFF JOEL HERNANDEZCUEVA AGAINST ALL DEFENDANTS EXCEPT NOT
13 AGAINST DEFENDANT E.F. BRADY COMPANY, INC.)

14 10. At all times herein mentioned, each of the named DEFENDANTS, and each of them, was
15 the successor, successor in business, successor in product line or a portion thereof, parent, subsidiary,
16 wholly or partially owned by, or the whole or partial owner of or member in an entity researching,
17 studying, manufacturing, fabricating, designing, modifying, labeling, assembling, distributing, leasing,
18 buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation,
19 repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a
20 certain substance, the generic name of which is asbestos, and other products containing said substance.¹
21 DEFENDANTS, and each of them, are liable for the tortious conduct of each successor, successor in
22 business, successor in product line or a portion thereof, assign, predecessor in product line or a portion
23 thereof, parent, subsidiary, whole or partial owner, or wholly or partially owned entity, or entity that it
24 was a member of, or funded, that researched, repaired, marketing, warranted, re-branded, manufactured
25 for others and advertised a certain substance, the generic name of which is asbestos, and other products
26

27 ¹ Throughout this Complaint, Plaintiffs’ references to “asbestos containing products” includes asbestos, asbestos-
28 containing products, products designed to be used with asbestos-containing products, and/or products that it was
foreseeable would be used with asbestos-containing products.

1 containing said asbestos. The DEFENDANTS, and each of them, are liable for the acts of each and
2 every “alternate entity”, and each of them, in that there has been a virtual destruction of Plaintiffs’
3 remedy against each such “alternate entity”; DEFENDANTS, and each of them, have acquired the
4 assets, product line, or a portion thereof, of each such “alternate entity”; DEFENDANTS, and each of
5 them, have caused the destruction of Plaintiffs’ remedy against each such “alternate entity”; each such
6 DEFENDANTS have the ability to assume the risk-spreading role of each such “alternate entity”; and
7 that each such DEFENDANTS enjoy the goodwill originally attached to each such “alternate entity”.

8 11. At all times herein mentioned, DEFENDANTS and each of them, were and are engaged
9 in the business of researching, manufacturing, fabricating, designing, modifying, labeling, assembling,
10 distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing,
11 contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others,
12 packaging, and advertising a certain substance, the generic name of which is asbestos and other products
13 containing said substance.

14 12. DEFENDANTS, and each of them, had a duty to exercise reasonable care while
15 engaging in the activities mentioned above and each of the DEFENDANTS, and each of them, breached
16 said duty of reasonable care in that DEFENDANTS, and each of them, failed to safely and adequately
17 design, manufacture and/or sell DEFENDANTS’ products; failed to test said products; failed to
18 investigate the hazards of said products; failed to warn “exposed person”, including Plaintiff JOEL
19 HERNANDEZCUEVA, of the health hazards of using DEFENDANTS’ products; failed to disclose the
20 known or knowable dangers of using DEFENDANTS’ products; failed to warn of the harmful exposures
21 caused by use of said products to cut, saw or otherwise manipulate asbestos containing products; failed
22 to obtain suitable alternative materials to asbestos when such alternatives were available; and as
23 otherwise stated herein. DEFENDANTS, and each of them, had a duty to exercise due care in the
24 pursuance of the activities mentioned above and DEFENDANTS, and each of them, breached said duty
25 of due care.

26 13. DEFENDANTS knew, or should have known, and intended that the aforementioned
27 asbestos and products containing asbestos would be transported by truck, rail, ship and other common
28 carriers, and that in the shipping process the products would break, crumble or be otherwise damaged;

1 and/or that such products would be used for insulation, construction, plastering, fireproofing,
2 soundproofing, automotive, aircraft and/or other applications, including, but not limited to: sawing,
3 chipping, hammering, scraping, sanding, breaking, removal, “rip-out”, and other manipulation, resulting
4 in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling
5 “exposed persons”, including Plaintiff herein, would use or be in proximity of and exposed to said
6 asbestos fibers.

7 14. DEFENDANTS, and each of them, knew, or should have known, and intended that the
8 aforementioned asbestos and asbestos-containing products would be used or handled by Decedent JOEL
9 HERNANDEZCUEVA and/or others in his presence, resulting in the release of airborne asbestos fibers,
10 and that through such foreseeable use and/or handling “exposed persons”, including Plaintiff herein,
11 would be in proximity to and exposed to said asbestos fibers.

12 15. Decedent JOEL HERNANDEZCUEVA, used, handled, or had been otherwise exposed
13 to asbestos and asbestos-containing products referred to herein in a manner that was reasonably
14 foreseeable, in both occupational and non-occupational settings. Plaintiff’s exposure to asbestos and
15 asbestos-containing products occurred at various locations, including but not limited to those, set forth in
16 Exhibit “A”, which is attached hereto and incorporated by reference herein.

17 16. As a direct and proximate result of the conduct of the DEFENDANTS, and each of
18 them, as aforesaid, Decedent JOEL HERNANDEZCUEVA’s exposure to asbestos and asbestos-
19 containing products caused severe and permanent injury to Decedent JOEL HERNANDEZCUEVA,
20 including but not limited to malignant mesothelioma.

21 17. Plaintiff is informed and believes, and thereon alleges, that progressive lung disease,
22 cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma
23 and that said disease results from exposure to asbestos and asbestos-containing products over a period of
24 time.

25 18. Decedent JOEL HERNANDEZCUEVA suffers from a malignant pleural mesothelioma,
26 caused by an exposure to asbestos and asbestos-containing products. Decedent JOEL
27 HERNANDEZCUEVA was not aware at the time of exposure that asbestos or asbestos-containing
28 products presented any risk of injury and/or disease.

1 19. As a direct and proximate result of the aforesaid conduct of DEFENDANTS, and each of
2 them, Plaintiff suffered permanent injuries to his person, body and health, including, but not limited to,
3 mesothelioma, other lung damage, and cancer, and the mental and emotional distress attendant thereto,
4 from the effect of exposure to asbestos fibers, all to Plaintiff general damage in a sum in excess of the
5 jurisdictional limit of a limited civil case.

6 20. As a direct and proximate result of the aforesaid conduct of the DEFENDANTS, and
7 each of them, Plaintiff has incurred liability for physicians, surgeons, nurses, hospital care, medicine,
8 hospices, X-rays and other medical treatment, the true and exact amount thereof being unknown to
9 Plaintiff at this time, and Plaintiff prays leave to amend this complaint accordingly when the true and
10 exact cost thereof is ascertained.

11 21. Plaintiff further alleges that DEFENDANTS, and each of them, also engaged in the
12 following wrongful acts:

13 (a) DEFENDANTS, and each of them, suppressed from all consumers, including Decedent
14 JOEL HERNANDEZCUEVA, medical and scientific information concerning the health hazards
15 associated with inhalation of asbestos, including the substantial risk of injury or death therefrom.
16 Although DEFENDANTS, and each of them, of the substantial risks associated with exposure to
17 asbestos, they willfully and knowingly concealed such information from the users of their asbestos
18 and/or asbestos-containing products in conscious disregard of the rights, safety and welfare of “exposed
19 person”, including Decedent JOEL HERNANDEZCUEVA;

20 (b) DEFENDANTS, and each of them, belonged to, participated in, and financially
21 supported industry organizations, including but not limited to the Gypsum Association, Asbestos
22 Information Association, Industrial Hygiene Foundation and others, which, for and on behalf of
23 defendants, their “alternate entities”, and each of them, actively promoted the suppression of information
24 about the dangers of asbestos to users of the aforementioned products and materials, thereby misleading
25 Decedent JOEL HERNANDEZCUEVA as to the safety of their products. Through their participation
26 and association with such industry organizations, defendants and each of them knowingly and
27 deliberately concealed and suppressed the true information regarding asbestos and its dangers, and
28 propagated misinformation intended to instill in users of Defendants’ Products a false security about the

1 safety of their products. The Dust Control Committee, which changed its name to the Air Hygiene
2 Committee, of the Asbestos Textile Institute, was specifically enlisted to study the subject of dust
3 control. Discussions in this committee were held many times regarding the dangers inherent in asbestos
4 and the dangers, which arise from the lack of control of dust, and such information was suppressed from
5 public dissemination from 1946 to a date unknown to Decedent JOEL HERNANDEZCUEVA at this
6 time;

7 (c) Commencing in 1930 with the study of mine and mill workers at Asbestos and Thetford
8 Mines in Quebec, Canada, and the study of the workers at Raybestos-Manhattan plants in Manheim and
9 Charleston, South Carolina, DEFENDANTS, and each of them, and each of them, knew and possessed
10 medical and scientific information of the connection between the inhalation of asbestos fibers and
11 asbestosis, which information was disseminated through the Asbestos Textile Institute and other
12 industry organizations to all other DEFENDANTS, and each of them, and each of them, herein.
13 Between 1942 and 1950, DEFENDANTS, and each of them, failed to provide this information to
14 consumers;

15 (d) DEFENDANTS, and each of them, failed to warn Plaintiff JOEL HERNANDEZCUEVA
16 and others of the nature of said materials which were dangerous when breathed and which could cause
17 pathological effects without noticeable trauma, despite the fact that DEFENDANTS, and each of them,
18 possessed knowledge and were under a duty to disclose that said materials were dangerous and a threat
19 to the health of persons coming into contact therewith;

20 (e) DEFENDANTS, and each of them, failed to provide Decedent JOEL
21 HERNANDEZCUEVA with information concerning adequate protective masks and other equipment
22 devised to be used when applying, mixing, installing and sanding the products of DEFENDANTS, and
23 each of them, despite knowing that such protective measures were necessary, and that they were under a
24 duty to disclose that such materials were dangerous and would result in injury to Decedent JOEL
25 HERNANDEZCUEVA and others applying and installing such material;

26 (f) DEFENDANTS, and each of them, knew and failed to disclose that Decedent JOEL
27 HERNANDEZCUEVA and anyone similarly situated, upon inhalation of asbestos would, in time, have
28 a substantial risk of developing irreversible conditions of pneumoconiosis, asbestosis, mesothelioma

1 and/or cancer;

2 (g) DEFENDANTS, and each of them, failed to provide information of the true nature of the
3 hazards of asbestos materials and that exposure to these material would cause pathological effects
4 without noticeable trauma to the public, including buyers, users, and physicians employed by Decedent
5 JOEL HERNANDEZCUEVA so that said physicians could not examine, diagnose, and treat Plaintiff
6 and others who were exposed to asbestos, despite the fact that DEFENDANTS, and each of them, were
7 under a duty to so inform and said failure was misleading.

8 22. DEFENDANTS, and each of them, and their officers, directors, and managing agents
9 participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have
10 known of, each of the acts set forth herein. DEFENDANTS, and each of them, are liable for the
11 oppressive and malicious acts of their “alternate entities”, and each of the DEFENDANTS’ officers,
12 directors, and managing agents participated in, authorized, expressly and impliedly ratified, and had full
13 knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

14 23. The herein-described conduct of DEFENDANTS, and each of them, was and is willful,
15 malicious, oppressive, outrageous, and in conscious disregard and indifference to the safety and health
16 of “exposed person,” including Decedent JOEL HERNANDEZCUEVA, in that DEFENDANTS, and
17 each of them, continued to manufacture, market and/or sell dangerous products known to cause severe,
18 permanent injuries and death, despite possessing knowledge of the substantial hazards posed by use of
19 their products, in order to continue to profit financially therefrom. DEFENDANTS, and each of them,
20 engaged in such conduct so despicable, contemptible, base, vile, miserable, wretched and loathsome as
21 to be looked down upon and despised by ordinary people and justifies an award of punitive and
22 exemplary damages pursuant to *Civil Code* section 3294. Plaintiff, for the sake of example and by way
23 of punishing said defendants, seeks punitive damages according to proof.

24 24. DEFENDANTS, and each of them, engaged in conduct which was intended by
25 defendants and each of them to cause injury to the plaintiffs, and despicable conduct which was carried
26 on by DEFENDANTS, and each of them, with a willful and conscious disregard of the rights or safety
27 of others, including Decedent JOEL HERNANDEZCUEVA.

28 25. DEFENDANTS, and each of them, engaged in the despicable conduct described herein

1 that subjected persons, including Decedent JOEL HERNANDEZCUEVA, to cruel and unjust hardship
2 in the form of sever, debilitating and fatal diseases like asbestosis, lung cancer and mesothelioma, in
3 conscious disregard of those persons' rights.

4 26. As a direct and proximate result of such intentional conduct by DEFENDANTS, and
5 each of them, Decedent JOEL HERNANDEZCUEVA sustained the injuries and damages alleged
6 herein.

7 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS, and each of them, as
8 hereinafter set forth.

9 **SECOND CAUSE OF ACTION**

10 (Strict Liability)

11 (BY PLAINTIFFS AGAINST ALL DEFENDANTS)

12 27. Plaintiff incorporates herein by reference, as though fully set forth therein, the allegations
13 contained in the First Cause of Action herein.

14 28. DEFENDANTS listed on Exhibit "B", and each of them, sold the aforementioned
15 Products and failed to adequately warn or instruct of the known and knowable dangers and risks of the
16 ordinary, intended, and foreseeable use of their products, which dangers and risks would not have been,
17 and were not, recognized by ordinary consumers of the products, including Decedent JOEL
18 HERNANDEZCUEVA, and the lack of sufficient instructions and/or warnings was a substantial factor
19 in causing harm to Decedent JOEL HERNANDEZCUEVA, and others in Plaintiff's position working
20 with and in close proximity to such products.

21 29. DEFENDANTS' Products were defective and unsafe for their intended purpose and
22 foreseeable use in that, when used, handled, installed, repaired, maintained, overhauled, removed,
23 sawed, chipped, hammered, mixed, scraped, sanded, removed with compressed air, arched, swept,
24 broken, "ripped out," cut, sawed, installed, and/or used as intended, or used to cut, saw or manipulate
25 products containing asbestos or otherwise disturbed, said products would result in the release, and
26 therefore inhalation of, hazardous and dangerous asbestos fibers by exposed person, including Decedent
27 JOEL HERNANDEZCUEVA. The defect existed in all of said products when they left the possession
28 of the DEFENDANTS, and each of them. At the time DEFENDANTS' Products were used by

1 Decedent, and others in Decedent's position working with and in close proximity to such products, the
2 products were substantially the same as when they left the possession of the DEFENDANTS, and each
3 of them, and/or any changes made to the products after they left the possession of DEFENDANTS, and
4 each of them were reasonably foreseeable to DEFENDANTS, and each of them. DEFENDANTS'
5 asbestos and asbestos products were used by Decedent JOEL HERNANDEZCUEVA and others in
6 Decedent's position working with and in close proximity to such products, in a way that was reasonably
7 foreseeable to DEFENDANTS, and each of them. The defect in said products was a substantial factor in
8 causing harm and personal injuries to Decedent JOEL HERNANDEZCUEVA, including malignant
9 mesothelioma, while being used in a reasonably foreseeable manner, thereby rendering said products
10 defective, unsafe, and unreasonably dangerous for their ordinary and intended use.

11 30. As a direct and proximate result of the actions and conduct outlined herein,
12 DEFENDANTS' Products failed to perform as safely as an ordinary consumer would have expected in
13 that DEFENDANTS' Products, and each of them, caused respirable asbestos fibers to be released from
14 asbestos products during their ordinary and intended use, and such hazardous exposures lacked any
15 perceptible qualities to the human body, yet they cause severe and fatal diseases, including asbestosis,
16 lung cancer, mesothelioma and other cancers in humans. Plaintiffs further allege that "exposed person",
17 including Decedent JOEL HERNANDEZCUEVA, were unaware of the harmful effects of asbestos and
18 further unaware of the harmful exposures to DEFENDANTS' Products when such exposures occurred,
19 and thus the failure of DEFENDANTS' products to perform as safely as Decedent JOEL
20 HERNANDEZCUEVA, had reason to expect was a substantial factor in causing his injuries.

21 31. As a direct and proximate result of the actions and conduct outlined herein, Decedent
22 JOEL HERNANDEZCUEVA, has suffered the injuries and damages alleged herein.

