

FILED BY FAX

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8 *Attorneys for Plaintiffs,*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SANTA CLARA  
11 (UNLIMITED JURISDICTION)

12 LYN KILLIAN ROSEMAN, ALEXANDER  
13 HOLCOMB, Individually, and as POA for  
14 WILLIE LEE HOLCOMB, Individually, and as  
15 Successor in Interest to the Estate of QUEEN  
16 ESTHER HOLCOMB, Deceased; CEDRIC  
17 HUNT, Individually, and as Executor of the  
18 Estate of EVELYN HUNT, Deceased; KARI L.  
19 MORRIS, Individually, and as Successor in  
20 Interest to the Estate of NANCY GUSTAVSON,  
21 Deceased; CARL PFEIFFER, Individually, and as  
22 Executor of the Estate of CAROL PFEIFFER,  
23 Deceased; VALERIE LOMBARDI; LINDA  
24 WONG-FARENBAUGH; MICA BAILEY,  
25 Individually, and as Successor in Interest to the  
26 Estate of CAROLYN T. JOHNSON, Deceased;  
27 PAM BAILEY, Individually, and as Successor in  
28 Interest to the Estate of LORENE G.  
HEPWORTH, Deceased; MALEA DAUGHTON,

Plaintiffs,

vs.

JOHNSON & JOHNSON; JOHNSON &

Case No.:

16CV29800

COMPLAINT FOR DAMAGES AND  
DEMAND FOR JURY TRIAL

1. STRICT LIABILITY FAILURE TO WARN (AGAINST IMERYS TALC)
2. STRICT LIABILITY FAILURE TO WARN (AGAINST JOHNSON & JOHNSON DEFENDANTS)
3. STRICT LIABILITY DESIGN DEFECT AND MANUFACTURING DEFECT (AGAINST IMERYS TALC)
4. STRICT LIABILITY MANUFACTURING DEFECT AND DESIGN DEFECT (AGAINST JOHNSON & JOHNSON DEFENDANTS)
5. NEGLIGENCE (AGAINST IMERYS

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

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JOHNSON CONSUMER INC. F/K/A JOHNSON  
& JOHNSON CONSUMER COMPANIES, INC.,  
and IMERY'S TALC AMERICA, INC. F/K/A  
LUZENAC AMERICA, INC.,

Defendants.

- TALC)
- 6. NEGLIGENCE (AGAINST JOHNSON & JOHNSON DEFENDANTS)
  - 7. BREACH OF EXPRESS WARRANTY (AGAINST JOHNSON & JOHNSON DEFENDANTS)
  - 8. BREACH OF IMPLIED WARRANTY (AGAINST JOHNSON & JOHNSON DEFENDANTS)
  - 9. CIVIL CONSPIRACY (AGAINST ALL DEFENDANTS)
  - 10. FRAUD, FRAUDULENT MISREPRESENTATION, INTENTIONAL CONCEALMENT (AGAINST JOHNSON & JOHNSON DEFENDANTS)
  - 11. NEGLIGENT MISREPRESENTATION (AGAINST ALL DEFENDANTS)
  - 12. WRONGFUL DEATH (AGAINST ALL DEFENDANTS)
  - 13. PUNITIVE DAMAGES (AGAINST ALL DEFENDANTS)
  - 14. LOSS OF CONSORTIUM (AGAINST ALL DEFENDANTS)
- JURY TRIAL DEMANDED

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW, the above-captioned Plaintiffs (collectively referred to as "Plaintiffs"), and each of them, bring this Complaint and Demand for Jury Trial by and through their attorneys THE MILLER FIRM, LLC and complain and allege against Defendant JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC., and IMERY'S TALC AMERICA, INC. F/K/A LUZENAC AMERICA, INC. (collectively referred to as "Defendants") as follows:

**SUMMARY OF ALLEGATIONS**

1. This is a products liability action against the Defendants because Plaintiffs and Plaintiffs' Decedents have suffered from and have passed away from the severe effects of Ovarian Cancer caused by Johnson & Johnson's baby powder and Shower-to-Shower products which were manufactured, mined, and/or marketed by Defendants (hereinafter, the "PRODUCTS"). Defendants' PRODUCTS each contain talc powder, which caused Plaintiffs and Plaintiffs' Decedents to develop Ovarian Cancer after they used the PRODUCTS in their perineal area.

2. All Plaintiffs in this action seek recovery for damages as a result of developing ovarian cancer, which was directly and proximately caused by such wrongful conduct by Defendants, the unreasonably dangerous and defective nature of the PRODUCTS and talcum powder, and the attendant effects of developing ovarian cancer. All of the claims involve common legal and medical issues.

3. At all relevant times, all Defendants were engaged in the research, development, manufacture, design, testing, sale and marketing of PRODUCTS, and introduced such products into interstate commerce with knowledge and intent that such products be sold in all States,

1 including but not limited to the States of California, Texas, Indiana, Missouri, Kentucky,  
2 Alabama, Virginia, New York, Georgia, Michigan, and Pennsylvania.

3  
4 4. Defendants concealed and continue to conceal their knowledge of talc powder's  
5 unreasonably dangerous risks from Plaintiffs, Plaintiffs' Decedents, other consumers, and the  
6 medical community. Specifically, Defendants failed to adequately inform Plaintiffs, Plaintiffs'  
7 Decedents, consumers, and the medical community about the known risks of Ovarian Cancer  
8 associated with perineal use of the PRODUCTS.

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10 **PARTY PLAINTIFFS**

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12 5. Plaintiff LYN KILLIAN ROSEMAN is a competent individual over the age of 18  
13 currently residing in California and hereby submits to the jurisdiction of this Court and alleges  
14 that Venue in this Court is proper. Ms. Roseman regularly used Defendants' PRODUCTS in her  
15 perineal region and suffered from severe physical, economic, and emotional injuries as a result of  
16 her use of Defendants' PRODUCTS, including but not limited to Ovarian Cancer diagnosed in  
17 2000.

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19 6. Plaintiff ALEXANDER HOLCOMB, INDIVIDUALLY, AND AS POA FOR WILLIE  
20 LEE HOLCOMB, INDIVIDUALLY, AND AS SUCCESSOR IN INTEREST TO THE  
21 ESTATE OF QUEEN ESTHER HOLCOMB, DECEASED, is a competent individual over the  
22 age of 18 currently residing in North Carolina and hereby submits to the jurisdiction of this Court  
23 and alleges that Venue in this Court is proper. Decedent QUEEN ESTHER HOLCOMB  
24 regularly used Defendants' PRODUCTS in her perineal region, was diagnosed with Ovarian  
25 Cancer and subsequently died in June, 2014.

1 7. Plaintiff CEDRIC HUNT, INDIVIDUALLY, AND AS EXECUTOR OF THE ESTATE  
2 OF EVELYN HUNT, DECEASED, is a competent individual over the age of 18 currently  
3 residing in Texas and hereby submits to the jurisdiction of this Court and alleges that Venue in  
4 this Court is proper. Decedent EVELYN HUNT regularly used Defendants' PRODUCTS in her  
5 perineal region, was diagnosed with Ovarian Cancer and subsequently died in June, 2014.

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7 8. Plaintiff KARI L. MORRIS, INDIVIDUALLY, AND AS SUCCESSOR IN INTEREST  
8 TO THE ESTATE OF NANCY GUSTAVSON, DECEASED, is a competent individual over the  
9 age of 18 currently residing in Wisconsin and hereby submits to the jurisdiction of this Court and  
10 alleges that Venue in this Court is proper. Decedent NANCY GUSTAVSON regularly used  
11 Defendants' PRODUCTS in her perineal region, was diagnosed with Ovarian Cancer and  
12 subsequently died in June, 2014.