23 32. Plaintiff further alleges that DEFENDANTS, and each of them, also engaged in the
24 following wrongful acts:

25 (a) DEFENDANTS, and each of them, suppressed from all consumers, including Decedent
26 JOEL HERNANDEZCUEVA, medical and scientific information concerning the health hazards
27 associated with inhalation of asbestos, including the substantial risk of injury or death therefrom.
28 Although DEFENDANTS, and each of them, knew of the substantial risks associated with exposure to

1 asbestos, they willfully and knowingly concealed such information from the users of their asbestos
2 and/or asbestos-containing products in conscious disregard of the rights, safety and welfare of “exposed
3 person”, including Decedent JOEL HERNANDEZCUEVA;

4 (b) DEFENDANTS, and each of them, belonged to, participated in, and financially
5 supported industry organizations, including but not limited to the Gypsum Association, Asbestos
6 Information Association, Industrial Hygiene Foundation and others, which, for and on behalf of
7 DEFENDANTS, and each of them, actively promoted the suppression of information about the dangers
8 of asbestos to users of the aforementioned products and materials, thereby misleading Decedent JOEL
9 HERNANDEZCUEVA, as to the safety of their products. Through their participation and association
10 with such industry organizations, DEFENDANTS, and each of them, knowingly and deliberately
11 concealed and suppressed the true information regarding asbestos and its dangers, and propagated
12 misinformation intended to instill in users of DEFENDANTS’, and each of them, Products a false
13 security about the safety of their products. The Dust Control Committee, which changed its name to the
14 Air Hygiene Committee, of the Asbestos Textile Institute, was specifically enlisted to study the subject
15 of dust control. Discussions in this committee were held many times regarding the dangers inherent in
16 asbestos and the dangers, which arise from the lack of control of dust, and such information was
17 suppressed from public dissemination from 1946 to a date unknown to Decedent JOEL
18 HERNANDEZCUEVA, at this time;

19 (c) Commencing in 1930 with the study of mine and mill workers at Asbestos and Thetford
20 Mines in Quebec, Canada, and the study of the workers at Raybestos-Manhattan plants in Manheim and
21 Charleston, South Carolina, DEFENDANTS, and each of them, knew and possessed medical and
22 scientific information of the connection between the inhalation of asbestos fibers and asbestosis, which
23 information was disseminated through the Asbestos Textile Institute and other industry organizations to
24 all other DEFENDANTS, and each of them, herein. Between 1942 and 1950, DEFENDANTS, and each
25 of them, failed to provide this information to consumers;

26 (d) DEFENDANTS, and each of them, failed to warn Decedent JOEL
27 HERNANDEZCUEVA, and others of the nature of said materials which were dangerous when breathed
28 and which could cause pathological effects without noticeable trauma, despite the fact that

1 DEFENDANTS, and each of them, possessed knowledge and were under a duty to disclose that said
2 materials were dangerous and a threat to the health of persons coming into contact therewith;

3 (e) DEFENDANTS, and each of them, failed to provide Decedent JOEL
4 HERNANDEZCUEVA, with information concerning adequate protective masks and other equipment
5 devised to be used when applying, mixing, sawing, cutting, installing and sanding the products of
6 DEFENDANTS, and each of them, despite knowing that such protective measures were necessary, and
7 that they were under a duty to disclose that such materials were dangerous and would result in injury to
8 Decedent JOEL HERNANDEZCUEVA, and others applying and installing such material;

9 (f) DEFENDANTS, and each of them, knew and failed to disclose that Decedent JOEL
10 HERNANDEZCUEVA, and anyone similarly situated, upon inhalation of asbestos would, in time, have
11 a substantial risk of developing irreversible conditions of pneumoconiosis, asbestosis, mesothelioma
12 and/or cancer;

13 (g) DEFENDANTS, and each of them, failed to provide information of the true nature of the
14 hazards of asbestos materials and that exposure to these material would cause pathological effects
15 without noticeable trauma to the public, including buyers, users, and physicians employed by Decedent
16 JOEL HERNANDEZCUEVA, so that said physicians could not examine, diagnose, and treat Decedent
17 and others who were exposed to asbestos, despite the fact that DEFENDANTS, and each of them, were
18 under a duty to so inform and said failure was misleading; and

19 33. DEFENDANTS, and each of them, and their officers, directors, and managing agents
20 participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have
21 known of, each of the acts set forth herein. DEFENDANTS, and each of them, are liable for the
22 oppressive and malicious acts of their “alternate entities”, and each of them, and each DEFENDANTS’
23 officers, directors, and managing agents participated in, authorized, expressly and impliedly ratified, and
24 had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth
25 herein.

26 34. The herein-described conduct of said DEFENDANTS, and each of them, and each of
27 them, was and is willful, malicious, oppressive, outrageous, and in conscious disregard and indifference
28 to the safety and health of “exposed person,” including Decedent JOEL HERNANDEZCUEVA, in that

1 DEFENDANTS, and each of them, continued to manufacture, market and/or sell dangerous products
2 known to cause severe, permanent injuries and death, despite possessing knowledge of the substantial
3 hazards posed by use of their products, in order to continue to profit financially therefrom.
4 DEFENDANTS, and each of them, engaged in such conduct so despicable, contemptible, base, vile,
5 miserable, wretched and loathsome as to be looked down upon and despised by ordinary people and
6 justifies an award of punitive and exemplary damages pursuant to *Civil Code* section 3294. Plaintiff, for
7 the sake of example and by way of punishing said DEFENDANTS, and each of them, seeks punitive
8 damages according to proof.

9 35. DEFENDANTS, and each of them, engaged in conduct which was intended by
10 DEFENDANTS, and each of them, to cause injury to the Plaintiff, and despicable conduct which was
11 carried on by DEFENDANTS, and each of them, with a willful and conscious disregard of the rights or
12 safety of others, including Decedent JOEL HERNANDEZCUEVA.

13 36. DEFENDANTS, and each of them, engaged in the despicable conduct described herein
14 that subjected persons, including Decedent JOEL HERNANDEZCUEVA, to cruel and unjust hardship
15 in the form of sever, debilitating and fatal diseases like asbestosis, lung cancer and mesothelioma, in
16 conscious disregard of those persons' rights.

17 37. As a direct and proximate result of such intentional conduct by DEFENDANTS, and
18 each of them, Decedent JOEL HERNANDEZCUEVA, sustained the injuries and damages alleged
19 herein.

20 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS, and each of them, as
21 hereinafter set forth.

22 **THIRD CAUSE OF ACTION**

23 (False Representation Under Restatement of Torts Section 402-B)

24 (BY PLAINTIFFS AGAINST ALL DEFENDANTS EXCEPT NOT AGAINST DEFENDANT E.F.

25 BRADY COMPANY, INC.)

26 38. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and
27 every allegation contained in the First and Second Causes of Action.

28 39. At the aforementioned time when DEFENDANTS, and each of them, researched,

1 manufactured, fabricated, designed, modified, tested or failed to test, inadequately warned or failed to
2 warn, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected,
3 serviced, installed, contracted for installation, repaired, marketed, warranted, re-branded, manufactured
4 for others, packaged and advertised the said asbestos and asbestos-containing products, as hereinabove
5 set forth, the DEFENDANTS, and each of them, expressly and impliedly represented to members of the
6 general public, including the purchasers and users of said product, and other “exposed persons”,
7 including, without limitation, Decedent JOEL HERNANDEZCUEVA, that asbestos and asbestos-
8 containing products, were of merchantable quality, and safe for the use for which they were intended.

9 40. The purchasers and users of said asbestos and asbestos-containing products, and other
10 “exposed persons”, including, without limitation, Decedent JOEL HERNANDEZCUEVA, relied upon
11 said representations of DEFENDANTS, and each of them, in the selection, purchase, and use of asbestos
12 and asbestos-containing products.

13 41. Said representation by DEFENDANTS, and each of them, were false and untrue, and
14 DEFENDANTS, and each of them, knew at the time they were untrue, in that the asbestos and asbestos-
15 containing products were not safe for their intended use, nor were they of merchantable quality as
16 represented by DEFENDANTS, and each of them, in that asbestos and asbestos-containing products
17 have very dangerous properties and defects whereby said products cause asbestosis, other lung damages,
18 and cancer, and have other defects that cause injury and damage to the users of said products and other
19 “exposed persons”, thereby threatening the health and life of said persons, including Decedent JOEL
20 HERNANDEZCUEVA herein.

21 42. As a direct and proximate result of said false representations by DEFENDANTS, and
22 each of them, Plaintiff sustained the injuries and damages alleged herein.

23 WHEREFORE, Plaintiffs prays for judgment against DEFENDANTS, and each of them, as
24 hereinafter set forth.

25 **FOURTH CAUSE OF ACTION**

26 (Intentional Tort/Intentional Failure to Warn)

27 (BY PLAINTIFFS AGAINST ALL DEFENDANTS EXCEPT NOT AGAINST DEFENDANT E.F.

28 BRADY COMPANY, INC.)

1 43. Plaintiff hereby incorporates by reference, as though fully set forth herein, each and every
2 allegation contained in the First and Third Causes of Action herein.

3 44. At all times pertinent hereto, DEFENDANTS, and each of them, owed Plaintiff a duty, as
4 provided for in Section 1708, 1709, and 1710 of the *Civil Code* of the State of California, to abstain
5 from injuring the person, property, or rights of the Plaintiff. When a duty to act was imposed, as set
6 forth herein, DEFENDANTS, and each of them, did do the acts and omissions in violation of that duty,
7 thereby causing injury to Plaintiff as is more fully set forth herein. Such acts and omissions consisted of
8 acts falling within Section 1709 (Fraudulent Deceit) and Section 1710 (Deceit) of the *Civil Code* of the
9 State of California and, more specifically, included suggestions of fact which were not true and which
10 DEFENDANTS, and each of them, did not believe to be true; assertions of fact which were not true and
11 which DEFENDANTS, and each of them, had no reasonable ground for believing to be true, and the
12 suppression of fact when a duty existed to disclose it, all as more fully set forth herein; the violation of
13 any one such duty gave rise to a cause of action for violation of rights of Plaintiff as provided for in the
14 aforementioned *Civil Code* sections.

15 45. Since on or before 1930, DEFENDANTS, and each of them, have known and have
16 possessed the true facts of medical and scientific data and other knowledge which clearly indicated that
17 the asbestos and asbestos-containing products referred to in Plaintiff's First Cause of Action were and
18 are hazardous to the health and safety of Plaintiff, and others in Plaintiff's position working in close
19 proximity with such materials. DEFENDANTS, and each of them, have known of the dangerous
20 propensities of the aforementioned materials and products since before that time. With intent to deceive
21 Decedent JOEL HERNANDEZCUEVA and others in Plaintiff's position, and with intent that he and
22 such others should be and remain ignorant of such facts with intent to induce Plaintiff and such others to
23 alter his and their positions to his and their injury and/or risk and in order to gain advantages, the
24 following acts occurred:

25 (a) DEFENDANTS, and each of them, did not label any of the aforementioned asbestos-
26 containing materials and products regarding the hazards of such materials and products to the health and
27 safety of Plaintiff and others in Plaintiff's position working in close proximity with such materials until
28 1964, when certain of such materials were labeled by some, but not all, DEFENDANTS, and each of

1 them, since on or before 1930. By not labeling such materials as to their said hazards, DEFENDANTS,
2 and each of them, caused to be suggested as a fact to Plaintiff that it was safe for him to work in close
3 proximity to such materials, when in fact it was not true; and DEFENDANTS, and each of them, did not
4 believe it to be true;

5 (b) DEFENDANTS, and each of them, suppressed information relating to the danger of use
6 of the aforementioned materials by requesting the suppression of information to the Plaintiff and the
7 general public concerning the dangerous nature of the aforementioned materials to workers, by not
8 allowing such information to be disseminated in a manner which would have given general notice to the
9 public and knowledge of the hazardous nature thereof when DEFENDANTS, and each of them, were
10 bound to disclose such information;

11 (c) DEFENDANTS, and each of them, sold the aforementioned products and materials to
12 Plaintiff, his employers and others without advising Plaintiff, his employers, and others of the dangers of
13 use of such materials to persons working in close proximity thereto when DEFENDANTS, and each of
14 them, knew of such dangers, and had a duty to disclose such dangers all as set forth herein. By said
15 conduct, Defendants, their “alternate entities”, and each of them, caused to be positively asserted to
16 Decedent JOEL HERNANDEZCUEVA that which was not true and that which DEFENDANTS, and
17 each of them, had no reasonable ground for believing to be true, to wit: that it was safe for Decedent
18 JOEL HERNANDEZCUEVA to work in close proximity to such materials;

19 (d) DEFENDANTS, and each of them, suppressed from Plaintiff’s medical and scientific
20 data and knowledge of the results of studies including, but not limited to, the information and contents
21 of the “Lanza Report.” Although bound to disclose it, DEFENDANTS, and each of them, influenced A.
22 J. Lanza, M.D. to change his report, the altered version of which was published in *Public Health*
23 *Reports*, Volume 50, at page 1, in 1935, thereby causing Plaintiff and others to be and remain ignorant
24 thereof. DEFENDANTS, and each of them, caused *Asbestos Magazine*, a widely disseminated trade
25 journal, to omit mention of danger, thereby lessening the probability of notice of danger to the users
26 thereof;

27 (e) DEFENDANTS, and each of them, belonged to, participated in, and financially
28 supported the Asbestos Textile Institute and other industry organizations which, for and on behalf of

1 DEFENDANTS, and each of them, actively promoted the suppression of information of danger to users
2 of the aforementioned products and materials, thereby misleading Decedent JOEL
3 HERNANDEZCUEVA by the suggestions and deceptions set forth above in this cause of action. The
4 Dust Control Committee, which changed its name to the Air Hygiene Committee, of the Asbestos
5 Textile Institute, was specifically enlisted to study the subject of dust control. Discussions in this
6 committee were held many times regarding the dangers inherent in asbestos and the dangers, which arise
7 from the lack of control of dust, and such information was suppressed from public dissemination from
8 1946 to a date unknown to Decedent JOEL HERNANDEZCUEVA at this time;

9 (f) Commencing in 1930 with the study of mine and mill workers at Asbestos and Thetford
10 Mines in Quebec, Canada, and the study of the workers at Raybestos-Manhattan plants in Manheim and
11 Charleston, South Carolina, DEFENDANTS, and each of them, knew and possessed medical and
12 scientific information of the connection between the inhalation of asbestos fibers and asbestosis, which
13 information was disseminated through the Asbestos Textile Institute and other industry organizations to
14 all other DEFENDANTS, and each of them, herein. Between 1942 and 1950, DEFENDANTS, and each
15 of them, suggested to the public as a fact that which is not true and disseminated other facts likely to
16 mislead Plaintiff. Such facts did mislead Plaintiff and others by withholding the afore-described
17 medical and scientific data and other knowledge and by not giving Decedent JOEL
18 HERNANDEZCUEVA the true facts concerning such knowledge of danger, which DEFENDANTS,
19 and each of them, were bound to disclose;

20 (g) DEFENDANTS, and each of them, failed to warn Decedent JOEL
21 HERNANDEZCUEVA and others of the nature of said materials which were dangerous when breathed
22 and which could cause pathological effects without noticeable trauma, despite the fact that
23 DEFENDANTS, and each of them, possessed knowledge and were under a duty to disclose that said
24 materials were dangerous and a threat to the health of persons coming into contact therewith;

25 (h) DEFENDANTS, and each of them, failed to provide Decedent JOEL
26 HERNANDEZCUEVA with information concerning adequate protective masks and other equipment
27 devised to be used when applying and installing the products of the DEFENDANTS, and each of them,
28 despite knowing that such protective measures were necessary, and that they were under a duty to

1 disclose that such materials were dangerous and would result in injury to Decedent JOEL
2 HERNANDEZCUEVA and others applying and installing such material;

3 (i) DEFENDANTS, and each of them, when under a duty to so disclose, concealed from
4 Decedent JOEL HERNANDEZCUEVA the true nature of the industrial exposure of Decedent JOEL
5 HERNANDEZCUEVA and knew that Plaintiff and anyone similarly situated, upon inhalation of
6 asbestos would, in time, develop irreversible conditions of pneumoconiosis, asbestosis, and/or cancer.
7 DEFENDANTS, and each of them, also concealed from Decedent JOEL HERNANDEZCUEVA and
8 others that harmful materials to which they were exposed would cause pathological effects without
9 noticeable trauma;

10 (j) DEFENDANTS, and each of them, failed to provide information of the true nature of the
11 hazards of asbestos materials and that exposure to these material would cause pathological effects
12 without noticeable trauma to the public, including buyers, users, and physicians employed by Decedent
13 JOEL HERNANDEZCUEVA so that said physicians could not examine, diagnose, and treat Plaintiff
14 and others who were exposed to asbestos, despite the fact that DEFENDANTS, and each of them, were
15 under a duty to so inform and said failure was misleading; and

16 (k) DEFENDANTS, and each of them, failed to provide adequate information to physicians
17 and surgeons retained by Plaintiff's employers and their predecessor companies, for purposes of making
18 physical examinations of Decedent JOEL HERNANDEZCUEVA and other employees as to the true
19 nature and risk of such materials and exposure thereto when they in fact possessed such information and
20 had a duty to disclose it.