13 9. Plaintiff CARL PFEIFFER, INDIVIDUALLY, AND AS EXECUTOR OF THE  
14 ESTATE OF CAROL PFEIFFER, DECEASED, is a competent individual over the age of 18  
15 currently residing in Michigan and hereby submits to the jurisdiction of this Court and alleges  
16 that Venue in this Court is proper. Decedent CAROL PFEIFFER regularly used Defendants'  
17 PRODUCTS in her perineal region, was diagnosed with Ovarian Cancer and subsequently died  
18 in June, 2013.

19 10. Plaintiff VALERIE LOMBARDI is a competent individual over the age of 18 currently  
20 residing in Washington and hereby submits to the jurisdiction of this Court and alleges that  
21 Venue in this Court is proper. Ms. Lombardi regularly used Defendants' PRODUCTS in her  
22 perineal region and suffered from severe physical, economic, and emotional injuries as a result of  
23 her use of Defendants' PRODUCTS, including but not limited to Ovarian Cancer diagnosed in  
24 2013.

25 11. Plaintiff LINDA WONG-FARENBAUGH is a competent individual over the age of 18  
26 currently residing in Kansas and hereby submits to the jurisdiction of this Court and alleges that  
27

1 Venue in this Court is proper. Ms. Wong-Farenbaugh regularly used Defendants' PRODUCTS  
2 in her perineal region and suffered from severe physical, economic, and emotional injuries as a  
3 result of her use of Defendants' PRODUCTS, including but not limited to Ovarian Cancer  
4 diagnosed in July, 2013.

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6 12. Plaintiff MICA BAILEY, INDIVIDUALLY, AND AS SUCCESSOR IN INTEREST TO  
7 THE ESTATE OF CAROLYN T. JOHNSON, DECEASED, is a competent individual over the  
8 age of 18 currently residing in Florida and hereby submits to the jurisdiction of this Court and  
9 alleges that Venue in this Court is proper. Decedent CAROLYN T. JOHNSON regularly used  
10 Defendants' PRODUCTS in her perineal region, was diagnosed with Ovarian Cancer and  
11 subsequently died in July, 2014.

12 13. Plaintiff PAM BAILEY, INDIVIDUALLY, AND AS SUCCESSOR IN INTEREST TO  
13 THE ESTATE OF LORENE G. HEPWORTH, DECEASED, is a competent individual over the  
14 age of 18 currently residing in Utah and hereby submits to the jurisdiction of this Court and  
15 alleges that Venue in this Court is proper. Decedent LORENE G. HEPWORTH regularly used  
16 Defendants' PRODUCTS in her perineal region, was diagnosed with Ovarian Cancer and  
17 subsequently died in July, 2014.

18 14. Plaintiff MALEA DAUGHTON is a competent individual over the age of 18 currently  
19 residing in Maryland and hereby submits to the jurisdiction of this Court and alleges that Venue  
20 in this Court is proper. Ms. Daughton regularly used Defendants' PRODUCTS in her perineal  
21 region and suffered from severe physical, economic, and emotional injuries as a result of her use  
22 of Defendants' PRODUCTS, including but not limited to Ovarian Cancer diagnosed in June  
23 2013.

PARTY DEFENDANTS

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3 15. Defendant, JOHNSON & JOHNSON, is a New Jersey corporation with its principal  
4 place of business in the State of New Jersey.

5 16. At all relevant times, JOHNSON & JOHNSON was engaged in the business of  
6 manufacturing, marketing, testing, promoting, selling, and/or distributing the PRODUCTS. At all  
7 relevant times, Johnson & Johnson regularly transacted, solicited, and conducted business in all  
8 States of the United States, including the State of California.

9  
10 17. Defendant JOHNSON & JOHNSON CONSUMER COMPANIES, INC. is a New Jersey  
11 corporation with its principal place of business in the State of New Jersey.

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13 18. At all relevant times, Johnson & Johnson Consumer Companies, Inc. was engaged in the  
14 business of manufacturing, marketing, testing, promoting, selling, and/or distributing the  
15 PRODUCTS. At all relevant times, JOHNSON & JOHNSON CONSUMER COMPANIES, INC.  
16 regularly transacted, solicited, and conducted business in all States of the United States,  
17 including the State of California.

18  
19 19. Defendants JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER  
20 COMPANIES, INC. are collectively referred to herein as the "Johnson & Johnson Defendants".

21 20. Defendant IMERYYS TALC AMERICA, INC. f/k/a LUZENAC AMERICA, INC. is a  
22 Delaware corporation with its principal place of business in the State of California – specifically,  
23 its head office and laboratory are located at 1732 North First Street, Suite 450, San Jose,  
24 California 95112 (County of Santa Clara).

1 21. At all relevant times, IMERYS TALC AMERICA, INC. f/k/a LUZENAC AMERICA,  
2 INC. (hereinafter described as "Imerys Talc" or "Imerys Talc America, Inc."), has been in the  
3 business of mining and distributing talcum powder for use in talcum powder based products,  
4 including the PRODUCTS. Imerys Talc is the successor or continuation of Luzenac America,  
5 Inc., and Imerys Talc America, Inc. is legally responsible for all liabilities incurred when it was  
6 known as Luzenac America, Inc.  
7

8 **ALLEGATIONS COMMON TO ALL COUNTS**

9 22. Talc is a magnesium trisilicate that is mined from the earth. Talc is an inorganic mineral.  
10 The Defendant, Imerys Talc America, Inc., f/k/a Luzenac America, Inc. mined the talc contained  
11 in the PRODUCTS.  
12

13 23. Talc is the main substance in talcum powders. The Johnson & Johnson Defendants  
14 manufactured the PRODUCTS. The PRODUCTS are composed almost entirely of talc.  
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16 24. At all relevant times, a feasible alternative to the PRODUCTS has existed. Cornstarch is  
17 an organic carbohydrate that is quickly broken down by the body with no known health effects.  
18 Cornstarch powders have been sold and marketed for the same uses with nearly the same  
19 effectiveness as the PRODUCTS.  
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21 25. At all relevant times, Defendant Imerys Talc<sup>1</sup> mined the talc contained in the  
22 PRODUCTS.  
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26 <sup>1</sup> All allegations regarding actions taken by Imerys Talc also include actions taken while that entity was known as  
Luzenac America, Inc.



1 26. At all relevant times, Imerys Talc continually advertised and marketed talc as safe for  
2 human use.

3 27. At all relevant times, Imerys Talc supplied its customers, including the Johnson &  
4 Johnson Defendants, with Material Safety Data Sheets ("MSDS") for talc, which were supposed  
5 to convey adequate health and warning information to its customers.  
6

7 28. Historically, "Johnson's Baby Powder" has been a symbol of freshness, cleanliness, and  
8 purity. During the time in question, the Johnson & Johnson Defendants advertised and marketed  
9 this product as a symbol of "freshness" and "comfort," eliminating friction on the skin, absorbing  
10 "excess wetness" to keep skin feeling dry and comfortable, and "clinically proven gentle and  
11 mild." The Johnson & Johnson Defendants compelled women through advertisements to dust  
12 themselves with this product to mask odors. The bottle of "Johnson's Baby Powder" specifically  
13 targets women, stating: "For you, use every day to help feel soft, fresh, and comfortable."<sup>2</sup>  
14

15 29. At all relevant times, the Johnson & Johnson Defendants advertised and marketed their  
16 "Shower to Shower" product as safe for use by women as evidenced in its slogan, "A sprinkle a  
17 day keeps odor away," and through advertisements such as: "Your body perspires in more places  
18 than just under your arms. Use SHOWER to SHOWER to feel dry, fresh, and comfortable  
19 throughout the day;" and "SHOWER to SHOWER can be used all over your body."  
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26 <sup>2</sup> Retailer Wal-Mart lists the labels for Johnson's Baby Powder, <http://www.walmart.com/ip/Johnson-s-Baby-Powder-22-oz/10294007>.

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30. Plaintiffs used the PRODUCTS to dust their perineum for feminine hygiene purposes. This was an intended and foreseeable use of the PRODUCTS based on the advertising, marketing, and labeling of the PRODUCTS.

31. Upon information and belief, in 1971, the first study was conducted that suggested an association between talc and ovarian cancer. This study was conducted by Dr. WJ Henderson and others in Cardiff, Wales.

32. Upon information and belief, in 1982, the first epidemiologic study was performed on talc powder use in the female genital area. That study was conducted by Dr. Daniel Cramer and others. This study found a ninety-two percent increased risk of ovarian cancer with women who reported genital talc use. Shortly after this study was published, Dr. Bruce Semple of Johnson & Johnson came and visited Dr. Cramer about his study. Dr. Cramer advised Dr. Semple that Johnson & Johnson should place a warning on its talcum powders about the ovarian cancer risks so that women can make an informed decision about their health.

33. Upon information and belief, since approximately 1982, there have been approximately twenty-two additional epidemiologic studies providing data regarding the association of talc and ovarian cancer. Nearly all of these studies have reported an elevated risk of ovarian cancer associated with genital talc use in women.

34. Upon information and belief, in or about 1993, the United States National Toxicology Program published a study on the toxicity of non-asbestos form talc and found clear evidence of

1 carcinogenic activity. Talc was found to be a carcinogen, with or without the presence of  
2 asbestos-like fibers.<sup>3</sup>

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4 35. Upon information and belief, in response to the United States National Toxicology  
5 Program's study, the Cosmetic Toiletry and Fragrance Association (CTFA), now known as the  
6 PCPC, formed the Talc Interested Party Task Force (TIPTF). Johnson & Johnson, Inc., Johnson  
7 & Johnson Consumer Companies, Inc., and Luzenac—now known as Inerys Talc—were  
8 members of the CTFA and were the primary actors and contributors of the TIPTF. The stated  
9 purpose of TIPTF was to pool financial resources of these companies in order to collectively  
10 defend talc use at all costs and to prevent regulation of any type over this industry. TIPTF hired  
11 scientists to perform biased research regarding the safety of talc. TIPTF members, including  
12 Johnson & Johnson and Luzenac, then edited these scientific reports hired by this group prior to  
13 the submissions of these scientific reports to governmental agencies. In addition, members of  
14 TIPTF knowingly released false information about the safety of talc to the consuming public and  
15 used political and economic influence on regulatory bodies regarding talc. These activities were  
16 conducted by these companies and organizations over the past four decades in an effort to  
17 prevent regulation of talc and to create confusion to the consuming public about the true hazards  
18 of talc and its association to ovarian cancer.  
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24 <sup>3</sup> Inhalation Toxicology Research Institute Annual Report, 1993 – 1994,  
25 <http://www.inhalationtoxicology.com/ftp/1993-1994/93-94%20Annual%20Report%20Final.pdf>  
26 <http://www.dpc.com/21.html>  
27 <http://www.dpc.com/21.html>

1 36. Upon information and belief, on or about November 19, 1994, the Cancer Prevention  
2 Coalition sent a letter to then Johnson & Johnson C.E.O. Ralph Larsen, urging him to substitute  
3 cornstarch for talcum powder products and to label its products with a warning on cancer risks.<sup>4</sup>

4 37. Upon information and belief, in or about 1996, the FDA requested that the condom  
5 industry stop dusting condoms with talc due to the health concerns that studies linked talc to  
6 ovarian cancer. Upon this request, all U.S. manufacturers discontinued the use of talc in its  
7 condom manufacturing process to reduce the potential health hazards to women.<sup>5</sup>

8 38. Upon information and belief, in or about 1990, the U.S. Food and Drug Administration  
9 (FDA) asked manufacturers to voluntarily stop putting talc on surgical gloves because mounting  
10 scientific evidence showed that it caused adhesions in surgical patients.<sup>6</sup>

11 39. Upon information and belief, in or about February 2006, the International Agency for  
12 Research on Cancer (IARC), the specialized cancer agency of the World Health Organization,  
13 published a paper whereby they classified perineal use of talc-based body powder as a "Group  
14 2B" human carcinogen.<sup>7</sup> IARC, which is universally accepted as the international authority on  
15 cancer issues, concluded that studies from around the world consistently found an increased risk  
16 of ovarian cancer in women who used talc in perineal areas. IARC determined that between 16-

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22 <sup>4</sup> Petition Seeking a Cancer Warning on Cosmetic Talc PRODUCTS, May 13, 2008  
[http://www.prosumentconcerns.com/publications/submit/FINAL\\_COTW\\_TalcOn\\_Co\\_may1308.pdf](http://www.prosumentconcerns.com/publications/submit/FINAL_COTW_TalcOn_Co_may1308.pdf).

23 <sup>5</sup> "A Women's Campaign Against Talc on Condoms," *Philly.com*, [http://articles.philly.com/1996-01-](http://articles.philly.com/1996-01-08/08-01-cin-26352376_1_talc-condoms-ovarian-cancer)  
24 [08-01-cin-26352376\\_1\\_talc-condoms-ovarian-cancer](http://articles.philly.com/1996-01-08/08-01-cin-26352376_1_talc-condoms-ovarian-cancer).

25 <sup>6</sup> *Id.*

26 <sup>7</sup> IARC, "Perineal use of talc-based body powder (Group 2B)," available at  
<http://monographs.iarc.fr/ENG/Monographs/PDFs/sh1a6.pdf>.

1 52% of women worldwide used talc to dust their perineum and found an increased risk of  
2 ovarian cancer in women talc users ranging from 30-60%.

3 40. Upon information and belief, in or about 2006, the Canadian government, under The  
4 Hazardous PRODUCTS Act and associated Controlled PRODUCTS Regulations, classified talc  
5 as a "D2A," "very toxic," "cancer-causing" substance under its Workplace Hazardous Materials  
6 Information System (WHMIS). Asbestos is also classified as "D2A."  
7

8 41. Upon information and belief, in or about 2006, Defendant Imerys Talc began placing a  
9 warning on the MSDS it provided to the Johnson & Johnson Defendants regarding the talc it sold  
10 to them for use in the PRODUCTS. The MSDSs not only provided the warning information  
11 about the IARC classification but also included warning information regarding "States Rights to  
12 Know" and warning information about the Canadian Government's D2A classification of talc.  
13 Although the Johnson & Johnson Defendants admittedly received these MSDs, they never  
14 passed this warning information on to consumers. On September 26, 2012, the corporate  
15 representative for Imerys testified in open court that his company exclusively supplied the  
16 Johnson & Johnson Defendants with talc used for its baby powder products and that ovarian  
17 cancer is a potential hazard associated with women's perineal use of talc-based body powders,  
18 such as the PRODUCTS. Despite this, the Johnson & Johnson defendants continue to mislead  
19 consumers, such as Plaintiffs, maintaining that talc is safe for personal use<sup>8</sup>.  
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25 <sup>8</sup> See, e.g., <http://www.safetysandclearcommitment.com/innovation-infotodotac-talc> ("talc can be used safely in personal  
26 care products"; We want to assure women and caregivers who use our talc products that numerous studies support  
27 its safety, and these include assessments by external experts in addition to our company testing. Many research  
28 papers and epidemiology studies have specifically evaluated talc and perineal use and these studies have found talc  
to be safe")

1 42. In 2008, the Cancer Prevention Coalition submitted a "Petition Seeking a Cancer  
2 Warning on Cosmetic Talc PRODUCTS" to the FDA. The petition requested that the FDA  
3 immediately require cosmetic talcum powder products to bear labels with a prominent warning  
4 that frequent talc application in the female genital area is responsible for major risks of ovarian  
5 cancer.<sup>9</sup>  
6

7 43. In 2013, Cancer Prevention Research published a study that showed that women who  
8 used talcum powder in their groin area had a 20 to 30 percent greater risk of developing ovarian  
9 cancer than women who did not use talc products in that area.<sup>10</sup>  
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11 44. Presently, the National Cancer Institute<sup>11</sup> and the American Cancer Society<sup>12</sup> list genital  
12 talc use as a "risk factor" for ovarian cancer.