21 46. DEFENDANTS, and each of them, willfully failed and omitted to complete and file a
22 First Report of Occupational Injury or Illness regarding Plaintiff's injuries and death, as required by law,
23 and did willfully fail and omit to file a Report of Injury and Occupational Disease with the State of
24 California. Decedent JOEL HERNANDEZCUEVA was in the class of persons with respect to whom a
25 duty was owed to file such reports and who would have been protected thereby if the fact of danger from
26 products complained of had become known.

27 47. DEFENDANTS, and each of them, having such aforementioned knowledge, and the duty
28 to inform Decedent JOEL HERNANDEZCUEVA about the true facts, and knowing the Decedent JOEL

1 HERNANDEZCUEVA did not possess such knowledge and would breathe such material innocently,
2 acted falsely and fraudulently and with full intent to cause Decedent JOEL HERNANDEZCUEVA to
3 remain unaware of the true facts and to induce Plaintiff to work in a dangerous environment, all in
4 violation of Sections 1708, 1709, and 1710 of the *Civil Code* of the State of California.

5 48. As a direct and proximate result of such intentional conduct by DEFENDANTS, and each
6 of them, Decedent JOEL HERNANDEZCUEVA sustained the injuries and damages alleged herein.
7 The herein-described conduct of DEFENDANTS, and each of them, was and is willful, malicious,
8 fraudulent, outrageous, and in conscious disregard and indifference to the safety and health of “exposed
9 persons”. Plaintiff, for the sake of example and by way of punishing DEFENDANTS, and each of them,
10 seeks punitive damages according to proof.

11 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS, and each of them, in an
12 amount to be proved at trial in each individual case, as hereinafter set forth.

13 **FIFTH CAUSE OF ACTION**

14 (Premises Owner/Contractor Liability)

15 (BY PLAINTIFF JOEL HERNANDEZCUEVA AGAINST PREMISES OWNER/
16 CONTRACTOR LIABILITY DEFENDANTS, EXCEPT NOT ALLEGED AGAINST DEFENDANT
17 E.F. BRADY COMPANY, INC.)

18 49. Plaintiff hereby incorporates by reference, as though fully set forth herein, paragraphs
19 1 through 6 herein.

20 50. At all times herein mentioned, each of the PREMISES OWNER/CONTRACTOR
21 LIABILITY DEFENDANTS was a successor, successor-in-business, assign, predecessor, predecessor-
22 in-business, parent, subsidiary, wholly or partially owned by, or the whole or partial owner of an entity
23 causing certain asbestos-containing insulation, other building materials, products and toxic substances to
24 be constructed, installed, maintained, used, replaced, repaired and/or removed on the respective
25 premises owned, leased, maintained, managed and/or controlled by them. Said entities shall hereinafter
26 collectively be called “alternate entities.” Each of the herein-named defendants is liable for the tortious
27 conduct of each successor, successor-in-business, assign, predecessor-in-business, parent, subsidiary,
28 whole or partial owner, or wholly or partially owned entity, that caused the presence as aforesaid of said

1 asbestos-containing insulation and other toxic substances. The PREMISES OWNER/CONTRACTOR
2 LIABILITY DEFENDANTS, and each of them, are liable for the acts of each and every “alternate
3 entity,” and each of them, in that there has been a virtual destruction of Plaintiff’s remedy against each
4 such alternate entity; defendants, and each of them, have acquired the assets, or a portion thereof, of
5 each such alternate entity; defendants, and each of them, have caused the destruction of Plaintiff’s
6 remedy against each such alternate entity; each PREMISES OWNER/CONTRACTOR LIABILITY
7 DEFENDANTS has the ability to assume the risk-spreading role of each such alternate entity, and that
8 each such PREMISES OWNER/CONTRACTOR LIABILITY DEFENDANTS enjoys the goodwill
9 originally attached to each such alternate entity.

10 51. At all times mentioned herein, the PREMISES OWNER/CONTRACTOR LIABILITY
11 DEFENDANTS, and each of them, respectively, owned, leased, maintained, managed, and/or controlled
12 the premises where Plaintiff was present. The information is preliminary, based on recall over events
13 covering many years and further investigation and discovery may produce more reliable information.
14 Additionally, Plaintiff might have been present at these or other PREMISES OWNER/CONTRACTOR
15 LIABILITY DEFENDANTS’ premises at other locations and on other occasions.

16 52. Before and at said times and places, said PREMISES OWNER/CONTRACTOR
17 LIABILITY DEFENDANTS, and each of them, respectively, caused certain asbestos-containing
18 insulation, other building materials, products and toxic substances to be constructed, installed,
19 maintained, used, supplied, replaced, repaired, disturbed and/or removed on each of the aforesaid
20 respective premises, by their own workers and/or by various contractors and/or subcontractors, and
21 caused the release of dangerous quantities of toxic asbestos fibers and other toxic substances into the
22 ambient air and thereby created a hazardous and unsafe condition to plaintiff and other persons exposed
23 to said asbestos fibers and toxic substances while present at said premises.

24 53. At all times mentioned herein, PREMISES OWNER/CONTRACTOR LIABILITY
25 DEFENDANTS, and each of them, knew or in the exercise of ordinary and reasonable care should have
26 known, that the foregoing conditions and activities created a dangerous, hazardous, and unsafe condition
27 and unreasonable risk of harm and personal injury to Decedent and other workers or persons so exposed
28 present on each of the aforesaid respective premises.

1 54. At all times mentioned herein, PREMISES OWNER/CONTRACTOR LIABILITY
2 DEFENDANTS, and each of them, had more knowledge about the hazards of asbestos than Decedent or
3 his employers.

4 55. At all times relevant herein, plaintiff entered said premises and used or occupied each of
5 said respective premises as intended and for each of the PREMISES OWNER/CONTRACTOR
6 LIABILITY DEFENDANTS' benefit and advantage and at each of the respective PREMISES
7 OWNER/CONTRACTOR LIABILITY DEFENDANTS' request and invitation. In so doing, Decedent
8 was exposed to dangerous quantities of asbestos fibers and other toxic substances released into the
9 ambient air by the aforesaid hazardous conditions and activities managed, maintained, initiated, and/or
10 otherwise created, controlled, or caused by said PREMISES OWNER/CONTRACTOR LIABILITY
11 DEFENDANTS, and each of them.

12 56. Decedent at all times was unaware of the hazardous condition or the risk of personal
13 injury created by the aforesaid presence and use of asbestos products and materials and other toxic
14 substances on said premises.

15 57. The hazardous condition or the risk of personal injury created by the aforesaid presence
16 and use of asbestos products and materials and other toxic substances on said premises was not a known
17 condition that Plaintiff's employer was hired to correct or repair.

18 58. At all times mentioned herein, PREMISES OWNER/CONTRACTOR LIABILITY
19 DEFENDANTS, and each of them, remained in control of the premises where Decedent was performing
20 his work.

21 59. At all times mentioned herein, PREMISES OWNER/CONTRACTOR LIABILITY
22 DEFENDANTS, and each of them, owed to Decedent and others similarly situated a duty to exercise
23 ordinary care in the management of such premises in order to avoid exposing workers such as Plaintiff
24 to an unreasonable risk of harm and to avoid causing injury to said person.

25 60. At all times mentioned herein, PREMISES OWNER/CONTRACTOR LIABILITY
26 DEFENDANTS, and each of them, knew, or in the exercise of ordinary and reasonable care should have
27 known, that the premises that were in their control would be used without knowledge of, or inspection
28 for, defects or dangerous conditions and that the persons present and using said premises would not be

1 aware of the aforesaid hazardous conditions to which they were exposed on the premises.

2 61. At all times mentioned herein, PREMISES OWNER/CONTRACTOR LIABILITY
3 DEFENDANTS, and each of them, negligently failed to maintain, manage, inspect, survey, or control
4 said premises or to abate or correct, or to warn Decedent of, the existence of the aforesaid dangerous
5 conditions and hazards on said premises.

6 62. At all times herein mentioned, PREMISES OWNER/CONTRACTOR LIABILITY
7 DEFENDANTS, and each of them, negligently provided unsafe equipment, for the performance of the
8 work that contributed to Decedent's injuries.

9 63. At all times mentioned herein, PREMISES OWNER/CONTRACTOR LIABILITY
10 DEFENDANTS, and each of them, should have recognized that the work of said contractors would
11 create during the progress of the work, dangerous, hazardous, and unsafe conditions which could or
12 would harm Decedent and others unless special precautions were taken. PREMISES
13 OWNER/CONTRACTOR LIABILITY DEFENDANTS, and each of them, knew or should have known
14 that the work required special procedures to be done safely. PREMISES OWNER/CONTRACTOR
15 LIABILITY DEFENDANTS, and each of them, were aware or should have been aware that such special
16 procedures were not taken.

17 64. In part, Decedent was exposed to dangerous quantities of asbestos fibers and other toxic
18 substances by reason of such contractors' failure to take the necessary precautions.

19 65. The work of contractors on premises controlled by PREMISES
20 OWNER/CONTRACTOR LIABILITY DEFENDANTS, and each of them, created an unsafe premise
21 and an unsafe work place by reason of the release of dangerous quantities of toxic substances including
22 but not limited to asbestos.

23 66. The unsafe premise or work place was created, in part, by the negligent conduct of the
24 contractors employed by the PREMISES OWNER/CONTRACTOR LIABILITY DEFENDANTS, and
25 each of them, and by the negligent conduct of the PREMISES OWNER/CONTRACTOR LIABILITY
26 DEFENDANTS, and each of them, themselves. Said negligent conduct includes but is not limited to:

- 27 (a) Failure to warn of asbestos and other toxic dusts;
28 (b) Failure to suppress the asbestos-containing or toxic dusts;

- 1 (c) Failure to remove the asbestos-containing and toxic dusts through use of ventilation or
- 2 appropriate means;
- 3 (d) Failure to provide adequate breathing protection, i.e., approved respirators or masks;
- 4 (e) Failure to inspect and/or test the air;
- 5 (f) Failure to provide medical monitoring;
- 6 (g) Providing asbestos-containing materials without adequate warning or instructions for safe
- 7 use;
- 8 (h) Failure to segregate asbestos work;
- 9 (i) Creating hazardous levels of asbestos dust.

10 67. PREMISES OWNER/CONTRACTOR LIABILITY DEFENDANTS', and each of them,
11 duty to maintain and provide safe premises, a safe place to work, and to warn of dangerous conditions
12 are non-delegable; said duties arise out of common law, *Civil Code* §1708, and Labor Code §6400, et
13 seq., or Health and Safety Code §40200, et seq., and its regulations. Therefore, PREMISES
14 OWNER/CONTRACTOR LIABILITY DEFENDANTS, and each of them, are responsible for any
15 breach of said duties whether by themselves or others.

16 68. Prior to and at said times and places, PREMISES OWNER/CONTRACTOR
17 LIABILITY DEFENDANTS, and each of them, were subject to certain ordinances, statutes, and other
18 government regulations promulgated by the United States Government, the State of California, and
19 others, including but not limited to the General Industry Safety Orders promulgated pursuant to
20 California Labor Code §6400 and the California Administrative Code under the Division of Industrial
21 Safety, Department of Industrial Relations, including but not limited to Title VIII, Group 9 (Control of
22 Hazardous Substances), Article 81, §§4150, 4106, 4107, and 4108, and Threshold Limit Values as
23 documented for asbestos and other toxic substances under Appendix A, Table 1 of said Safety Orders;
24 additionally, California Health and Safety Code §40200, et seq., which empowers the South Coast Air
25 Quality Management District to promulgate regulations including but not limited to South Coast Air
26 Quality Management District. Regulation 11, Rules 2 and 14, Title 40 Code of Federal Regulations,
27 Chapter 1, Part 61, et seq.—The National Emission Standards for Hazardous Air Pollutants, which
28 required said Premises Owner/Contractor Liability Defendants to provide specific safeguards or

1 precautions to prevent or reduce the inhalation of asbestos dust and other toxic fumes or substances; and
2 PREMISES OWNER/CONTRACTOR LIABILITY DEFENDANTS, and each of them, failed to
3 provide the required safeguards and precautions, or contractors employed by the PREMISES
4 OWNER/CONTRACTOR LIABILITY DEFENDANTS, and each of them, failed to provide the
5 required safeguards and precautions. Defendants' violations of said codes include but are not limited to:

- 6 (a) Failing to comply with statutes and allowing ambient levels of airborne asbestos fiber to
7 exceed the permissible/allowable levels with regard to the aforementioned statutes;
- 8 (b) Failing to segregate work involving the release of asbestos or other toxic dusts;
- 9 (c) Failing to suppress dust using prescribed ventilation techniques;
- 10 (d) Failing to suppress dust using prescribed "wet down" techniques;
- 11 (e) Failing to warn or educate plaintiff or others regarding asbestos or other toxic substances on
12 the premises;
- 13 (f) Failing to provide approved respiratory protection devices;
- 14 (g) Failing to ensure "approved" respiratory protection devices were used properly;
- 15 (h) Failing to provide for an on-going health screening program for those exposed to asbestos on
16 the premises;
- 17 (i) Failing to provide adequate housekeeping and clean-up of the work place;
- 18 (j) Failing to properly warn of the hazards associated with asbestos as required by these statutes;
- 19 (k) Failing to properly report renovation and disturbance of asbestos-containing materials,
20 including but not limited to the South Coast Air Quality Management District. Regulation
21 11-2-401;
- 22 (l) Failing to have an asbestos removal supervisor as required by regulation;
- 23 (m) Failing to get approval for renovation as required by statutes; and
- 24 (n) Failing to maintain records as required by statute.

25 69. Decedent at all times was unaware of the hazardous condition or the risk of personal
26 injury created by defendants' violation of said regulations, ordinances or statutes.

27 70. At all times mentioned herein, Decedent was a member of the class of persons whose
28 safety was intended to be protected by the regulations, statutes or ordinances described in the foregoing

1 paragraphs.

2 71. At all times mentioned herein, PREMISES OWNER/CONTRACTOR LIABILITY
3 DEFENDANTS, and each of them, knew, or in the exercise of ordinary and reasonable care should have
4 known, that the premises that were in their control would be used without knowledge of, or inspection
5 for, defects or dangerous conditions, that the persons present and using said premises would not be
6 aware of the aforesaid hazardous conditions to which they were exposed on the premises, and that such
7 persons were unaware of the aforesaid violations of codes, regulations, and statutes.

8 72. The herein-described conduct of DEFENDANTS, and each of them, was and is willful,
9 malicious, oppressive, outrageous, and in conscious disregard and indifference to the safety and health
10 of “exposed person,” including Decedent JOEL HERNANDEZCUEVA, in that DEFENDANTS, and
11 each of them, continued to manufacture, market and/or sell dangerous products known to cause severe,
12 permanent injuries and death, despite possessing knowledge of the substantial hazards posed by use of
13 their products, in order to continue to profit financially therefrom. DEFENDANTS, and each of them,
14 engaged in such conduct so despicable, contemptible, base, vile, miserable, wretched and loathsome as
15 to be looked down upon and despised by ordinary people and justifies an award of punitive and
16 exemplary damages pursuant to *Civil Code* section 3294. Decedent, for the sake of example and by way
17 of punishing said defendants, seeks punitive damages according to proof.

18 73. DEFENDANTS, and each of them, engaged in conduct which was intended by
19 defendants and each of them to cause injury to the plaintiffs, and despicable conduct which was carried
20 on by DEFENDANTS, and each of them, with a willful and conscious disregard of the rights or safety
21 of others, including Decedent JOEL HERNANDEZCUEVA.

22 74. DEFENDANTS, and each of them, engaged in the despicable conduct described herein
23 that subjected persons, including Decedent JOEL HERNANDEZCUEVA, to cruel and unjust hardship
24 in the form of sever, debilitating and fatal diseases like asbestosis, lung cancer and mesothelioma, in
25 conscious disregard of those persons’ rights.

26 75. As a direct and proximate result of such intentional conduct by DEFENDANTS, and
27 each of them, Decedent JOEL HERNANDEZCUEVA sustained the injuries and damages alleged
28 herein.

1 and general nervousness as a result thereof.

2 WHEREFORE, Plaintiffs pray for judgment against DEFENDANTS, and each of them, in an
3 amount to be proved at trial in each individual case, as hereinafter set forth.