13 45. The Gilda Radner Familial Ovarian Cancer Registry, Roswell Park Center Institute, and  
14 the Department of Gynecologic Oncology University of Vermont publish a pamphlet entitled  
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21 <sup>9</sup> Cancer Prevention Coalition "Petition Seeking a Cancer Warning on Cosmetic Talc PRODUCTS" submitted to the  
FDA on May 13, 2008, <http://www.organicconsumers.org/articles/article.asp?id=12517>.

22 <sup>10</sup> "Genital powder use and risk of ovarian cancer: a pooled analysis of 8,525 cases and 9,859 controls." *Cancer*  
23 *Prevention Research*, June 2013. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3719140/>  
6207.CAPR-140117.html.

24 <sup>11</sup> National Cancer Institute, Ovarian Cancer Prevention,  
25 <http://www.cancer.gov/cancerprevention/detailedguide/ovarian-cancer-prevention>

26 <sup>12</sup> American Cancer Society, Risk Factors for Ovarian Cancer,  
27 <http://www.cancer.org/cancer/ovariancancer/detailedguide/ovarian-cancer-risk-factors>

1 "Myths & Facts about ovarian cancer: What you need to know." In this pamphlet, under "known"  
2 risk factors for ovarian cancer, it lists: "Use of Talc (Baby Powder) in the Genital Area."<sup>13</sup>

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4 46. The Defendants had a duty to know and warn about the hazards associated with the use of  
5 the PRODUCTS.

6 47. The Defendants failed to inform its customers and end users of the PRODUCTS of a  
7 known catastrophic health hazard associated with the use of its PRODUCTS.

8 48. In addition, the Defendants procured and disseminated false, misleading, and biased  
9 information regarding the safety of the PRODUCTS to the public and used influence over  
10 governmental and regulatory bodies regarding talc.

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12 49. As a direct and proximate result of the Defendants' calculated and reprehensible conduct  
13 Plaintiffs were injured and suffered damages, namely ovarian cancer, which required surgeries  
14 and treatments.

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17 **FEDERAL STANDARDS AND REQUIREMENTS**

18 50. Plaintiffs hereby incorporate the above paragraphs as if fully set forth herein.

19  
20 51. At all relevant times, Defendants had the obligation to comply with federal standards and  
21 regulations in the manufacture, design, marketing, branding, labeling, distribution, and sale of  
22 the PRODUCTS.

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26 <sup>13</sup> Myths and Facts About Ovarian Cancer,  
27 [http://imaging.ubmmedica.com/cancernetwork/forpatients/pdfs/7\\_M&F%20Ovarian%20Cancer.pdf](http://imaging.ubmmedica.com/cancernetwork/forpatients/pdfs/7_M&F%20Ovarian%20Cancer.pdf)

1 52. Defendants, each individually, *in solido*, and/or jointly, violated the Federal Food, Drug  
2 and Cosmetic Act, 21 U.S.C. §301, *et seq.*

3 53. Defendants have or may have failed to comply with federal standards and requirements  
4 governing the manufacture, design, marketing, branding, and sale of the PRODUCTS including,  
5 but not limited to, the following violations of sections and subsections of the United States Code  
6 and the Code of Federal Regulations:  
7

- 8 a. The PRODUCTS are adulterated in violation of 21 U.S.C. § 361 because, among  
9 other things, they contain a poisonous or deleterious substance which may render  
10 them injurious to users under the conditions of use prescribed in the labeling thereof,  
11 or under such conditions of use as are customary or usual.
- 12 b. The PRODUCTS are misbranded in violation of 21 U.S.C. § 362 because, among  
13 other things, their labeling is false or misleading.
- 14 c. The PRODUCTS are misbranded in violation 21 U.S.C. § 362 because words,  
15 statements, or other information required by or under authority of 21 U.S.C. § 362 are  
16 not prominently placed thereon with such conspicuousness and in such terms as to  
17 render them likely to be read and understood by the ordinary individual under  
18 customary conditions of purchase and use.
- 19 d. The PRODUCTS are misbranded in violation of 21 C.F.R. § 701.1 because they  
20 contain false or misleading representations that they are safe for daily application to  
21 all parts of the female body.
- 22 e. The PRODUCTS do not bear a warning statement, in violation of 21 C.F.R. § 740.1,  
23 to prevent a health hazard that may be associated with the PRODUCTS, namely that  
24 the PRODUCTS may cause ovarian cancer or a heightened risk of ovarian cancer  
25 when applied to the perineal area.
- 26 f. The PRODUCTS do not prominently and conspicuously bear a warning statement, in  
27 violation of 21 C.F.R. § 740.2, as to the risk of ovarian cancer caused by the use of  
28 the PRODUCTS when applied to the perineal area, in such terms and design that it is



1 likely to be read and understood by the ordinary individual under customary  
2 conditions of purchase and use.

- 3  
4 g. The PRODUCTS, in violation of 21 C.F.R. § 740.10, do not conspicuously state on  
5 their principal display panel that the safety of the PRODUCTS have not been  
6 determined and/or that the safety of the PRODUCTS' principal ingredients have not  
7 been determined.

8  
9 **COUNT I - STRICT LIABILITY FAILURE TO WARN**

10 **(Against Imerys Talc)**

11 54. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
12 fully herein.

13 55. At all relevant times, Imerys Talc mined and sold talc to the Johnson & Johnson  
14 Defendants with full knowledge that the Johnson & Johnson Defendants were then packaging the  
15 talc and selling to consumers as the PRODUCTS and consumers of the PRODUCTS were using  
16 it to powder their perineal regions.

17 56. At all relevant times, by mining talc and supplying that talc to the Johnson & Johnson  
18 Defendants for use in the PRODUCTS, Imerys Talc was knowingly an integral part of the  
19 overall manufacture, design, and production of the PRODUCTS and their introduction into the  
20 stream of interstate commerce.

21 57. At all relevant times, Imerys Talc knew or should have known of the unreasonably  
22 dangerous and carcinogenic nature of the talc it was selling to the Johnson & Johnson  
23 Defendants, especially when applied to a woman's perineal regions, and it knew or should have  
24 known that Johnson & Johnson was not warning its consumers of this danger.  
25

1 58. At all relevant times, Imerys Talc knew or should have known that the use of the  
2 PRODUCTS significantly increase the risk of ovarian cancer in women based upon scientific  
3 knowledge dating back until at least 1971.

4 59. At all relevant times, the PRODUCTS were defective and unreasonably dangerous when  
5 used in a reasonably foreseeable manner because, despite Imerys Talc's knowledge that the  
6 PRODUCTS were carcinogenic and could lead to an increased risk of ovarian cancer, Imerys  
7 Talc failed to provide adequate warning and/or instruction to consumers, including Plaintiff  
8 regarding the increased risk of ovarian cancer associated with the use of the PRODUCTS when  
9 applied to the perineal area.  
10

11 60. Had Plaintiffs received warning or instruction regarding the increased risk of ovarian  
12 cancer associated with the PRODUCTS when applied to the perineal area, Plaintiffs would not  
13 have used the PRODUCTS in this manner.  
14

15 61. Due to the absence of any warning or instruction by the Defendants as to the significant  
16 health and safety risks posed by the PRODUCTS as described herein, Plaintiffs were unaware  
17 that the PRODUCTS created an increased risk of ovarian cancer, as this danger was not known  
18 to the general public.  
19

20 62. As a direct and proximate result of Imerys Talc's failure to warn Plaintiffs of the  
21 increased risk of ovarian cancer associated with the PRODUCTS when applied to the perineal  
22 area, despite their actual knowledge of this material fact, Plaintiffs developed ovarian cancer and  
23 have been injured catastrophically and have been caused severe and permanent pain, suffering,  
24 disability, impairment, loss of enjoyment of life, loss of care, comfort and economic damages.  
25

1 63. WHEREFORE, Plaintiffs demand judgment against Inerlys Tale for compensatory, treble  
2 damages pursuant to California Civil Code Section 3345, and punitive damages in excess of the  
3 jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all  
4 such other relief, as this Court deems proper.  
5

6 **COUNT II - STRICT LIABILITY FAILURE TO WARN**

7 **(Against Johnson & Johnson Defendants)**

8 64. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
9 fully herein.