4 **SEVENTH CAUSE OF ACTION**

5 (Wrongful Death)

6 (BY PLAINTIFFS AGAINST ALL DEFENDANTS)

7 82. Plaintiffs incorporate by reference, as though fully set forth herein, all preceding
8 paragraphs.

9 83. At the time that Decedent JOEL HERNANDEZCUEVA sustained injury from
10 mesothelioma and later died, as more fully alleged in the First through Sixth Causes of Action, and at all
11 times thereafter, Plaintiff JOVANA COLLANTES was the spouse of Decedent JOEL
12 HERNANDEZCUEVA and Plaintiffs JOANNA HERNANDEZ, JOEL HERNANDEZ, JENNY
13 HERNANDEZ, and NOHELY HERNANDEZ were the children of Decedent JOEL
14 HERNANDEZCUEVA.

15 84. As a direct and proximate result of defendants, and each of them, and of Decedent's
16 diagnosis of and later death from mesothelioma, plaintiffs will be deprived of the love, care, affection,
17 comfort, moral support, protection, companionship, guidance, services and support of Decedent,
18 plaintiffs' father, and have thereby sustained and will continue to sustain damages in an amount in
19 excess of \$50,000.00 in additional to special damages herein alleged.

20 85. As a further direct and proximate result of the acts and omissions of defendants, each one
21 of them, and the death of Decedent, plaintiffs have incurred medical expenses, funeral expenses, as well
22 as other expenses, in an amount in excess of \$50,000.00 in additional to special damages herein alleged.

23 **PLAINTIFFS MAKES NO CLAIMS UNDER FEDERAL LAW**

24 86. As to each and every Defendant, plaintiffs specifically exclude any claims against ALL
25 DEFENDANTS arising in any way under Federal Law or creating any FEDERAL COURT
26 JURISDICTION as to this claims and allegations made herein.

27 **PRAYER FOR DAMAGES**

28 WHEREFORE, Plaintiffs pray judgment against defendants, their "alternate entities," and each

1 of them, as follows:

2 **Prayer for Relief –First through Seventh Causes of Action**

- 3 1. General damages in an amount in excess of \$50,000.00 in accordance with the proof;
- 4 2. Damages for fraud in an amount in excess of \$50,000.00 in accordance with proof;
- 5 3. Punitive and exemplary damages in an amount found appropriate by the trier of fact in
- 6 accordance with the proof;
- 7 4. For Decedent’s loss of income, wages, earning capacity and earning potential according
- 8 to proof;
- 9 5. For Decedent’s medical and related expenses according to proof
- 10 6. Non-economic damages as found appropriate by the trier of fact.
- 11 7. Special damages in accordance with the proof;
- 12 8. Prejudgment interest and post-judgment interest in accordance with law;
- 13 9. Costs of suit; and
- 14 10. Such other and further relief as the Court deems just and proper in the premises.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs also by this pleading demand a jury trial on all issues set forth hereinabove and as

17 shall or might arise pursuant to the same.

18

19 DATED: January 17, 2018

FARRISE LAW FIRM, P.C.

DEAN OMAR BRANHAM, LLP

20

21 By: /s/ Benjamin H. Adams

22 Simona A. Farrise, Esq.

23 Benjamin H. Adams, Esq.

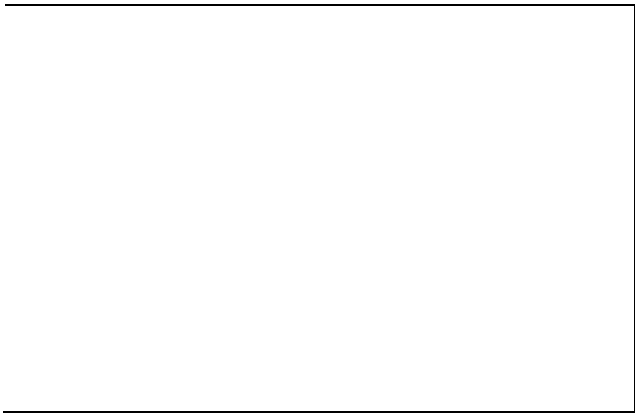
24 Attorneys for Plaintiffs

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- 8. Premises/Contractor Liability/Negligent Provision of Unsafe Equipment – Restatement Second of Torts, Sec. 414
- 9. Premises/Contractor Liability Concealed, Preexisting Dangerous Condition on Premises
- 10. Premises/Contractor Liability/Negligent Undertaking
- 11. Wrongful Death
- 12. Survival Action

Plaintiffs JOVANA COLLANTES, individually and as heir and successor-in-interest to JOEL HERNANDEZCUEVA, deceased; and JOANNA HERNANDEZ, JOEL HERNANDEZ, JENNY HERNANDEZ, and NOHELY HERNANDEZ, individually and as heirs to JOEL HERNANDEZCUEVA, deceased, complain of defendants, and each of them, and allege:

GENERAL ALLEGATIONS – ALL DEFENDANTS

1. Plaintiffs come now on and complain and allege as to ALL DEFENDANTS and each of them named herein as identified or as a fictitiously named defendant as “DOES” that JOEL HERNANDEZCUEVA suffered a fatal cancer, mesothelioma, from which he died on April 5, 2014, which caused plaintiffs economic and non-economic damage in excess of \$50,000.00 for which defendants and each of them are liable and responsible to jointly and/or severally as permitted by law.

2. Plaintiffs are the legal heirs of JOEL HERNANDEZCUEVA, deceased (hereinafter referred to as the “Decedent”). The Decedent died from asbestos related mesothelioma on April 5, 2014 in Lakewood, California. He was 46 years old. The name of each plaintiff and the relationship to Decedent is as follows:

<u>Name</u>	<u>Relationship</u>
JOVANA COLLANTES	Surviving Spouse of Decedent and successor-in-interest to JOEL HERNANDEZCUEVA, deceased
JOANNA HERNANDEZ	Minor daughter of Decedent
JOEL HERNANDEZ	Minor son of Decedent
JENNY HERNANDEZ	Minor daughter of Decedent
NOHELY HERNANDEZ	Daughter of Decedent

3. Plaintiff JOVANA COLLANTES brings this action on her own behalf and as successor-

1 in-interest to JOEL HERNANDEZCUEVA, deceased. Plaintiffs JOANNA HERNANDEZ, JOEL
2 HERNANDEZ, JENNY HERNANDEZ, and NOHELY HERNANDEZ bring this action individually.
3 Plaintiffs are collectively referred to as “plaintiffs” or “plaintiff” herein. Plaintiffs know of no other
4 parties who should be named as a plaintiff herein.

5 4. Decedent JOEL HERNANDEZCUEVA’s purported adult son, OMAR MALDONADO,
6 is allied in interest with plaintiffs, but refuses to join as a coplaintiff. As such, he is involuntarily joined
7 as a nominal defendant so that all of Decedent’s heirs are before the court in the same action.

8 5. The true names and capacities, whether individual, corporate, associate, governmental or
9 otherwise, of defendants DOE 1 through DOE 500, inclusive, are unknown to plaintiffs at this time, with
10 the exception of DOE 1 which is defendant ELEMENTIS CHEMICALS, INC. F/K/A HARCROSS
11 CHEMICAL, INC. [SII TO HARRISONS AND CROSSFIELD (PACIFIC)] and DOE 2 which is
12 defendant CROW HOLDINGS CAPITAL PARTNERS, LLC, whom plaintiffs therefore sue by such
13 fictitious names. When the true names and capacities of said defendants have been ascertained,
14 plaintiffs will amend this complaint accordingly. Plaintiffs are informed and believe, and thereon allege,
15 that each defendant designated herein as a DOE is responsible, negligently or in some other actionable
16 manner, for the events and happenings hereinafter referred to, and caused injuries and damages
17 proximately thereby to plaintiffs, as hereinafter alleged.

18 6. Plaintiffs know of no other party who should be joined as defendant herein; in the event
19 such party or parties exist, any such party is included and nominally named as a fictitiously-named
20 “DOE” defendant herein.

21 7. Plaintiffs are informed and believes, and alleges, that at all times herein mentioned
22 defendants and each of them including defendants DOE 1 through DOE 500, inclusive, were and are
23 authorized to do business in the State of California, that said defendants have regularly conducted
24 business in the County of Los Angeles, State of California, and that certain of said defendants presently
25 designate and have at pertinent times have designated the County of Los Angeles as their principal place
26 of doing business within the State of California. Plaintiffs further allege that throughout the times above
27 some or all of the above-identified defendants maintained their principal places of business and/or
28 contemporaneous business offices in Los Angeles County, State of California, including Los Angeles

1 County business locations at which asbestos-containing products, materials, equipment and components
2 of these defendants were designed, manufactured, assembled, furnished, shipped, warehoused, sold,
3 supplied, distributed to which decedent Mr. HERNANDEZCUEVA and Los Angeles County residents
4 were exposed without warning or protection from these defendants.

5 8. At all times herein mentioned, each of the defendants, except as otherwise alleged, was
6 the agent, servant, employee and/or joint venturer of his codefendants, and each of them, and at all said
7 times, each defendant was acting in the full course and scope of said agency, service, employment
8 and/or joint venture. Defendants and each of them agreed and conspired among themselves and with
9 certain other individuals and/or entities, to act, or not to act, in such a manner that resulted in injury to
10 the plaintiffs; and such defendants, as co-conspirators, are liable for the acts, or failures to act, of the
11 other conspiring defendants. Among other entities and persons, defendants, and each of them, are liable
12 for the acts of each and every "alternate entity" as identified below in that they conspired with one
13 another to make, sell, distribute, design and or provide products and services which would injure
14 plaintiffs which defendants and their co-conspirators and alternate entities knew were dangerous and
15 would place individuals such as Decedent JOEL HERNANDEZCUEVA at risk for serious injury
16 including cancer, but withheld and concealed that information and knowledge from Decedent JOEL
17 HERNANDEZCUEVA and others resulting in the harm complained of herein.

18 9. **NO FEDERAL COURT JURISDICTION AND NO CLAIMS MADE UNDER**
19 **FEDERAL LAW.** As to each and every defendant named herein Plaintiffs do not herein allege or
20 claim any exposure under any of the following causes of action at this time with regard to any product,
21 action, place or activity relating to any military and/or government products; any asbestos-exposure
22 relating to military and/or governmental products, any actions by a federal officer; or activities related in
23 any way to any federal enclave. This Complaint does not nor intends to in any way assert claims based
24 on federal subject matter jurisdiction. Removal is improper. Venue is proper in Los Angeles County,
25 Superior Court of California. As to each and every defendant, Plaintiffs do not herein allege or claim
26 any exposure under any of the following causes of action at this time with regard to any product, action,
27 place or activity relating to any military and/or government products; any asbestos-exposure relating to
28 military and/or governmental products, any actions by a federal officer or activities related in any way to

1 any federal enclave. This Complaint does not nor intends to in any way assert claims based on federal
2 subject matter jurisdiction.

3 10. At all times herein mentioned, each of the defendants was the successor, successor in
4 business, successor in product line or a portion thereof, assign, predecessor, predecessor in business,
5 predecessor in product line or a portion thereof, parent, subsidiary, alter ego, agent and/or fiduciary
6 wholly or partially owned by, or the whole or partial owner of or member in an entity researching,
7 studying, manufacturing, fabricating, designing, labeling, assembling, distributing, leasing, buying,
8 offering for sale, selling, inspecting, servicing, installing, contracting for installation, repairing,
9 marketing, warranting, rebranding, manufacturing for others, packaging and advertising a certain
10 substance, the generic name of which is asbestos and asbestos-containing products. Said entities shall
11 hereinafter collectively be called "alternate entities". Each of the herein named defendants are liable for
12 the tortious conduct of each successor, successor in business, successor in product line or a portion
13 thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof,
14 parent, subsidiary, whole or partial owner, or wholly or partially owned entity, or entity that it was a
15 member of, or funded, that researched, studied, manufactured, fabricated, designed, labeled or failed to
16 label, assembled, distributed, leased, bought, offered for sale, sold, inspected, serviced, installed,
17 contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others and
18 advertised a certain substance, the generic name of which is asbestos and asbestos-containing products.
19 The following defendants, and each of them, are liable for the acts of each and every "alternate entity",
20 and each of them, in that there has been a virtual destruction of plaintiffs' remedy against each such
21 "alternate entity"; defendants have acquired the assets, product line, or a portion thereof, of each such
22 "alternate entity"; defendants and each of them, caused the destruction of plaintiffs' remedy against each
23 such "alternate entity"; each such defendant has the ability to assume the risk spreading role of each
24 such "alternate entity"; and that each such defendant enjoys the goodwill originally attached to each such
25 "alternate entity."

26 11. Decedent JOEL HERNANDEZCUEVA was exposed to asbestos during the course of his
27 life in the manner and during the time periods set forth below. Decedent was employed at the following
28 location where he was repeatedly and substantially exposed to asbestos:

1 From approximately 1992 through 1995, decedent JOEL HERNANDEZCUEVA worked as a
2 janitor and maintenance person at the Fluor facility known as Park Place, an 800,000 square foot
3 complex of buildings located at 3333 Michelson Drive, Irvine, California. While Mr.
4 HERNANDEZCUEVA worked at Park Place, it was owned and managed by defendant CROW
5 HOLDINGS CAPITAL PARTNERS, LLC. Built in the early and mid-1970s, the original walls at Park
6 Place were constructed using asbestos-containing dual purpose joint compound manufactured by
7 Hamilton Materials and installed by defendant E.F. BRADY COMPANY, INC. Defendant Union
8 Carbide Corporation, a miner and miller of raw asbestos fiber, was the exclusive supplier of the asbestos
9 fiber in the Hamilton joint compound that defendant E.F. BRADY COMPANY, INC. applied to every
10 wall at Park Place. During the first six months that Mr. HERNANDEZCUEVA worked at Park Place,
11 he provided janitorial and maintenance services as an employee of an independent contractor. From
12 1993 through 1995, Mr. HERNANDEZCUEVA worked for Fluor Maintenance Services. Throughout
13 his entire employment at Park Place – both as an independent contractor and as a Fluor employee – Mr.
14 HERNANDEZCUEVA was repeatedly and continuously exposed to UNION CARBIDE
15 CORPORATION’s raw asbestos fiber through the removal and demolition of original walls as part of
16 ongoing tenant improvement and renovation work. Mr. HERNANDEZCUEVA was also exposed to
17 asbestos while performing routine maintenance and clean-up work throughout the Park Place buildings.

18 12. Decedent’s exposure to asbestos was the direct and legal cause of his development of
19 mesothelioma and subsequent death.

20 **FIRST CAUSE OF ACTION**

21 **Negligence**

22 **[Against ALL DEFENDANTS EXCEPT NOT AGAINST DEFENDANT E.F. BRADY**
23 **COMPANY, INC.]**

24 For a First Cause of Action, plaintiffs complain of defendants and PRODUCT DEFENDANTS,
25 and each of them, and for a cause of action allege:

26 13. PLAINTIFFS incorporate fully here by reference as though fully set forth all of the
27 General Allegations above.

28 14. “PRODUCT DEFENDANTS” as they are referred to hereafter and throughout this

1 complaint include: ELEMENTIS CHEMICAL, INC.; UNION CARBIDE CORPORATION, and DOES
2 1 THROUGH 300, inclusive.

3 15. "PREMISES/CONTRACTOR DEFENDANTS" as they are referred to hereafter and
4 throughout this complaint, including: CROW HOLDINGS CAPITAL PARTNERS, LLC; E.F. BRADY
5 COMPANY, INC.; and DOES 301-500.

6 16. At all times herein mentioned, each of the defendants and PRODUCT DEFENDANTS,
7 and each of them, was the successor, successor in business, successor in product line or a portion
8 thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof,
9 parent, subsidiary, alter ego, agent and/or fiduciary wholly or partially owned by, or the whole or partial
10 owner of or member in an entity researching, studying, manufacturing, fabricating, designing, labeling,
11 assembling, distributing, leasing, buying, offering for sale, selling, inspecting, servicing, installing,
12 contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others,
13 packaging and advertising a certain substance, the generic name of which is asbestos and asbestos-
14 containing products. Each of the herein named defendants are liable for the tortious conduct of each
15 successor, successor in business, successor in product line or a portion thereof, assign, predecessor,
16 predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, whole or
17 partial owner, or wholly or partially owned entity, or entity that it was a member of, or funded, that
18 researched, studied, manufactured, fabricated, designed, labeled or failed to label, assembled,
19 distributed, leased, bought, offered for sale, sold, inspected, serviced, installed, contracted for
20 installation, repaired, marketed, warranted, rebranded, manufactured for others and advertised a certain
21 substance, the generic name of which is asbestos and asbestos-containing products.