10 65. At all relevant times, the Johnson & Johnson Defendants were engaged in the business of  
11 manufacturing, marketing, testing, promoting, selling and/or distributing, and otherwise  
12 introducing into the stream of interstate commerce, the PRODUCTS.  
13

14 66. At all relevant times, the Johnson & Johnson Defendants knew or should have known  
15 that the use of the PRODUCTS in the female perineal area significantly increased the risk of  
16 ovarian cancer in women based upon scientific knowledge dating back until at least 1971.  
17

18 67. At all relevant times, the PRODUCTS, manufactured and supplied by the Johnson &  
19 Johnson Defendants, were defective and unreasonably dangerous because, despite the Johnson &  
20 Johnson Defendants' knowledge that its PRODUCTS were carcinogenic and could lead to an  
21 increased risk of ovarian cancer when applied to the female perineal area, a reasonably  
22 foreseeable use of the PRODUCTS, the Johnson & Johnson Defendants failed to provide  
23 adequate warning or instruction to consumers, including Plaintiffs, regarding the increased risk  
24 of ovarian cancer when the PRODUCTS are applied to the female perineal area.  
25  
26

1 68. At all relevant times, Plaintiffs used the PRODUCTS to powder their perineal areas, a use  
2 that was reasonably foreseeable and for which the PRODUCTS were supplied.

3 69. Had Plaintiffs received warning and/or instruction from the Johnson & Johnson  
4 Defendants regarding the increased risk of ovarian cancer associated with the PRODUCTS when  
5 applied to the perineal area, Plaintiffs would not have used the PRODUCTS in this manner.  
6

7 70. Due to the absence of any warning or instruction by the Johnson & Johnson Defendants  
8 as to the significant health and safety risks posed by the PRODUCTS as described herein,  
9 Plaintiffs were unaware that the PRODUCTS created an increased risk of ovarian cancer, as this  
10 danger was not known to the general public.  
11

12 71. As a direct and proximate result of Johnson & Johnson Defendants' failure to warn  
13 Plaintiffs of the increased risk of ovarian cancer associated with the PRODUCTS when applied  
14 to the perineal area, despite their actual knowledge of this material fact, Plaintiffs developed  
15 ovarian cancer and have been injured catastrophically and have been caused severe and  
16 permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort  
17 and economic damages.  
18

19 72. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants  
20 for compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive  
21 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of  
22 suit, attorneys' fees, and all such other relief, as this Court deems proper.  
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27

2 COUNT III - STRICT LIABILITY DESIGN DEFECT AND MANUFACTURING

3 DEFECT

4 (Against Imerys Tale)

5  
6 73. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
7 fully herein.

8 74. At all relevant times, Defendant Imerys Tale was engaged in the business of mining and  
9 distributing talcum to Johnson & Johnson Defendants for use in the PRODUCTS, and they were  
10 knowingly an integral part of the overall manufacture, design, and production of the  
11 PRODUCTS and their introduction into the stream of interstate commerce.

12  
13 75. At all relevant times, the PRODUCTS were expected to and did reach Plaintiffs without a  
14 substantial change in their condition.

15 76. At all relevant times, the PRODUCTS were defectively and improperly manufactured  
16 and designed by Imerys Tale in that, when Imerys Tale supplied its talc product to Johnson &  
17 Johnson with full knowledge that Johnson & Johnson would use its talc in formulating the  
18 PRODUCTS and that the talc would be the primary ingredient in the PRODUCTS, the  
19 foreseeable risks of the PRODUCTS far outweighed the benefits associated with their design and  
20 formulation.  
21

22  
23 77. At all relevant times, the PRODUCTS were defectively manufactured and designed by  
24 Imerys Tale in that their design and formulation is more dangerous than an ordinary consumer  
25 would expect when used in an intended and reasonably foreseeable manner.  
26

1 78. At all relevant times, the PRODUCTS created significant risks to the health and safety of  
2 consumers that far outweigh the risks posed by other products on the market used for the same  
3 therapeutic purpose.

4 79. As a direct and proximate result of the defective design and manufacture of the  
5 PRODUCTS, Plaintiffs developed ovarian cancer and have been injured catastrophically and  
6 have been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment  
7 of life, loss of care, comfort and economic damages.

8 80. WHEREFORE, Plaintiffs demand judgment against Imerys Tale for compensatory, treble  
9 damages pursuant to California Civil Code Section 3345, and punitive damages in excess of the  
10 jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all  
11 such other relief, as this Court deems proper.  
12  
13

14  
15 **COUNT IV – STRICT LIABILITY MANUFACTURING DEFECT AND DESIGN**

16  
17 **DEFECT**

18 **(Against Johnson & Johnson Defendants)**

19 81. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
20 fully herein.

21  
22 82. At all relevant times, the Johnson & Johnson Defendants were engaged in the business of  
23 manufacturing, formulating, creating, designing, testing, labeling, packaging, supplying,  
24 marketing, promoting, selling, advertising, and otherwise introducing the PRODUCTS into the  
25 stream of interstate commerce, which they sold and distributed throughout the United States.  
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substantial change in condition.

84. At all relevant times, the PRODUCTS were defectively and improperly manufactured and designed by the Johnson & Johnson Defendants in that, when the PRODUCTS left the hands of the Johnson & Johnson Defendants, the foreseeable risks of the PRODUCTS far outweighed the benefits associated with their design and formulation.

85. At all relevant times, the PRODUCTS were defectively manufactured and designed by the Johnson & Johnson Defendants in that their design and formulation is more dangerous than an ordinary consumer would expect when used in an intended and reasonably foreseeable manner.

86. At all relevant times, the PRODUCTS created significant risks to the health and safety of consumers that far outweigh the risks posed by other products on the market used for the same therapeutic purpose.

87. At all relevant times, a reasonable and safer alternative design existed, which could have feasibly been employed by the Johnson & Johnson Defendants to manufacture a product with the same therapeutic purpose as the PRODUCTS. Despite knowledge of this reasonable and safer alternative design, the Johnson & Johnson Defendants failed to alter the PRODUCTS' design and formulation. The magnitude of the danger created by the PRODUCTS far outweighs the costs associated with using an alternative, safer design.

88. As a direct and proximate result of the defective design and manufacture of the PRODUCTS, Plaintiffs developed ovarian cancer and have been injured catastrophically and have been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort and economic damages.

1 89. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants  
2 for compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive  
3 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of  
4 suit, attorneys' fees, and all such other relief, as this Court deems proper.  
5

6 **COUNT V – NEGLIGENCE**

7 **(Against Imerys Talc)**  
8

9 90. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
10 fully herein.

11 91. At all relevant times, Imerys Talc had a duty to exercise reasonable care to consumers,  
12 including Plaintiffs herein, in the design, development, manufacture, testing, inspection,  
13 packaging, promotion, marketing, distribution, labeling and/or sale of the PRODUCTS.  
14

15 92. At all relevant times, Imerys Talc mined and sold talc to the Johnson & Johnson  
16 Defendants, which it knew was then being packaged and sold to consumers as the PRODUCTS  
17 by the Johnson and Johnson Defendants. Further, Imerys Talc knew that consumers of the  
18 PRODUCTS were using it to powder their perineal regions.  
19

20 93. At all relevant times, Imerys Talc knew or should have known that the use of the  
21 PRODUCTS in the perineal area significantly increases the risk of ovarian cancer based upon  
22 scientific knowledge dating back to the 1971.