22 17. At all times herein mentioned, defendants DOE 150 through DOE 300 were Officers and
23 Directors of named defendants herein as DOE 1 through DOE 149.

24 18. At all times herein mentioned, defendants, including PRODUCT DEFENDANTS, and
25 each of them, were and are engaged in the business of mining, milling, researching, manufacturing,
26 fabricating, designing, labeling, assembling, distributing, leasing, buying, offering for sale, selling,
27 supplying, inspecting, servicing, installing, contracting for installation, repairing, removing,
28 demolishing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising a

1 certain substance, the generic name of which is asbestos, and certain products, materials and equipment
2 containing asbestos including, but not limited to one or more of the following: insulation materials,
3 refractory materials, fireproofing, pipes; pumps, boilers, turbines, engines, valves; gaskets, packing
4 materials; compressors; decking materials; electrical equipment, electrical insulation materials, wire
5 materials and coverings; building materials, tile flooring, asbestos-cement sheets; cement conduit;
6 drywall materials, joint compound; adhesives; textiles; asbestos containing vinyl tiles, and other
7 asbestos-containing products (herein, collectively, "asbestos-containing products") to be placed on the
8 market and in the stream of commerce with the result that asbestos and asbestos-containing products and
9 materials came in to use by Decedent JOEL HERNANDEZCUEVA and those working in close
10 proximity to Decedent at relevant times herein.

11 19. At all times herein mentioned, defendants, including PRODUCT DEFENDANTS, and
12 each of them, singularly and jointly, negligently and unreasonably researched, manufactured, fabricated,
13 designed, tested or failed to test, recalled or retrofitted or failed to recall or retrofit where such was
14 reasonable, warned or failed to warn, labeled or failed to label, assembled, distributed, leased, bought,
15 offered for sale, sold, supplied, inspected, serviced, installed, contracted for installation, contracting for
16 fabrication, repaired, removed and/or demolished, marketed, warranted, rebranded, manufactured for
17 others, packaged and advertised asbestos and asbestos-containing products that proximately caused
18 personal injuries to persons themselves using, working with, working around or living with persons
19 working with or around such asbestos and asbestos-containing products (hereinafter collectively called
20 "exposed persons"), including Decedent, JOEL HERNANDEZCUEVA, while being used in a manner
21 that was intended by or otherwise reasonably foreseeable to defendants, including PRODUCT
22 DEFENDANTS, and each of them, thereby rendering such asbestos and asbestos-containing products
23 unsafe and dangerous to such exposed persons.

24 20. At all times relevant herein, defendants, including PRODUCT DEFENDANTS, and each
25 of them, owed a duty of due care which required them to exercise ordinary care to protect against an
26 unreasonable risk of harm. At all times relevant herein, Defendants, and each of them, had a duty to
27 exercise due care in the pursuance of the activities described in the preceding paragraphs, above,
28 including a non-delegable and continuing post-sale duty to exercise due care in the pursuance of the

1 activities set out therein. This duty was owed to persons who were at risk of exposure to asbestos,
2 including Decedent.

3 21. Defendants, including PRODUCT DEFENDANTS, and each of them, knew, or through
4 the exercise of ordinary care should have known, that exposure to asbestos is, and at all times relevant
5 herein has been, associated with terminal and incurable diseases which have caused and continue to
6 cause death. In doing the activities, acts and omissions herein described, defendants, and PRODUCT
7 DEFENDANTS, and each of them, breached said duty of due care to exposed persons, including to the
8 Decedent.

9 22. Decedent, JOEL HERNANDEZCUEVA, as a worker, product user and/or bystander to
10 the use of defendants' and PRODUCT DEFENDANTS', and each of them, asbestos and asbestos-
11 containing products, whereby plaintiffs allege Decedent was exposed to asbestos by defendants and
12 PRODUCT DEFENDANTS, and each of them, at locations within State of California, including, but not
13 limited to the following:

14 23. From approximately 1992 through 1995, decedent JOEL HERNANDEZCUEVA worked
15 as a janitor and maintenance person at the Fluor facility known as Park Place, an 800,000 square foot
16 complex of buildings located at 3333 Michelson Drive, Irvine, California. While Mr.
17 HERNANDEZCUEVA worked at Park Place, it was owned and managed by defendants Winthrop
18 Management, LP, and Trammel Crow Company, Inc. built in the early and mid-1970s, the original walls
19 at Park Place were constructed using asbestos-containing dual purpose joint compound manufactured by
20 Hamilton Materials. Defendant Union Carbide Corporation, a miner and miller of raw asbestos fiber,
21 was the exclusive supplier of the asbestos fiber in the Hamilton joint compound that covered every wall
22 at Park Place. During the first six months that Mr. HERNANDEZCUEVA worked at Park Place, he
23 provided janitorial and maintenance services as an employee of an independent contractor. From 1993
24 through 1995, Mr. HERNANDEZCUEVA worked for Fluor Maintenance Services. Throughout his
25 entire employment at Park Place – both as an independent contractor and as a Fluor employee – Mr.
26 HERNANDEZCUEVA was repeatedly and continuously exposed to Union Carbide Corporation's raw
27 asbestos fiber through the removal and demolition of original walls as part of ongoing tenant
28 improvement and renovation work. Mr. HERNANDEZCUEVA was also exposed to asbestos while

1 performing routine maintenance and clean-up work throughout the Park Place buildings. Decedent,
2 JOEL HERNANDEZCUEVA, in a manner that was reasonably foreseeable to defendants and
3 PRODUCT DEFENDANTS, himself used, handled, disturbed, or was a bystander to the use, handling
4 and disturbance of, and/or was environmentally exposed to asbestos and asbestos-containing products
5 for which PRODUCT DEFENDANTS, and each of them, were, are and remain liable and legally
6 responsible, including, but not limited to, through PRODUCT DEFENDANTS' design, manufacture,
7 use, supply, distribution, specification, sale or other use of the same, as alleged in the preceding
8 paragraphs.

9 24. As a direct and proximate result of the conduct of defendants, including PRODUCT
10 DEFENDANTS, and each of them, as aforesaid, Decedent was exposed to asbestos from defendants'
11 asbestos and asbestos-containing products, caused severe and permanent injury to Decedent, JOEL
12 HERNANDEZCUEVA, described below.

13 25. Decedent, JOEL HERNANDEZCUEVA, suffered from mesothelioma, a lethal cancer
14 caused by exposure to defendants' asbestos and asbestos-containing products. Neither plaintiffs, nor
15 Mr. HERNANDEZCUEVA were aware at the time of exposure were aware that the materials at Park
16 Place contained asbestos or that asbestos or asbestos-containing products presented any risk of injury
17 and/or disease.

18 26. Plaintiffs are informed and believe, and thereon allege, that the injuries and harm from
19 asbestos hereinabove described from which Decedent suffered have been caused by inhalation of
20 asbestos fibers without perceptible trauma; said asbestos disease results from decedent's exposure to
21 defendants', including PRODUCT DEFENDANTS', asbestos and asbestos-containing products.

22 27. Decedent's development of mesothelioma and related conditions is the direct and legal
23 result of the conduct of defendants and PRODUCT DEFENDANTS, and each of them, in that they
24 negligently and carelessly researched, tested or failed to test, manufactured, designed, specified,
25 developed, labeled, advertised, marketed, warranted, inspected, fabricated, modified, applied, installed,
26 distributed and supplied asbestos and asbestos-containing products. Defendants, and each of them,
27 without any adequate warning to the consumer or user, produced, sold, and otherwise put into the stream
28 of interstate commerce the foregoing materials which said defendants, and each of them, knew, or in the

1 exercise of ordinary care should have known, were deleterious, poisonous and highly harmful to
2 decedent's body, lungs, respiratory system, skin and health. Further, defendants, and each of them,
3 knew, or through the exercise of ordinary care should have known, that exposure to asbestos is, and at
4 all times relevant herein has been, associated with terminal and incurable diseases which have caused
5 and continue to cause death.

6 28. The mesothelioma and related conditions from which Decedent suffered developed at a
7 microscopic and undetectable level over an extended period of time, without noticeable trauma, and was
8 therefore unknown and unknowable to Decedent until his physicians diagnosed him with mesothelioma
9 and related conditions. Prior to his diagnosis, Decedent did not know, nor through the exercise of
10 reasonable diligence could he have known, that his disease was caused by his exposure to defendants'
11 asbestos and asbestos-containing products.

12 29. At all times mentioned herein, Decedent was not aware that asbestos or asbestos-
13 containing products presented any risk of injury and/or disease. The asbestos and asbestos-containing
14 products of each of the PRODUCT DEFENDANTS was a substantial factor in contributing to, and in
15 causing, injury to Decedent as set forth herein.

16 30. (a) Decedent's injuries were a result of cumulative exposure to asbestos and asbestos
17 containing products manufactured, fabricated, inadequately researched, designed, inadequately tested,
18 recalled, retrofitted, labeled or failed to label, assembled, distributed, leased, bought, offered for sale,
19 sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded,
20 manufactured for others, packaged and advertised by the aforementioned PRODUCT DEFENDANTS,
21 their "alternate entities", and each of them.

22 (b) Plaintiffs cannot identify precisely at this time which asbestos or asbestos containing
23 product(s) of defendants and PRODUCT DEFENDANTS, and each of them, specifically caused
24 Decedent's injuries complained of herein, rather that they each and all during the course of Decedent
25 work and use caused Decedent's asbestos exposure which contributed to increase the risk of his
26 developing his asbestos illness described hereinabove, and that said products did in fact do so.

27 31. As a direct and proximate result of the aforesaid conduct of defendants, including
28 PRODUCT DEFENDANTS, and each of them, Decedent suffered permanent injuries to his person,

1 body and health, including, but not limited to mesothelioma and related conditions, the mental and
2 emotional distress attendant thereto, and subsequent death causing economic and non-economic damage
3 in excess of \$50,000.00.

4 32. As a further direct and legal result of the conduct of the defendants, including PRODUCT
5 DEFENDANTS, and each of them, it was necessary for Decedent to retain the services of physicians,
6 hospitals, hospice, and other health care professionals to diagnose, treat, and provide palliative care for
7 Decedent until he died. Plaintiff does not yet know the full extent of treatment rendered to Decedent
8 herein and therefore requests leave to amend this complaint when that sum is determined.

9 33. As a direct and legal result of the conduct of the defendants, and each of them, including
10 PRODUCT DEFENDANTS, and of Decedent's diagnosis of, and death from mesothelioma, Decedent
11 incurred loss of income, wages, profits and commissions, a diminishment of earning potential, and other
12 pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs; and leave is
13 requested to amend this complaint to conform to proof at the time of trial.

14 34. As a further direct and proximate result of the said conduct of the defendants, including
15 PRODUCT DEFENDANTS, and each of them, Decedent was damaged in an amount in excess of
16 \$50,000.00 in addition to special damages herein alleged.

17 35. The asbestos and asbestos-containing products of PRODUCT DEFENDANTS, and each
18 of them, were a substantial factor in contributing to, and in causing injury to and subsequent death of
19 Decedent JOEL HERNANDEZCUEVA as set forth herein.

20 36. Since 1924, defendants, including PRODUCT DEFENDANTS, and each of them, knew
21 or should have known of medical and scientific data and other knowledge which clearly indicated that
22 the asbestos-containing materials and products referred to herein were and are hazardous to the health
23 and safety of the Decedent, and others in Decedent's position working in close proximity with such
24 materials. The PRODUCT DEFENDANTS, and each of them, knew or should have known of the
25 dangerous propensities of the aforementioned materials and products since before that time.

26 37. Defendants, including PRODUCT DEFENDANTS, and each of them, knew or should
27 have known that said asbestos-containing materials were dangerous when breathed and caused
28 pathological effects without noticeable trauma, and that such material was dangerous and a threat to the

1 health of persons coming into contact therewith.

2 38. Defendants, including PRODUCT DEFENDANTS, and each of them, knew or should
3 have known that Decedent and anyone similarly situated in an industrial and construction setting would
4 be exposed to PRODUCT DEFENDANTS' asbestos-containing products, and that, upon inhalation of
5 asbestos such persons would, in time, develop irreversible conditions of either pneumoconiosis,
6 asbestosis or cancer, or all.

7 39. Defendants, including PRODUCT DEFENDANTS, and each of them, knew or should
8 have known of the connection between inhalation of asbestos fibers and mesothelioma, lung cancer,
9 asbestosis, pleural plaques, and related conditions which information was disseminated through the
10 Asbestos Textile Institute and other industry organizations to all other PRODUCT DEFENDANTS, and
11 each of them, herein.

12 40. Defendants, including PRODUCT DEFENDANTS, and each of them, knew or should
13 have known that adequate protective masks and devices should be used by workers such as Decedent
14 when applying and installing the asbestos-containing products of the PRODUCT DEFENDANTS.
15 PRODUCT DEFENDANTS, and each of them, knew or should have known that not wearing an
16 adequate protective mask and/or device would result in injury to the Decedent and others applying and
17 installing such materials.

18 41. Defendants, including PRODUCT DEFENDANTS, and each of them, prior to and at the
19 time of sale, distribution or supply of the aforementioned products to Decedent's employer or to others
20 who in turn sold to Decedent's employers, and to other persons relevant herein, knew or should have
21 known that the foregoing asbestos fibers released from said products during the foreseeable operations
22 of applying and removing same, were dangerous when inhaled.

23 42. Defendants, including PRODUCT DEFENDANTS, and each of them, knew or should
24 have known of the hazards and dangers of working with or around asbestos products produced or
25 supplied by PRODUCT DEFENDANTS, and each of them. The PRODUCT DEFENDANTS, and each
26 of them, knew or should have known that said products would be used by Decedent and others who had
27 no knowledge of the dangerous and hazardous nature thereof.

28 43. Commencing in 1964, many asbestos-containing materials of defendants and PRODUCT

1 DEFENDANTS, and each of them, were not labeled as hazardous by said defendants herein, despite the
2 fact that the knowledge of such hazards existed and said defendants, and each of them, knew or should
3 have known of such hazards since 1924.

4 44. Although defendants and PRODUCT DEFENDANTS knew or should have known of the
5 aforementioned information, PRODUCT DEFENDANTS, and each of them, negligently, carelessly, and
6 recklessly failed to adequately label any of the aforementioned asbestos-containing materials and
7 products, including those with which and around which Decedent worked, regarding the hazards of such
8 materials and products to the health and safety of Decedent and others in Decedent's position working in
9 close proximity with such materials.

10 45. Despite the knowledge that asbestos-containing products were hazardous to the health
11 and safety of "exposed persons," including Decedent, defendants and PRODUCT DEFENDANTS, and
12 each of them, negligently, carelessly and recklessly:

13 A. failed to provide information relating to the danger of the use of the hereinabove described
14 asbestos-containing materials to Decedent and other in Decedent's position and the general public
15 concerning the dangerous nature of the hereinabove described materials to workers;

16 B. failed to disseminate such information in a manner which would give general notice to the
17 public and knowledge of the hazardous nature thereof, when defendants were bound to disclose such
18 information;

19 C. sold the hereinabove described products and materials to Decedent's employer(s) and
20 others without advising such employers and others of dangers of the use of such materials to persons
21 working in close proximity thereto, when defendants knew or should have known of such dangerous,
22 as set forth herein, when defendants and PRODUCT DEFENDANTS had a duty to disclose such
23 dangers;

24 D. negligently, carelessly and recklessly misrepresented to decedent, others in decedent's
25 position, and decedent's employers that it was safe for Decedent to work in close proximity to such
26 materials, when defendants knew that this was not the case; and

27 E. negligently, carelessly and recklessly failed to disclose to Decedent, others in Decedent's
28 position, Decedent's employer, and members of the general public medical and scientific data and
knowledge of the results of studies including, but not limited to, the information and knowledge of the
contents of the "Lanza Report."

46. Despite the knowledge of defendants and PRODUCT DEFENDANTS, and each of them,
that said asbestos-containing materials were dangerous when breathed and caused pathological effects
without noticeable trauma, and that such material was dangerous and a threat to the health of persons

1 coming into contact therewith. Defendants, including PRODUCT DEFENDANTS and each of them
2 negligently, carelessly and recklessly did not warn Decedent, others in Decedent's position, Decedent's
3 employer(s) and the general public of this information.

4 47. Despite the knowledge of defendants, including PRODUCT DEFENDANTS, and each of
5 them, that Decedent and anyone similarly situated in an industrial and construction setting would be
6 exposed to PRODUCT DEFENDANTS' asbestos-containing products, and that, upon inhalation of
7 asbestos such persons would, in time, develop irreversible conditions such as pneumoconiosis,
8 asbestosis or cancer, PRODUCT DEFENDANTS, and each of them, negligently, carelessly and
9 recklessly failed to provide that information to the public at large and buyers, users, and physicians
10 employed by Decedent and Decedent's employer for the purpose of conducting physical examinations
11 of Decedent and others working with or near asbestos.