23 94. At all relevant times, Imerys Talc knew that Johnson & Johnson Defendants were not  
24 providing warnings to consumers of the PRODUCTS of the risk of ovarian cancer posed by talc  
25 contained therein.  
26



1 95. At all relevant times, Imerys Talc was negligent in providing talc to the Johnson &  
2 Johnson Defendants. Imerys Talc possessed information on the carcinogenic properties of talc,  
3 including its risk of causing ovarian cancer. Imerys Talc was negligent because it knew that the  
4 talc they provided to Johnson & Johnson Defendants would be used in the PRODUCTS, but they  
5 did not adequately take steps to ensure that ultimate consumers of the PRODUCTS, including  
6 Plaintiffs, received the information that Imerys Talc possessed on the carcinogenic properties of  
7 talc.  
8

9 96. As a direct and proximate result of Imerys Talc's negligence, Plaintiffs developed  
10 ovarian cancer and have been injured catastrophically and have been caused severe and  
11 permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort  
12 and economic damages.  
13

14 97. WHEREFORE, Plaintiffs demand judgment against Imerys Talc for compensatory, treble  
15 damages pursuant to California Civil Code Section 3345, and punitive damages in excess of the  
16 jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all  
17 such other relief, as this Court deems proper.  
18

19 **COUNT VI - NEGLIGENCE**

20 **(Johnson & Johnson Defendants)**

21 98. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
22 fully herein.  
23

24 99. At all relevant times, the Johnson & Johnson Defendants breached their duty to Plaintiffs  
25 and were otherwise negligent in marketing, designing, manufacturing, producing, supplying,  
26

1 inspecting, testing, selling and/or distributing the PRODUCTS in one or more of the following  
2 respects:

- 3
- 4 a. In failing to warn Plaintiffs of the hazards associated with the use of the PRODUCTS;
- 5 b. In failing to properly test their products to determine adequacy and effectiveness of  
6 safety measures, if any, prior to releasing the PRODUCTS for consumer use;
- 7 c. In failing to properly test the PRODUCTS to determine the increased risk of ovarian  
8 cancer during the normal and/or intended use of the PRODUCTS;
- 9 d. In failing to inform ultimate users, such as Plaintiffs, as to the safe and proper  
10 methods of handling and using the PRODUCTS;
- 11 e. In failing to remove the PRODUCTS from the market when the Defendants knew or  
12 should have known the PRODUCTS were defective;
- 13 f. In failing to instruct the ultimate users, such as Plaintiffs, as to the methods for  
14 reducing the type of exposure to the PRODUCTS which caused increased risk of  
15 ovarian cancer;
- 16 g. In failing to inform the public in general and the Plaintiffs in particular of the known  
17 dangers of using the PRODUCTS for dusting the perineum;
- 18 h. In failing to advise users how to prevent or reduce exposure that caused an increased  
19 risk for ovarian cancer;
- 20 i. In marketing and labeling the PRODUCTS as safe for all uses despite knowledge to  
21 the contrary;
- 22 j. In failing to act like a reasonably prudent company under similar circumstances;
- 23 k. In failing to use a safer alternative to talc in the PRODUCTS, such as cornstarch.

24 Each and all of these acts and omissions, taken singularly or in combination, were a  
25 proximate cause of the injuries and damages sustained by Plaintiffs.  
26  
27  
28

100. At all relevant times, the Johnson & Johnson Defendants knew or should have known that the PRODUCTS were unreasonably dangerous and defective when put to their reasonably anticipated use.

101. As a direct and proximate result of the Johnson & Johnson Defendants' negligence, Plaintiffs purchased and used the PRODUCTS that directly and proximately caused each Plaintiff to develop ovarian cancer. As a direct and proximate result, Plaintiffs were caused to incur medical bills, lost wages, and conscious pain and suffering.

102. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants for compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

**COUNT VII - BREACH OF EXPRESS WARRANTY**

**(Against Johnson & Johnson Defendants)**

103. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth fully herein.

104. At all relevant times, the Johnson & Johnson Defendants knew or should have known that the PRODUCTS were unreasonably dangerous and defective when put to their reasonably anticipated use.

105. At all relevant times, the Johnson & Johnson Defendants expressly warranted, through direct-to-consumer marketing, advertisements, and labels, that the PRODUCTS were safe and effective for reasonably anticipated uses, including use by women in their perineal area. Although the label has changed over time, the message has been the same: that the product is

1 safe for use on women as well as babies. At least as of 2014, the baby powder label stated that  
2 "Johnson's® Baby Powder is designed to gently absorb excess moisture helping skin feel  
3 comfortable. Our incredibly soft, hypoallergenic, dermatologist and allergy-tested formula  
4 glides over skin to leave it feeling delicately soft and dry while providing soothing relief." The  
5 Johnson & Johnson Defendants instruct consumers on the product labeling to "Shake powder  
6 directly into your hand, away from the face, before smoothing onto the skin."

8 106. Through other marketing, including on their website for Johnson's® Baby Powder,  
9 Defendants similarly encouraged women to use the product daily. Defendants state that  
10 Johnson's® Baby Powder "keeps skin feeling soft, fresh and comfortable. It's a classic.  
11 Johnson's® Baby Powder helps eliminate friction while keeping skin cool and comfortable. It's  
12 made of millions of tiny slippery plates that glide over each other to help reduce the irritation  
13 caused by friction." Under a heading "How to Use," "For skin that feels soft, fresh and  
14 comfortable, apply Johnson's® Baby Powder close to the body, away from the face. Shake  
15 powder into your hand and smooth onto skin." Under a heading "When to Use", the Johnson &  
16 Johnson Defendants recommend that the consumer "Use anytime you want skin to feel soft,  
17 fresh and comfortable. For baby, use after every bath and diaper change." On their website for  
18 Johnson's® Baby Powder, Defendants also state the product is "Clinically proven to be safe,  
19 gentle and mild."

22 107. Even more recently, in February or March, 2016, after a St. Louis Jury rendered a \$72  
23 million dollar verdict against Johnson & Johnson, including punitive damages, Johnson &  
24

1 Johnson published a web page directed at consumers misleadingly assuring them of the safety of  
2 talc titled "Our Safety & Care Commitment"<sup>14</sup> and touted the safety of talc, stating, *inter alia*:

- 3
- 4 a. "Decades of Safety: Our confidence in using talc reflects more than 30 years of  
5 research by independent scientists, review boards and global authorities, which have  
6 concluded that talc can be used safely in personal care products. Various government  
7 agencies and other bodies also have examined talc to determine the potential for any  
8 safety risks, and none have concluded that there are safety risks. In fact, no  
9 regulatory agency has ever required a change in labeling to reflect any safety risk  
10 from talc powder products."
- 11 b. "Our Position on Talc: At Johnson & Johnson Consumer Inc., our confidence in using  
12 talc is based on a long history of safe use and more than 30 years of research by  
13 independent researchers, scientific review boards and global regulatory authorities.  
14 Various agencies and governmental bodies have examined whether talc is a  
15 carcinogen, and none have concluded that it is. With over 100 years of use, few  
16 ingredients have the same demonstrated performance, mildness and safety profile as  
17 cosmetic talc."
- 18 c. "We want to assure women and caregivers who use our talc products that numerous  
19 studies support its safety, and these include assessments by external experts in  
20 addition to our company testing. Many research papers and epidemiology studies  
21 have specifically evaluated talc and perineal use and these studies have found talc to  
22 be safe"

23 108. At all relevant times, even up until present day, the Johnson & Johnson Defendant's  
24 representations relating to talc: that the PRODUCTS are safe for personal use, including in the  
25 perineal region.

26 109. At all relevant times, the PRODUCTS did not conform to these express representations  
27 because they cause serious injury, including ovarian cancer, when used by women in the  
28 perineal area.

<sup>14</sup> See, <http://www.safetyandcarecommitment.com/ingredient-info/other/talc>

1 110. As a direct and proximate result of the Defendants' breach of warranty, Plaintiffs  
2 purchased and used the PRODUCTS that directly and proximately caused each Plaintiff to  
3 develop ovarian cancer. Plaintiffs were caused to incur medical bills, lost wages, and conscious  
4 pain and suffering.

5  
6 111. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants  
7 for compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive  
8 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of  
9 suit, attorneys' fees, and all such other relief, as this Court deems proper.

10 **COUNT VIII – BREACH OF IMPLIED WARRANTIES**

11 **(Against Johnson & Johnson Defendants)**

12  
13 112. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
14 fully herein.

15 113. At the time the Defendants manufactured, marketed, labeled, promoted, distributed  
16 and/or sold the PRODUCTS, the Johnson & Johnson Defendants knew of the uses for which the  
17 PRODUCTS were intended, including use by women in the perineal area. With this knowledge,  
18 they impliedly warranted the PRODUCTS to be of merchantable quality and safe for such use.

19  
20 114. Defendants breached their implied warranties of the PRODUCTS sold to Plaintiffs  
21 because they were not fit for their common, ordinary and intended uses, including use by women  
22 in the perineal area.

23  
24 115. As a direct and proximate result of the Johnson & Johnson Defendants' breach of implied  
25 warranties, Plaintiffs purchased and used the PRODUCTS that directly and proximately caused

1 each Plaintiff to develop ovarian cancer. As a result, Plaintiffs were caused to incur medical bills,  
2 lost wages, and conscious pain and suffering.

3 116. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants  
4 for compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive  
5 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of  
6 suit, attorneys' fees, and all such other relief, as this Court deems proper.  
7

8  
9 **COUNT IX - CIVIL CONSPIRACY**

10 **(Against All Defendants)**

11  
12 117. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
13 fully herein.

14 118. Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined,  
15 confederated and conspired among themselves to cause Plaintiffs' injuries, diseases, and/or  
16 illnesses by exposing the Plaintiffs to harmful and dangerous PRODUCTS. Defendants further  
17 knowingly agreed, contrived, confederated and conspired to deprive the Plaintiffs of the  
18 opportunity of informed free choice as to whether to use the PRODUCTS or to expose  
19 themselves to the stated dangers. Defendants committed the wrongs as described herein by  
20 willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the  
21 use of and exposure to the PRODUCTS.  
22

23  
24 119. In furtherance of said conspiracies, Defendants performed the following overt acts:

- 25 a. For many decades, Defendants, individually, jointly, and in conspiracy with each  
26 other, have been in possession of medical and scientific data, literature and test  
27 reports that clearly indicated that use of their by women resulting from ordinary and

1 foreseeable use of the PRODUCTS were unreasonably dangerous, hazardous,  
2 deleterious to human health, carcinogenic, and potentially deadly;

3 b. Despite the medical and scientific data, literature, and test reports possessed by and  
4 available to Defendants, Defendants individually, jointly, and in conspiracy with each  
5 other, fraudulently, willfully and maliciously:

6 i. Withheld, concealed and suppressed said medical information regarding the  
7 increased risk of ovarian cancer from Plaintiffs, as described above; In  
8 addition, on July 27, 2005, Defendants, as part of the TIPTF, corresponded  
9 about and agreed to edit and delete portions of scientific papers being  
10 submitted on their behalf to the United States Toxicology Program in an  
11 attempt to prevent talc from being classified as a carcinogen;

12 ii. Instituted a "defense strategy" through the TIPTF to defend talc at all costs.  
13 In furtherance of this defense strategy, Defendants, through the TIPTF, used  
14 their influence over the National Toxicology Program ("NTP")  
15 Subcommittee and the threat of litigation against the NTP to prevent the NTP  
16 from classifying talc as a carcinogen on its 10th Report on Carcinogens  
17 ("RoC");

18 iii. Caused to be released, published and disseminated medical and scientific  
19 data, literature, and test reports containing information and statements  
20 regarding the risks of ovarian cancer which Defendants knew were incorrect,  
21 incomplete, outdated, and misleading. Specifically, Defendants, through the  
22 TIPTF, collectively agreed to release false information to the public  
23 regarding the safety of talc on July 1, 1992; July 8, 1992; and November 17,  
24 1994. In a letter dated September 17, 1997, the Defendants were criticized by  
25 their own toxicologist consultant for releasing this false information to the  
26 public, yet nothing was done by the Defendants to correct or redact this  
27 public release of knowingly false information.

28 c. By these false and fraudulent representations, omissions, and concealments,  
29 Defendants intended to induce and did induce the Plaintiffs to rely upon these false  
30 and fraudulent representations, omissions and concealments, and to continue to  
31 expose themselves to the dangers inherent in the use of and exposure to the  
32 PRODUCTS.

33 120. Plaintiffs reasonably and in good faith relied upon the fraudulent representations,  
34 omissions, and concealments made by Defendants regarding the nature of the PRODUCTS.



1 121. As a direct, foreseeable and proximate result of the Defendants' conspiracy, Plaintiffs  
2 purchased and used the PRODUCTS in the perineal areas, which directly and proximately  
3 caused each Plaintiff to develop ovarian cancer. Plaintiffs were caused to incur medical bills, lost  
4 wages, and conscious pain and suffering.  
5

6 122. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory,  
7 treble damages pursuant to California Civil Code Section 3345, and punitive damages in excess  
8 of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees,  
9 and all such other relief, as this Court deems proper.  
10

11  
12 **COUNT X – FRAUD, FRAUDULENT MISREPRESENTATION, AND INTENTIONAL**

13 **CONCEALMENT**

14 **(Against Johnson & Johnson Defendants)**

15 123. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
16 fully herein.  
17

18 124. At all relevant times, the Johnson & Johnson Defendants intentionally, willfully, and/or  
19 recklessly, with the intent to deceive, misrepresented and/or concealed material facts to  
20 consumers and users, including Plaintiffs.  
21

22 125. At all relevant times, the Johnson & Johnson Defendants misrepresented and/or  
23 concealed material facts concerning the PRODUCTS to consumers, including the Plaintiffs, with  
24 knowledge of the falsity of their misrepresentations.  
25  
26

1 126. At all relevant times, upon information and belief, the misrepresentations and  
2 concealments concerning the PRODUCTS made by the Johnson & Johnson Defendants include  
3 but are not limited to the following:  
4

- 5 a. The Johnson & Johnson Defendants falsely labeled and advertised the PRODUCTS  
6 in the following ways, among others: "For you, use every day to help feel soft, fresh,  
7 and comfortable." "a sprinkle a day keeps the odor away," "your body perspires in  
8 more places than just under your arms," "Use SHOWER to SHOWER to feel dry,  
9 fresh, and comfortable throughout the day," and "SHOWER to SHOWER can be  
10 used all over your body."  
11  
12 b. The Johnson & Johnson Defendants falsely advertised the PRODUCT SHOWER to  
13 SHOWER to be applied "all over," and in particular, urges women to use it to  
14 "Soothe Your Skin: Sprinkle on problem areas to soothe skin that has been irritated  
15 from friction. Apply after a bikini wax to help reduce irritation and discomfort."  
16  
17 c. The Johnson & Johnson Defendants, through the advertisements described above,  
18 knowingly misrepresented to Plaintiff and the public that the PRODUCTS were safe  
19 for use all over the body, including the perineal areas of women.  
20  
21 d. The Johnson & Johnson Defendants intentionally failed to disclose that talc and the  
22 associated PRODUCTS, when used in the perineal area, increase the risk of ovarian  
23 cancer.  
24  
25 e. The Johnson & Johnson Defendants intentionally failed to include adequate warnings  
26 with the PRODUCTS regarding the potential and actual risks of using the  
27 PRODUCTS in the perineal area on women and the nature, scope, severity, and  
28 duration of any serious injuries resulting therefrom.<sup>15</sup>  
29  
30 f. Despite knowing about the carcinogenic nature of talc and its likelihood to increase  
31 the risk of ovarian cancer in women, the Johnson & Johnson Defendants falsely  
32 marketed, advertised, labeled and sold the PRODUCTS as safe for public  
33 consumption and usage, including for use by women to powder their perineal areas.