12 48. Despite the knowledge of defendants, including PRODUCT DEFENDANTS, and each of
13 them, that said asbestos-containing materials were dangerous when breathed and caused pathological
14 effects without noticeable trauma, and that such material was dangerous and a threat to the health of
15 persons coming into contact therewith, defendants, including PRODUCT DEFENDANTS and each of
16 them negligently, carelessly and recklessly did not warn Decedent, other's in Decedent's position,
17 Decedent's employer(s) and the general public of this information.

18 49. Despite the knowledge of defendants, including PRODUCT DEFENDANTS, that
19 adequate protective masks and devices should be used by workers such as Decedent when applying,
20 installing, or demolishing the asbestos-containing products of the defendants, or when working as a
21 bystander around the same, including PRODUCT DEFENDANTS, and that not wearing an adequate
22 protective mask and/or device would result in injury to Decedent and others applying, installing, or
23 demolishing such materials, defendants, including PRODUCT DEFENDANTS, and each of them,
24 negligently, carelessly and recklessly do not inform workers such as Decedent, and others applying,
25 installing, or demolishing such materials of the aforementioned information.

26 50. Defendants, including PRODUCT DEFENDANTS, and each of them, negligently,
27 carelessly and recklessly failed to provide the above described medical and scientific data to Decedent,
28 others in Decedent's position, Decedent's employer(s), and members of the general public concerning

1 such knowledge of danger, when defendants, including PRODUCT DEFENDANTS were under a duty
2 to disclose it.

3 51. The conduct, acts and omissions of each of the defendants, including PRODUCT
4 DEFENDANTS, as herein alleged, was done by said defendants' officers, directors and managing
5 agents and managing employees.

6 52. Each of the defendants, including PRODUCT DEFENDANTS' officers, directors and
7 managing agents and managing employees participated in, authorized, expressly and impliedly ratified,
8 and had full knowledge of, or should have known of, the acts of each of their "alternate entities" as set
9 forth herein.

10 53. In doing the above-described conduct, acts and/or omission, defendants, including
11 PRODUCT DEFENDANTS, and each of them, knowingly disregarded the substantial certainty of injury
12 to others, including Decedent. The above-described conduct of PRODUCT DEFENDANTS, and each of
13 them, constitutes a conscious and reckless disregard of the rights and safety of others, including
14 Decedent; and a conscious disregard of the probability of injury to others, including Decedent.

15 54. The above-described conduct of said defendants, including PRODUCT DEFENDANTS,
16 their "alternate entities", and each of them, was and is willful, despicable, outrageous, oppressive, and in
17 conscious disregard and indifference to the safety and health of "exposed persons," including Decedent.
18 Plaintiffs, for the sake of example and by way of punishing said defendants, seek punitive damages
19 according to proof.

20 WHEREFORE, Plaintiffs pray for judgment against DEFENDANTS, including PRODUCT
21 DEFENDANTS their "alternate entities," and each of them, as hereinafter set forth.

22 **SECOND CAUSE OF ACTION**

23 **Breach of Implied Warranty**

24 **[Against All PRODUCT DEFENDANTS]**

25 For a Second Cause of Action, plaintiffs complain of PRODUCT DEFENDANTS, and each of
26 them, and for a cause of action allege:

27 55. Plaintiffs re-allege and incorporate herein by reference, as though fully set forth herein,
28 each preceding paragraph.

1 56. The PRODUCT DEFENDANTS, and each of them, marketed, sold, supplied, delivered
2 or otherwise distributed to Decedent, or to another purchaser or user who subsequently sold, supplied,
3 delivered or otherwise distributed to Decedent, or to others working in close proximity to Decedent, the
4 above-described asbestos and asbestos-containing products to which Decedent was exposed.

5 57. The PRODUCT DEFENDANTS, and each of them, knew the intended purpose of the
6 asbestos and asbestos-containing products prior to marketing said products and knew or had reason to
7 know that exposed persons, including Decedent, would be using asbestos containing products, during
8 which dangerous levels of asbestos fiber would be released during the process of applying, installing and
9 removing these products.

10 58. At all relevant times herein, the PRODUCT DEFENDANTS, their "alternate entities",
11 and each of them impliedly warranted their asbestos and asbestos containing products to be safe for their
12 intended and foreseeable uses. PRODUCT DEFENDANTS, and each of them, impliedly warranted that
13 their asbestos and asbestos-containing products were of merchantable quality and safe, fit and proper for
14 the uses which PRODUCT DEFENDANTS knew or intended were to be made of them at the time of
15 marketing them.

16 59. At all relevant times herein, the PRODUCT DEFENDANTS, and each of them, placed
17 said asbestos and asbestos-containing products on the market without any warning, or with an
18 inadequate warning, and by so doing impliedly warranted that said products were of good and
19 merchantable quality and fit for their intended purpose and use.

20 60. At all relevant times herein, "Exposed persons," including Decedent, did not know of the
21 substantial danger and unreasonable risk of bodily harm as a result of using said asbestos and asbestos-
22 containing products. Said risk and dangers were not readily recognizable by "exposed persons,"
23 including Decedent.

24 61. Decedent reasonably relied on the skill, knowledge and judgment of PRODUCT
25 DEFENDANTS and each of them, in furnishing and supplying the asbestos-containing products
26 described hereinabove.

27 62. The products were neither safe for their intended use nor of merchantable quality or fit
28 for use as warranted by PRODUCT DEFENDANTS, and each of them, in that said products had

1 **Strict Products Liability – Design and Manufacturing Defects**

2 **[Against All PRODUCT DEFENDANTS]**

3 For a Third Cause of Action, plaintiffs complain of PRODUCT DEFENDANTS, and each of
4 them, and for a cause of action allege:

5 67. Plaintiffs re-allege and incorporate herein by reference, as though fully set forth herein,
6 each of the preceding paragraphs s, above.

7 68. At all relevant times herein, PRODUCT DEFENDANTS, their "alternate entities", and
8 each of them, researched, manufactured, fabricated, designed, tested or failed to test, labeled or failed to
9 label, assembled, distributed, leased, bought, offered for sale, sold, inspected, serviced, installed,
10 contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged
11 and advertised a certain substance, the generic name of which is asbestos, and other products containing
12 asbestos, including those described in the preceding Paragraphs herein.

13 69. At all relevant times herein, the asbestos and asbestos-containing products which were
14 mined, milled, manufactured, tested, developed, processed, imported, converted, compounded,
15 assembled, fabricated, modified, designed, specified, approved, sold, supplied, distributed, delivered,
16 packaged, labeled, advertised, marketed, warranted, applied, installed, and inspected by PRODUCT
17 DEFENDANTS, and each of them, were defective due to the design, manufacture, sufficiency of or lack
18 of warning, and/or failure to meet ordinary consumer expectations of safety when used in an intended or
19 reasonably foreseeable manner. The design, manufacture and/or said defendants' failure to warn or give
20 adequate warnings of the risk of developing an asbestos-related disease and risk of death from an
21 asbestos-related disease resulting from use of the product, rendered the product unsafe for its intended or
22 reasonably foreseeable use.

23 70. Said asbestos and products containing asbestos were defective and unsafe for their
24 intended purpose in that the inhalation of asbestos fibers causes serious disease and/or death. The defect
25 existed in the said asbestos and asbestos-containing products at the time they left the possession of
26 defendants, their alternate entities, and each of them.

27 71. Defendants, their "alternate entities", and each of them, knew and intended that the above
28 referenced asbestos and other products containing asbestos would be used by the purchaser or user

1 without inspection for defects therein or in any of its component parts and without knowledge of the
2 hazards involved in such use.

3 72. Defendants, their "alternate entities," and each of them, knew, or should have known, that
4 the aforementioned asbestos and products containing asbestos would be used for building construction
5 purposes and/or would require sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-
6 out," and other manipulation which would result in the release of airborne asbestos fibers, and that
7 through such foreseeable use "exposed persons" would use or be in proximity to and exposed to said
8 asbestos fibers.

9 73. (A) PRODUCT DEFENDANTS, and each of them, knew that PRODUCT
10 DEFENDANTS' asbestos-containing products would be used by Decedent and anyone similarly
11 situated in an industrial and construction setting without inspection for defects.

12 (B) PRODUCT DEFENDANTS, and each of them, knew that, upon inhalation of
13 asbestos from defendant's asbestos-containing products, such persons would, in time, develop
14 irreversible conditions of pneumoconiosis, asbestosis or cancer, or all.

15 (C) At the time PRODUCT DEFENDANTS, and each of them, placed such asbestos-
16 containing products in to the stream of commerce, defendants and each of them knew or should have
17 known of the risks and hazards associated with the use and/or exposure of its products.

18 (D) At the time PRODUCT DEFENDANTS, and each of them, placed such asbestos-
19 containing products in to the stream of commerce, and subsequent thereto, PRODUCT DEFENDANTS,
20 and each of them failed to warn or provided inadequate warnings to persons who used or would be
21 exposed to its defective asbestos-containing products, including Decedent, of the dangers and hazards
22 associated with its products.

23 (E) At the time PRODUCT DEFENDANTS, and each of them, placed such asbestos-
24 containing products in to the stream of commerce, and subsequent thereto, PRODUCT DEFENDANTS,
25 and each of them failed to provide instructions or provided inadequate instructions to persons who used
26 its defective asbestos-containing products, or who would be exposed to said products, including
27 Decedent, of the dangers and hazards associated with its products.

28 (F) PRODUCT DEFENDANTS, and each of them, prior to and at the time of placing

1 the aforementioned products into the stream of commerce, including but not limited to supplying said
2 products to Decedent's employer or to others who in turn sold to Decedent's employers, and to other
3 persons relevant herein, knew that the asbestos which Decedent and others around him were exposed to
4 was dangerous. The PRODUCT DEFENDANTS, and each of them, either did not warn or insufficiently
5 warned regarding the dangerous nature of said products, and failed to place a sufficient warning on the
6 said product or package thereof regarding said dangerous nature, despite knowing that said products
7 would be used by Decedent and others around him who had no knowledge of the dangerous and
8 hazardous nature thereof.

9 (G) PRODUCT DEFENDANTS, their "alternate entities", and each of them, further
10 failed to adequately warn of the risks to which exposed persons, including Decedent and others similarly
11 situated, were exposed.

12 74. The asbestos-containing products of the PRODUCT DEFENDANTS, and each of them,
13 were defective in that:

14 A. The products failed to perform as safely as an ordinary consumer would expect in
15 their intended or reasonably foreseeable use or manner of operation, or;

16 B. The products had inherent risks of danger that outweighed their benefits; alternate
17 and safer substitute products existed and the state-of-the-art required their use given the seriousness of
18 the potential danger, likelihood of its occurrence, feasibility, cost, and adverse consequences to the
19 product and to the consumer of a safer alternative design.

20 C. *Failure to Warn*: PRODUCT DEFENDANTS and each of them knew or
21 reasonably should have known of the dangerous propensities of their products but nonetheless
22 distributed and marketed their products with inadequate warning of its dangers.

23 D. Each of defendants' products reached Decedent without substantial change in its
24 condition.

25 75. The aforementioned products were used by Decedent and those in close proximity to
26 Decedent in a foreseeable manner, and in the manner for which they were intended. "Exposed persons,"
27 including Decedent JOEL HERNANDEZCUEVA, did not know of the substantial danger of using said
28 asbestos and asbestos-containing products. Said dangers were not readily recognizable by "exposed

1 persons.”

2 76. Defendants’ products were used in a manner reasonably foreseeable by defendants, which
3 defendants intended or knew they would be used, or for which they marketed them or knew they were
4 marketed to be used.

5 77. At all times mentioned herein, Decedent was unaware of the dangerous nature of the
6 aforementioned products.

7 78. The asbestos and asbestos-containing products of PRODUCT DEFENDANTS, and each
8 of them, did, in fact, cause personal injuries, including mesothelioma and related lung disease to
9 "exposed persons", including Decedent JOEL HERNANDEZCUEVA, while being used in a reasonably
10 foreseeable manner, thereby rendering the same unsafe and dangerous for use and exposing such
11 exposed persons, including Decedent JOEL HERNANDEZCUEVA, to asbestos.

12 79. The asbestos and asbestos-containing products of each of the PRODUCT
13 DEFENDANTS was a substantial factor in contributing to, and in causing, injury to Decedent as set
14 forth herein. As a direct and legal result of the conduct of PRODUCT DEFENDANTS, and each of
15 them, Decedent developed an asbestos-related disease, mesothelioma, and related conditions and
16 disabilities. Plaintiffs have incurred damages in excess of \$50,000 in addition to the special damages
17 alleged herein.

18 80. The conduct of the PRODUCT DEFENDANTS, and each of them, was motivated by
19 their financial interests. In this financial pursuit, PRODUCT DEFENDANTS consciously disregarded
20 the safety of users, and persons exposed to their products, and were consciously willing to permit their
21 products and premises to injure workers and others, including Decedent in order to maximize profits.
22 Said defendants consciously disregarded the well-publicized risks of asbestos exposure because to have
23 kept consumers and end users like Decedent safe would have required said PRODUCT DEFENDANTS
24 to make less money or limit distribution of their products.

25 81. The conduct of PRODUCT DEFENDANTS, and each of them, as described herein was
26 and is willful, malicious, outrageous, and in conscious disregard and indifference to the safety and health
27 of workers and others exposed to asbestos, including Decedent, and therefore Plaintiffs are entitled to an
28 award of punitive damages.

1 WHEREFORE, Plaintiffs pray judgment against PRODUCT DEFENDANTS, and each of them,
2 as hereinafter set forth.

3 **FOURTH CAUSE OF ACTION**

4 **False Representation Under Restatement of Torts Section 402-B**

5 **[Against All PRODUCT DEFENDANTS]**

6 For a Fourth Cause of Action, plaintiffs complain of PRODUCT DEFENDANTS, their alternate
7 entities, and each of them, and for a cause of action allege:

8 82. Plaintiffs re-allege and incorporate herein by reference, as though fully set forth herein,
9 each of the preceding paragraphs herein.

10 83. At the aforementioned time when defendants, their “alternate entities,” and each of them,
11 including PRODUCT DEFENDANTS, researched, manufactured, fabricated, designed, modified, tested
12 or failed to test, inadequately warned or failed to warn, labeled, assembled, distributed, leased, bought,
13 offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired,
14 marketed, warranted, rebranded, manufactured for others, packaged and advertised the said asbestos and
15 asbestos-containing products, as herein above set forth, the defendants, their “alternate entities,” and
16 each of them, expressly and impliedly represented to members of the general public, including the
17 purchasers and users of said product, and other “exposed persons,” including Decedent and workers to
18 whose work Decedent was a bystander, that asbestos and asbestos-containing products, were of
19 merchantable quality, and safe for the use for which they were intended.

20 84. The purchasers and users of said asbestos and asbestos-containing products, and other
21 “exposed persons,” including the Decedent and workers to whose work Decedent was a bystander, relied
22 upon said representations of defendants, their “alternate entities,” and each of them, including
23 PRODUCT DEFENDANTS, in the selection, purchase and use of asbestos and asbestos-containing
24 products.

25 85. Said representations by defendants, their “alternate entities,” and each of them, including
26 PRODUCT DEFENDANTS, were false and untrue, and defendants knew at the time they were untrue,
27 in that the asbestos and asbestos-containing products, were not safe for their intended use, nor were they
28 of merchantable quality as represented by defendants, their “alternate entities,” and each of them, in that

1 asbestos and asbestos-containing products have very dangerous properties and defects whereby said
2 products cause mesothelioma, asbestosis, other lung damages and cancer, and have other defects that
3 cause injury and damage to the users of said products and other “exposed persons,” including the
4 Decedent and workers to whose work Decedent was a bystander, thereby threatening the health and life
5 of said persons including Decedent herein.

6 86. As a direct and proximate result of the above, their “alternate entities,” and each of them,
7 Decedent sustained the injuries and damages herein set forth.

8 WHEREFORE, plaintiffs pray judgment against defendants, their "alternate entities," and each
9 of them, including PRODUCT DEFENDANTS, as hereinafter set forth.

10 **FIFTH CAUSE OF ACTION**

11 **Fraud/Failure to Warn**

12 **[Against All PRODUCT DEFENDANTS]**

13 For a Fifth Cause of Action, plaintiffs complain of PRODUCT DEFENDANTS, and each of
14 them, and for a cause of action allege:

15 87. Plaintiffs re-allege and incorporate herein by reference, as though fully set forth herein,
16 each of the preceding paragraphs herein.

17 88. Decedent was exposed to asbestos at locations that include those within State of
18 California set out in the preceding Paragraphs herein, where he and others around him demolished and
19 cleaned up after drywall and asbestos-containing joint compound, among other products.

20 89. At all times during the period when Decedent was exposed to asbestos, as set out in the
21 preceding Paragraphs, PRODUCT DEFENDANTS owed Decedent a duty, as provided for in Sections
22 1708 through 1710 of the Civil Code of the State of California, to abstain from injuring the person,
23 property or rights of the Decedent. In violation of that duty, the PRODUCT DEFENDANTS, and each
24 of them, did do the acts and omissions, when a duty to act was imposed, as set forth herein, thereby
25 proximately causing injury to the Decedent as is more fully set forth herein. Such acts and omissions
26 consisted of acts falling within Section 1710, and more specifically were suggestions of fact which were
27 not true and which the defendants did not believe to be true, assertions of fact of that which was not true,
28 which the defendants had no reasonable ground for believing it to be true, and the suppression of facts

1 when a duty existed to disclose it, all as are more fully set forth herein, and the violation of which as to
2 any one such item gave rise to a cause of action for violation of the rights of Decedent as provided for
3 in the aforementioned code sections.

4 90. In violation of that duty, PRODUCT DEFENDANTS and each of them, did do the acts
5 and omissions, when a duty to act was imposed, as set forth herein, thereby proximately causing injury
6 to the Decedent as is more fully set forth herein.

7 91. Such acts and omissions consisted of acts falling within Civil Code Section 1710, and
8 more specifically were suggestions of fact which were not true and which the defendants did not believe
9 to be true, assertions of fact of that which was not true, which the defendants had no reasonable ground
10 for believing it to be true, and the suppression of facts when a duty existed to disclose it, all as are more
11 fully set forth herein, and the violation of which as to any one such item gave rise to a cause of action
12 for violation of the rights of the Decedent as provided for in the aforementioned code sections.

13 92. During the jobsite period of Decedent set out in the preceding Paragraphs, including
14 Paragraph 22 herein, Decedent used and worked around asbestos-containing products, including those of
15 PRODUCT DEFENDANTS, as set out in Paragraph 22 herein.

16 93. PRODUCT DEFENDANTS' asbestos-containing products and equipment were present
17 at plaintiff's jobsites as alleged in Paragraph 22 during the time Decedent worked at those jobsites.
18 During the time that Decedent was employed at jobsites in which he was exposed to PRODUCT
19 DEFENDANTS' asbestos-containing products and equipment, as set out in Paragraph 22 herein, and
20 prior thereto, PRODUCT DEFENDANTS designed, fabricated erected, manufactured, constructed,
21 installed and serviced asbestos-containing equipment and materials for industrial applications, including
22 asbestos and asbestos-containing joint compound, drywall, and flooring mastic, among others.

23 94. As a manufacturer of products, the PRODUCT DEFENDANTS, and each of them, had a
24 duty to investigate and research the safety of its products. That duty was owed to users of the product or
25 products, and those working around said products that were at risk of exposure to asbestos from those
26 products. During the time that Decedent used or worked around the asbestos-containing products of
27 PRODUCT DEFENDANTS, and each of them, the duty was owed to Decedent.

28 95. During the time that Decedent was employed at jobsites in which he was exposed to

1 PRODUCT DEFENDANTS' asbestos-containing products and equipment, as set out in Paragraph 22
2 herein, and prior thereto, PRODUCT DEFENDANTS knew of the hazards of asbestos, including
3 asbestos in its products. PRODUCT DEFENDANTS knew of the hazards of asbestos since at least the
4 early-to-mid-1940s.

5 96. During the time that Decedent was employed at jobsites in which he was exposed to
6 PRODUCT DEFENDANTS' asbestos-containing products and equipment, as set out in Paragraph 22
7 herein, and prior thereto, PRODUCT DEFENDANTS knew or should have known of the hazards of
8 asbestos and their asbestos-containing products and equipment.

9 97. As set out above, at least by 1950, PRODUCT DEFENDANTS had actual knowledge of
10 the hazards of asbestos, including the types of asbestos used by it in its products. Decedent Mr.
11 HERNANDEZCUEVA's work in jobsites around PRODUCT DEFENDANTS' asbestos-containing
12 products started in the 1990s.

13 98. During the time that Decedent was employed at jobsites in which he was exposed to
14 PRODUCT DEFENDANTS' asbestos-containing products and equipment, as set out in Paragraph 22
15 herein, and prior thereto, PRODUCT DEFENDANTS never provided any asbestos warnings with or on
16 any of their asbestos-containing products or equipment. During the time that Decedent was employed at
17 jobsites in which he was exposed to PRODUCT DEFENDANTS' asbestos-containing products and
18 equipment, as set out in Paragraph 22 herein, and prior thereto, PRODUCT DEFENDANTS never
19 provided any asbestos warnings with or on any of their asbestos-containing products or equipment.

20 99. During the period of Decedent's working career in which he worked with or around
21 PRODUCT DEFENDANTS' asbestos-containing products and equipment, PRODUCT DEFENDANTS
22 knew that laymen and end users would be exposed to asbestos during maintenance of its equipment.
23 Despite this knowledge, PRODUCT DEFENDANTS did not warn Decedent of asbestos hazards. By
24 marketing its products without warning, PRODUCT DEFENDANTS impliedly and expressly warranted
25 to Decedent that its products and equipment was safe and free from defects.

26 100. Since 1924, and thereafter, including Decedent's job period as set out in Paragraph 22
27 herein, PRODUCT DEFENDANTS, and each of them, have known and have been possessed of the true
28 facts consisting of medical and scientific data and other knowledge that clearly indicated that exposure

1 to asbestos and asbestos-containing materials and products referred to herein were and are hazardous to
2 the health and safety of the those working with and in close proximity with such materials.

3 101. Since 1924, and thereafter, including Decedent's job period as set out in Paragraph 22
4 herein, PRODUCT DEFENDANTS, and each of them, have known of the dangerous propensities of
5 asbestos and asbestos-containing materials and products.

6 102. Since 1924, and thereafter, including Decedent's job period as set out in Paragraph 22
7 herein, PRODUCT DEFENDANTS, and each of them, have known and have been possessed of the true
8 facts consisting of medical and scientific data and other knowledge which clearly indicated that
9 exposure to asbestos and asbestos-containing materials and products referred to herein were and are
10 hazardous to the health and safety of the Decedent, and others in Decedent's position working in close
11 proximity with such materials.

12 103. Since 1924, and thereafter, including Decedent's job period as set out in Paragraph 22
13 herein, PRODUCT DEFENDANTS did the following acts:

14
15 a. PRODUCT DEFENDANTS did not adequately label its asbestos-containing materials
16 and products as to the hazards of such materials and products to the health and safety of Decedent and
17 others in Decedent's position working in close proximity with such materials, despite the fact that the
knowledge of such hazards was existing and known to PRODUCT DEFENDANTS, and each of them,
since 1924;

18 b. By not labeling such materials as to their said hazards, PRODUCT DEFENDANTS, and
19 each of them, caused to be suggested as a fact to Decedent and Decedent's employer(s) that it was safe
20 for Decedent to work in close proximity to such materials when in fact it was not true and defendants
did not believe it to be true;

21 c. PRODUCT DEFENDANTS, and each of them, suppressed from Decedent and members
22 of the general public information concerning the dangerous nature of asbestos-containing products and
23 materials, by not allowing such information to be disseminated in a manner which would give general
24 notice to decedent and the public and knowledge of the hazardous nature thereof, when said defendants
were bound to disclose such information;

25 d. PRODUCT DEFENDANTS sold the aforementioned asbestos and asbestos-containing
26 products and materials to Decedent and/or Decedent's employer(s) and contractors working at
27 decedent's jobsites, and others without advising such employers, contractors, and others of the dangers
28 of use of such asbestos-containing materials to persons working in close proximity thereto, including
Decedent, when defendants knew of such dangers, as set forth herein, and, as set forth above, had a duty
to disclose such dangers;

e. PRODUCT DEFENDANTS caused to be positively asserted to Decedent and and/or

1 Decedent's employer(s) and others of that which was not true and which defendants had no reasonable
2 ground for believing it to be true, to wit, that it was safe for Decedent to work in close proximity to such
asbestos-containing materials;

3 f. By the above means and fraudulently-conspiratorial acts, PRODUCT DEFENDANTS,
4 affirmatively failed to warn Decedent and Decedent's employer and others of the nature of the said
5 asbestos and asbestos-containing products, to wit: dangerous when breathed, causing pathological
6 effects without noticeable trauma, when possessed with knowledge that such material was dangerous
and a threat to the health of persons coming into contact therewith and under a duty to disclose it;

7 g. PRODUCT DEFENDANTS failed to provide Decedent with information concerning
8 adequate protective masks and devices for use with and application and installation of the products of
9 the defendants, and each of them, when they knew that such protective measures were necessary, when
they were under a duty to disclose such information, and if not advised as to use would result in injury to
the Decedent and others applying and installing such materials;

10 h. PRODUCT DEFENDANTS concealed from Decedent the true nature of the industrial
11 exposure of Decedent, the fact that they, and each of them, knew that Decedent and anyone similarly
12 situated, upon inhalation of asbestos would, in time, develop irreversible conditions of either
13 pneumoconiosis, asbestosis, or cancer, or all, and such person would not immediately be in poor health,
the fact that he had in fact been exposed to harmful materials and the fact that the materials to which he
was exposed would cause pathological effects without noticeable trauma, when under a duty and bound
to disclose it;

14 i. PRODUCT DEFENDANTS failed to provide information to the public at large and
15 buyers, users and physicians employed by Decedent and Decedent's employer(s) for the purpose of
16 conducting physical examinations of Decedent and others working in contact with asbestos as to the true
17 nature of the hazards of asbestos, in order for such physicians to diagnose and treat workers coming into
18 contact with asbestos, in that the materials to which Decedent had been exposed would cause
pathological effects without noticeable trauma when under a duty to supply such information and such
failure is likely to mislead for want of communication of such facts; and

19 j. PRODUCT DEFENDANTS, and each of them, affirmatively misrepresented that
20 asbestos containing products were safe to use and handle when they knew such statements were false
21 when made, or made said false statements recklessly and without regard for whether the statements were
true.

22 104. Each of the foregoing acts, suggestions, assertions and forbearances to act when a duty
23 existed to act, the said defendants, and each of them, having such knowledge, knowing the Decedent did
24 not have such knowledge and would breathe such material innocently, was done falsely and fraudulently
25 and with full intent to induce Decedent to use or work around others using asbestos and asbestos
26 products of PRODUCT DEFENDANTS, and each of them, PRODUCT DEFENDANTS, or otherwise
27 work in a dangerous environment caused by the same and to cause plaintiffs to remain unaware of the
28 true facts, all in violation of Section 1710 of the Civil Code of the State of California.

1 105. The acts, misrepresentations and concealment of PRODUCT DEFENDANTS was done
2 with intent to deceive Decedent, and others in his position and with intent that decedent and such others
3 should be and remain ignorant of the hazards of asbestos.

4 106. The acts, misrepresentations and concealment of PRODUCT DEFENDANTS was done
5 with intent to induce Decedent and such others to alter his and their positions to his and their injury
6 and/or risk.

7 107. During the time that Decedent was exposed to asbestos, as set out in Paragraph 22 herein,
8 he was unaware that working with or around asbestos and asbestos-containing products and equipment,
9 were hazardous and harmful to his health and safety.

10 108. During the time that Decedent was exposed to asbestos, as set out in Paragraph 22 herein,
11 Decedent relied upon the said acts, suggestions, assertions and forbearances of PRODUCT
12 DEFENDANTS. Had Decedent known the true facts, he would not have continued to work in the said
13 environment, or use or work around asbestos or others using asbestos and asbestos products of
14 PRODUCT DEFENDANTS, and each of them, PRODUCT DEFENDANTS.

15 109. Neither Decedent nor Plaintiffs had knowledge that the foregoing acts were actionable at
16 law when they were committed, and cannot be charged with knowledge or inquiry thereof.

17 110. By reason of the aforesaid allegations, Decedent was damaged to his health and abilities
18 as plead hereinabove, resulting in damages to Decedent in excess of \$50,000.00, in addition to special
19 damages herein alleged.

20 111. The conduct, acts, and forbearances to act, misrepresentations, and concealment of
21 PRODUCT DEFENDANTS towards Decedent, as alleged herein, were a substantial factor in causing
22 the injuries to Decedent alleged herein.

23 112. Each of the foregoing acts, suggestions, assertions and forbearances to act when a duty
24 existed to act, the said defendants, and each of them, having such knowledge, knowing the Decedent did
25 not have such knowledge and would breathe such material innocently, was done falsely and fraudulently
26 and with full intent to induce Decedent to himself use or work around others using asbestos and asbestos
27 products of PRODUCT DEFENDANTS, or otherwise work in a dangerous environment caused by the
28 same and to cause Decedent to remain unaware of the true facts, all in violation of Section 1710 of the

1 Civil Code of the State of California.

2 113. Decedent relied upon the said acts, suggestions, assertions and forbearances of
3 PRODUCT DEFENDANTS, and each of them and had Decedent known the true facts, he would not
4 have continued to work in the said environment, himself use or work around others using asbestos and
5 asbestos products of PRODUCT DEFENDANTS.

6 114. Plaintiffs had no knowledge that the foregoing acts were actionable at law when they
7 were committed, and cannot be charged with knowledge or inquiry thereof.

8 115. Each of the said acts and forbearances to act were caused by false, fraudulent and
9 malicious motives of the PRODUCT DEFENDANTS, and each of them, and Plaintiffs are entitled to
10 exemplary and punitive damages. The foregoing acts of the PRODUCT DEFENDANTS, and each of
11 them, were done wantonly, willfully, oppressively and in conscious disregard of the safety of Decedent
12 and similar exposed persons and that as a result, Decedent, having no knowledge of the dangerous and
13 hazardous nature thereof, was thereby exposed to and inhaled asbestos fibers from defendants' asbestos
14 and asbestos products, thereby harming Decedent, causing his above described injury, harm, damage,
15 and death. Accordingly, plaintiffs are entitled to recover punitive damages against PRODUCT
16 DEFENDANTS, and each of them.

17 116. Each of the said acts and forbearances to act were caused by false, fraudulent and
18 malicious motives of PRODUCT DEFENDANTS, and plaintiffs are entitled to exemplary and punitive
19 damages. The foregoing acts of PRODUCT DEFENDANTS were done wantonly, willfully,
20 oppressively and in conscious disregard of the safety of Decedent and similar exposed persons, and that
21 as a result, Decedent, having no knowledge of the dangerous and hazardous nature thereof, was thereby
22 exposed to and inhaled asbestos fibers from defendants' asbestos and asbestos products, thereby
23 harming Decedent, causing his above described injury, harm and damage. Accordingly, Plaintiffs are
24 entitled to recover punitive damages against PRODUCT DEFENDANTS.

25 WHEREFORE, plaintiff prays judgment as is hereinafter set forth.

26 **SIXTH CAUSE OF ACTION**

27 **PREMISES LIABILITY – NEGLIGENCE**

28 **[AGAINST PREMISES/CONTRACTOR DEFENDANTS, BUT NOT DEFENDANT E.F.]**

1 **BRADY COMPANY, INC.]**

2 For a Sixth Cause of Action, Plaintiffs complain of the PREMISES/CONTRACTOR
3 DEFENDANTS, and each of them, and allege:

4 117. Plaintiffs re-allege and incorporate herein by reference, as though fully set forth herein,
5 each of the preceding paragraphs herein.

6 118. At relevant times PREMISES/CONTRACTOR DEFENDANTS, and DOE 301 through
7 DOE 500, inclusive, and each of them, owned, leased, occupied, maintained, operated, managed certain
8 premises, or in some other manner controlled certain premises or portions thereof at which Decedent
9 worked (hereinafter referred to as “the premises” or “premises”).

10 119. Plaintiffs are informed and believe, and allege, that at all times herein mentioned
11 PREMISES/CONTRACTOR DEFENDANTS, and DOE 301 through DOE 500, inclusive, were and are
12 authorized to do business in the State of California, that said defendants have regularly conducted
13 business in the County of Los Angeles, State of California, and that certain of said defendants have
14 designated the County of Los Angeles as their principal place of doing business within the State of
15 California.

16 120. At relevant times said PREMISES/CONTRACTOR DEFENDANTS, knew that the
17 asbestos-containing products and the asbestos fibers released therefrom created an unreasonable risk of
18 harm to persons entering said premises.

19 121. Decedent, during the course of performing his duties, was regularly and continually
20 exposed to asbestos fibers and dust on the premises owned or controlled by the
21 PREMISES/CONTRACTOR DEFENDANTS, and each of them, as set forth above during the time
22 periods set out in the preceding Paragraphs herein.

23 122. During the time periods set out in the preceding Paragraphs herein, the PREMISES/
24 CONTRACTOR DEFENDANTS, and each of them, authorized, supervised and/or were engaged in
25 were installing, removing, disturbing or cleaning up asbestos and asbestos-containing products during
26 the course of new construction, equipment installation, repair and/or remodel and renovation work while
27 Decedent was engaged in working on the premises, as described in the preceding Paragraphs herein.

28 123. At all times relevant herein, the PREMISES/CONTRACTOR DEFENDANTS, and each

1 of them, owed a non-delegable duty of due care which required them to exercise ordinary care to protect
2 against an unreasonable risk of harm to persons present on the premises. This duty was owed to
3 Decedent, who worked on the premises.

4 124. At relevant times said defendants, including PREMISES/CONTRACTOR
5 DEFENDANTS, knew, or in the exercise of ordinary care should have known, that said premises would
6 be entered by persons without knowledge of, or inspection for, defects or dangerous conditions and that
7 said persons would not be aware of the aforesaid unreasonable risk of harm. Defendants, including
8 PREMISES/CONTRACTOR DEFENDANTS, had a duty to disclose the presence of, and dangers
9 presented by, the asbestos-containing products and the asbestos fibers released therefrom.

10 125. Prior to and during the time period when Decedent was exposed to asbestos on the
11 premises, the PREMISES/CONTRACTOR DEFENDANTS, and each of them, knew or through the
12 exercise of reasonably diligence should have known, that exposure to asbestos fibers released from
13 asbestos and asbestos-containing products is, and at all times pertinent herein was, associated with
14 asbestos-related disease and death.

15 126. Despite said knowledge, defendants, including PREMISES/CONTRACTOR
16 DEFENDANTS, misrepresented that their premises was safe and free of defects, and/or failed to
17 disclose, and concealed, the presence of the asbestos-containing products and asbestos fibers which
18 created the unreasonable risk of harm to persons entering said premises, including Decedent.

19 127. At all times relevant herein, the PREMISES/CONTRACTOR DEFENDANTS, and each
20 of them, negligently maintained, managed, controlled and operated the aforementioned premises, and
21 affirmatively created the hazardous condition(s) and/or increased the hazard, in that they selected,
22 specified, approved, and/or authorized the use of asbestos and asbestos-containing products; supervised
23 and coordinated, in an inadequate manner, the construction and renovation work performed on the
24 premises; applied, installed, removed and/or inspected asbestos and asbestos-containing products on the
25 premises; failed to establish and utilize dust control measures on the premises; failed to warn of the
26 presence of asbestos on the premises; failed to warn of the health hazards associated with asbestos
27 exposure on the premises; violated applicable local, state and federal codes, regulations and statutes
28 which were enacted to protect worker safety, the exact nature of said violations being unknown to

1 Plaintiffs at the present time; and/or engaged in other negligent conduct or misconduct, the precise
2 nature of which is known to defendants, but is unknown to Plaintiffs herein.

3 128. At all times relevant herein, PREMISES/CONTRACTOR DEFENDANTS, and each of
4 them created visible asbestos dust by removing, handling, sweeping, shoveling, demolishing and
5 otherwise disturbing asbestos in Decedent's work area without warnings or protection.

6 129. At all times relevant herein, it was foreseeable that Decedent and others similarly situated
7 would be present on the premises and would be exposed to hazardous levels of asbestos fiber. Despite
8 the foreseeable nature of Decedent's exposure to asbestos, the PREMISES/ CONTRACTOR
9 DEFENDANTS, and each of them, failed to exercise reasonable care to prevent Decedent's asbestos
10 exposure on said premises.

11 130. In reliance upon the foregoing, Decedent entered and performed work in said premises,
12 which was to defendants' benefit and advantage and at defendants' request and invitation. In so doing,
13 Decedent was exposed to dangerous quantities of asbestos fibers.

14 131. Plaintiffs and Decedent were unaware of the unreasonable risk of harm created by the
15 aforesaid presence of asbestos-containing products and asbestos fibers on said premises.

16 132. As a legal consequence of the foregoing, Decedent developed asbestos-related illnesses
17 as previously set forth, and Plaintiffs suffered damages as herein being alleged in an amount in excess of
18 \$50,000.

19 WHEREFORE, plaintiffs pray judgment against PREMISES/CONTRACTOR DEFENDANTS,
20 and each of them, as hereinafter set forth.

21 **SEVENTH CAUSE OF ACTION**

22 **Premise Liability – Negligent Exercise of Retained Control –**

23 **Restatement Second of Torts, Section 414**

24 **[AGAINST PREMISES/CONTRACTOR DEFENDANTS, BUT NOT DEFENDANT E.F.**

25 **BRADY COMPANY, INC.]**

26 For a Seventh Cause of Action, plaintiffs complain of the PREMISES/CONTRACTOR
27 DEFENDANTS, and each of them, and allege:

28 133. Plaintiffs re-allege and incorporate herein by reference, as though fully set forth herein,

1 each of the preceding paragraphs herein.

2 134. Despite the above-set forth knowledge of PREMISES/CONTRACTOR DEFENDANTS
3 of the aforesaid risk of harm from asbestos and/or asbestos products, defendants retained control of the
4 work and negligently failed to implement, and/or failed to have others implement, proper safety
5 precautions, and/or the use of proper work practices, with the result that the asbestos-containing
6 products created an unreasonable risk of harm to persons entering said premises.

7 135. Decedent entered and performed work in said premises which was to defendants' benefit
8 and advantage and at defendants' request and invitation. In so doing, Decedent was exposed to
9 dangerous quantities of asbestos fibers.

10 136. Decedent was unaware of the risk of harm created by the aforesaid presence of asbestos
11 products and materials on said premises.

12 137. At all times mentioned herein, said defendants, including PREMISES/CONTRACTOR
13 DEFENDANTS, and each of them, controlled the operative details of the work and negligently failed to
14 maintain, manage, inspect, survey, or control said premises, or to abate or correct, or to warn Decedent
15 of the existence of the aforesaid dangerous conditions and hazards on said premises.

16 138. As a direct and proximate result of the of defendants' conduct, Decedent developed an
17 illness and harm, as described hereinabove. Plaintiffs were damaged as fully set forth herein, including
18 those special damages herein alleged.

19 WHEREFORE, plaintiffs pray judgment against defendants, including PREMISES/
20 CONTRACTOR DEFENDANTS, and each of them, as hereinafter set forth.

21 **EIGHTH CAUSE OF ACTION**

22 **Premise Liability – Negligent Provision of Unsafe Equipment – Restatement Second of Torts,**

23 **Section 414**

24 **[Against PREMISES/CONTRACTOR DEFENDANTS, BUT NOT DEFENDANT E.F. BRADY**
25 **COMPANY, INC.]**

26 For an Eighth Cause of Action, plaintiffs complain of the PREMISES/CONTRACTOR
27 DEFENDANTS, and each of them, and allege:

28 139. Plaintiffs re-allege and incorporate herein by reference, as though fully set forth herein,

1 each of the preceding paragraphs herein.

2 140. Despite the above-set forth knowledge of PREMISES/CONTRACTOR DEFENDANTS
3 of the aforesaid risk of harm from asbestos and/or asbestos products, defendants negligently provided
4 unsafe equipment, product and materials, including, but not limited to, asbestos and asbestos-containing
5 products, which created a risk of harm to persons entering said premises.

6 141. As a consequence, Decedent entered and performed work in and on said premises which
7 was to defendants' benefit and advantage and at defendants' request and invitation. In so doing,
8 Decedent was exposed to dangerous quantities of asbestos fibers.

9 142. Decedent and plaintiffs were unaware of the risk of harm created by the aforesaid
10 presence of asbestos products and materials on said premises and negligent provision of equipment,
11 product and materials, including, but not limited to, asbestos and asbestos-containing products.

12 143. As a legal consequence of the foregoing, Decedent developed asbestos-related illness as
13 previously set forth, and plaintiffs have suffered general and special damages as herein being alleged in
14 an amount in excess of \$50,000.

15 WHEREFORE, plaintiffs pray judgment against PREMISES/ CONTRACTOR DEFENDANTS,
16 and each of them, as hereinafter set forth.

17 **NINTH CAUSE OF ACTION**

18 **Premise Liability – Concealed, Preexisting Dangerous Condition on Premises**

19 **[Against PREMISES/CONTRACTOR DEFENDANTS, BUT NOT DEFENDANT E.F. BRADY**
20 **COMPANY, INC.]**

21 For a Ninth Cause of Action, plaintiffs complain of the PREMISES/CONTRACTOR
22 DEFENDANTS, and each of them, and allege:

23 144. Plaintiffs re-allege and incorporate herein by reference, as though fully set forth herein,
24 each of the preceding paragraphs herein.

25 145. At relevant times said defendants, including PREMISES/CONTRACTOR
26 DEFENDANTS, knew, or in the exercise of ordinary care should have known, that the aforesaid
27 presence and use of asbestos and asbestos-containing products and asbestos fibers created a concealed,
28 per-existing hazardous condition on its premises.

1 which said defendants should have recognized as necessary for the protection of Decedent. Decedent
2 suffered the harm complained of herein due to defendants' failure to exercise reasonable care in said
3 undertaking so that (a) defendants failure to exercise reasonable care increased the risk of harm to
4 Decedent, or (b) defendant undertook to perform a duty owed to Decedent by another, or (c) said harm
5 was suffered because of reliance, or the reliance of another, upon the undertaking by defendant.

6 153. As a legal consequence of the foregoing, Decedent developed asbestos-related illness
7 from which he suffered, as previously set forth, and plaintiffs have suffered general and special damages
8 as herein being alleged in an amount in excess of \$50,000.00.

9 WHEREFORE, plaintiffs pray judgment against PREMISES/CONTRACTOR DEFENDANTS,
10 and each of them, as hereinafter set forth.

11 **ELEVENTH CAUSE OF ACTION**

12 **Wrongful Death**

13 **[Against All Defendants]**

14 For an Eleventh Cause of Action, plaintiffs complain of defendants, and each of them, as
15 follows:

16 154. Plaintiffs refer to and by reference incorporate and make a part thereof, as though fully
17 set forth herein, each and every allegation in the preceding paragraphs herein.

18 155. At the time that Decedent JOEL HERNANDEZCUEVA sustained injury and later died,
19 as more fully alleged in the First through Tenth Causes of Action, and at all times thereafter, plaintiff
20 JOVANNA COLLANTES was the spouse of Decedent JOEL HERNANDEZCUEVA and plaintiffs
21 JOANNA HERNANDEZ, JOEL HERNANDEZ, JENNY HERNANDEZ, and NOHELY
22 HERNANDEZ were the children of Decedent JOEL HERNANDEZCUEVA.

23 156. As a direct and proximate result of defendants, and each of them, and of Decedent's
24 diagnosis of and later death from mesothelioma, plaintiffs will be deprived of the love, care, affection,
25 comfort, moral support, protection, companionship, guidance, services and support of Decedent,
26 plaintiffs' father, and have thereby sustained and will continue to sustain damages in an amount in
27 excess of \$50,000.00 in additional to special damages herein alleged.

28 157. As a further direct and proximate result of the acts and omissions of defendants, each

1 one of them, and the death of Decedent, plaintiffs have incurred medical expenses, funeral expenses, as
2 well as other expenses, in an amount in excess of \$50,000.00 in additional to special damages herein
3 alleged.

4 **TWELFTH CAUSE OF ACTION**

5 **Survivor Action**

6 **[Against all Defendants]**

7 For a Twelfth Cause of Action, plaintiffs complain of defendants, and each of them, and allege
8 as follows:

9 158. Plaintiffs refer to and by reference incorporate and make a part thereof, as though fully
10 set forth herein, each and every allegation in the preceding paragraphs herein.

11 159. Prior to his death, Decedent had filed this action against defendants herein for personal
12 injuries arising from his exposure to asbestos.

13 160. As a direct and legal result of the conduct of defendants, and each of them, Decedent
14 was required to, and did employ physicians and surgeons to examine, treat and care for him and incurred
15 medical and incidental expenses in a sum to be subsequently determined.

16 161. As a further, direct and legal result of the conduct of defendants, and each of them and of
17 Decedent's diagnosis and death from mesothelioma, Decedent was unable to follow his normal or any
18 gainful occupation for certain periods of time preceding his diagnosis and until Decedent's death, and
19 Decedent incurred loss of income, wages, profits and commissions, a diminishment of earning potential,
20 and other pecuniary losses, the full nature and extent of which are not yet known to plaintiffs; and leave
21 is requested to amend this complaint to conform to poof at the time of trial.

22 162. As a direct and legal result of the conduct of defendants, and each of them, prior to
23 Decedent's death, Decedent sustained the damages alleged herein, in an amount of at least \$50,000.00.

24 **PLAINTIFFS MAKES NO CLAIMS UNDER FEDERAL LAW**

25 163. As to each and every PRODUCT AND PREMISES/CONTRACTOR defendant plaintiffs
26 refers to and incorporates herein by reference paragraph 8 of the General Allegations as though fully set
27 out herein. In addition, plaintiffs specifically exclude any claims against PRODUCT DEFENDANTS,
28 PREMISES/CONTRACTOR defendants arising in any way under Federal Law or creating any

1 FEDERAL COURT JURISDICTION as to this claims and allegations made herein.

2 **PRAYER FOR DAMAGES**

3 WHEREFORE, Plaintiffs pray judgment against defendants, their "alternate entities," and each
4 of them, as follows:

5 **Prayer for Relief –First through Twelfth Causes of Action**

- 6 1. General damages in an amount in excess of \$50,000.00 in accordance with the proof;
- 7 2. Damages for fraud in an amount in excess of \$50,000.00 in accordance with proof;
- 8 3. Punitive and exemplary damages in an amount found appropriate by the trier of fact in
9 accordance with the proof;
- 10 4. For Decedent’s loss of income, wages, earning capacity and earning potential according
11 to proof;
- 12 5. For Decedent’s medical and related expenses according to proof
- 13 6. Non-economic damages as found appropriate by the trier of fact.
- 14 7. Special damages in accordance with the proof;
- 15 8. Prejudgment interest and post-judgment interest in accordance with law;
- 16 9. Costs of suit; and
- 17 10. Such other and further relief as the Court deems just and proper in the premises.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs also by this pleading demand a jury trial on all issues set forth hereinabove and as
20 shall or might arise pursuant to the same.

21
22 DATED: January 17, 2018

FARRISE LAW FIRM, P.C.
DEAN OMAR BRANHAM, LLP

23
24 By: /s/ Benjamin H. Adams
25 Simona A. Farrise, Esq.
26 Benjamin H. Adams, Esq.
27 Attorneys for Plaintiffs
28

PROOF OF SERVICE

LASC Case No.: BC 558820

I am employed in the County of Dallas, State of Texas. I am over eighteen years of age and not a party to the within action; my business address is 302 N. Market Street, Suite 300, Dallas, Texas 75202.

On the date set forth below, I served the following:

AMENDED COMPLAINT FOR PERSONAL INJURY (SURVIVORSHIP) AND WRONGFUL DEATH (INCLUDING DEMAND FOR JURY TRIAL)

On all interested parties in this action by placing a true copy as follows:

SEE SERVICE LIST PROVIDED BY LEXIS NEXIS

BY ELECTRONIC SERVICE: I caused the above document(s) to be served via File & ServeXpress pursuant to C.C.P. § 1010.6, C.R.C. 2.251, and by the Court Order dated October 25, 2011 Authorizing Electronic Serve in JCCP Case No. 4674, *In re Asbestos Litigation*, transmitting completely and without error through the approved vendor on all interested parties in this action as designated on the Transaction Receipt located on the File & ServeXpress website.

BY US MAIL: I caused the above document(s) to be deposited in the mail at Los Angeles, California with postage thereon fully prepaid to the office of the addressee(s) as indicated on the attached service list. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

BY E-MAIL: I transmitted a courtesy copy of the document described via e-mail to addresses listed on the referenced service list.

I declare under penalty of perjury under the laws of the State to California that the foregoing is true and correct.

Executed this 17 day of January 2018, at Dallas, Texas.

/s/ Teresa Gilliland
Teresa Gilliland