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26 <sup>15</sup> Household PRODUCTS Database, Label for Johnson's Baby Powder, Original,  
27 [http://householdproducts.nlm.nih.gov/cgi-bin/household/brands?\(b\)=brands&id=10001040](http://householdproducts.nlm.nih.gov/cgi-bin/household/brands?(b)=brands&id=10001040)

1 127. At all relevant times, the Johnson & Johnson Defendants actively, knowingly, and  
2 intentionally concealed and misrepresented these material facts to the consuming public with the  
3 intent to deceive the public and Plaintiffs, and with the intent that the consumers would purchase  
4 and use the PRODUCTS in the female perineal area.

5  
6 128. At all relevant times, the consuming public, including Plaintiffs, would not otherwise  
7 have purchased the PRODUCTS and/or applied the PRODUCTS in the perineal area if they had  
8 been informed of the risks associated with the use of the PRODUCTS in the perineal area.

9 129. At all relevant times, Plaintiffs relied on the Johnson & Johnson Defendants'  
10 misrepresentations concerning the safety of the PRODUCTS when purchasing the PRODUCTS  
11 and using them in her perineal area, and her reliance was reasonable and justified.

12  
13 130. As a direct, foreseeable and proximate result of the Johnson & Johnson Defendants'  
14 fraudulent conduct, Plaintiffs purchased and used the PRODUCTS in their perineal areas. As a  
15 direct and proximate result of such use, each Plaintiff developed ovarian cancer, and Plaintiffs  
16 were caused to incur medical bills, lost wages, and conscious pain and suffering.

17  
18 131. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants  
19 for compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive  
20 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of  
21 suit, attorneys' fees, and all such other relief, as this Court deems proper.

22  
23 **COUNT XI - NEGLIGENT MISREPRESENTATION**

24 **(Against All Defendants)**

25 132. Plaintiffs incorporate by reference all other paragraphs in this Complaint as if set forth  
26 fully herein.

1 133. As a direct, foreseeable and proximate result of the Johnson & Johnson Defendants'  
2 fraudulent conduct, Plaintiffs purchased and used the PRODUCTS in their perineal areas. As a  
3 direct and proximate result of such use, each Plaintiff developed ovarian cancer, and Plaintiffs  
4 were caused to incur medical bills, lost wages, and conscious pain and suffering.  
5

6 134. Defendants had a duty to accurately and truthfully represent to the medical and healthcare  
7 community, Plaintiffs and the public that the PRODUCTS had been tested and found to be safe  
8 and effective for use in the perineal area. However, the representations made by Defendants, in  
9 fact, were false.  
10

11 135. Defendants failed to exercise ordinary care in the representations concerning the  
12 PRODUCTS while they were involved in their manufacture, sale, testing, quality assurance,  
13 quality control, and distribution in interstate commerce, because Defendants negligently  
14 misrepresented the PRODUCTS' high risk of unreasonable, dangerous, adverse side effects.  
15

16 136. Defendants breached their duty in representing that the PRODUCTS were safe for use in  
17 the perineal areas of women.

18 137. At all relevant times, upon information and belief, the misrepresentations, omissions and  
19 concealments concerning the PRODUCTS made by the Defendants include, but are not limited  
20 to the following:

- 21
- 22 a. The Johnson & Johnson Defendants labeled and advertised the PRODUCTS in the  
23 following ways, among others: "For you, use every day to help feel soft, fresh, and  
24 comfortable;" "A sprinkle a day keeps the odor away;" "Your body perspires in more  
25 places than just under your arms;" "Use SHOWER to SHOWER to feel dry, fresh,  
26 and comfortable throughout the day; and "SHOWER to SHOWER can be used all  
27 over your body."
  - 28 b. The Johnson & Johnson Defendants advertised the product SHOWER to SHOWER  
to be applied "all over," and in particular, urged women to use it to "Soothe Your

1 Skin: Sprinkle on problem areas to soothe skin that has been irritated from friction.  
2 Apply after a bikini was to help reduce irritation and discomfort."

- 3 e. Defendants, through the advertisements described above, among others,  
4 misrepresented to consumers, including the Plaintiffs, that the PRODUCTS were safe  
5 for use all over the body, including the female perineal area.
- 6 d. Despite actual knowledge of the health risks of the PRODUCTS, the Defendants  
7 failed to disclose to the consumers and the Plaintiffs, through adequate warnings,  
8 representations, labeling, or otherwise, that the PRODUCTS were inherently  
9 dangerous and carcinogenic in nature, which poses serious health risks to consumers.
- 10 e. Despite actual knowledge that the use of the PRODUCTS in the perineal area created  
11 a significantly increased risk of ovarian cancer, the Defendants failed to disclose to  
12 consumers and the Plaintiff, through adequate warnings, representations, labeling, or  
13 otherwise, that material fact.
- 14 f. Despite knowing about the carcinogenic nature of talc and its likelihood to increase  
15 the risk of ovarian cancer in women, the Johnson & Johnson Defendants falsely  
16 marketed, advertised, labeled and sold the PRODUCTS as safe for public  
17 consumption and usage, including for use by women to powder their perineal areas.

18 138. At all relevant times, Defendants failed to exercise reasonable care in ascertaining or  
19 sharing information regarding the safe use of PRODUCTS, failed to disclose facts indicating that  
20 the PRODUCTS were inherently dangerous and carcinogenic in nature, and otherwise failed to  
21 exercise reasonable care in communicating the information concerning the PRODUCTS to  
22 Plaintiff and/or concealed relevant facts that were known to them.

23 139. At all relevant times, Plaintiffs were not aware of the falsity of the foregoing  
24 misrepresentations, nor was she aware that material facts concerning talc and the PRODUCTS  
25 had been concealed or omitted. In reasonable reliance upon the Johnson & Johnson Defendants'  
26 misrepresentations and/or omissions, Plaintiffs were induced to and did purchase the  
27 PRODUCTS and did use the PRODUCTS on her perineal area. If the Defendants had disclosed  
28 true and accurate material facts concerning the risks of the use of the PRODUCTS, in particular

1 the risk of developing ovarian cancer from using the PRODUCTS in the female perineal area,  
2 Plaintiffs would not have purchased and/or received the PRODUCTS and/or used the  
3 PRODUCTS in that manner.  
4

5 140. Plaintiffs' reliance upon the Defendants' misrepresentations and omissions was justified  
6 and reasonable because, among other reasons, those misrepresentations and omissions were  
7 made by individuals and entities who were in a position to know the material facts concerning  
8 the PRODUCTS and the association between the PRODUCTS and the incidence of ovarian  
9 cancer, while Plaintiff was not in a position to know these material facts, and because the  
10 Johnson & Johnson Defendants failed to warn or otherwise provide notice to the consuming  
11 public as to the risks of the PRODUCTS, thereby inducing Plaintiff to use the PRODUCTS in  
12 lieu of safer alternatives and in ways that created unreasonably dangerous risks to her health. At  
13 all relevant times, the Defendants' corporate officers, directors, and/or managing agents knew of  
14 and ratified the acts of the Johnson & Johnson Defendants, as alleged herein.  
15

16 141. As a direct and proximate result of Defendants' conduct, Plaintiffs have been injured and  
17 sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life,  
18 loss of care and comfort, and economic damages.  
19

20 142. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory  
21 treble damages pursuant to California Civil Code Section 3345, and punitive damages in excess  
22 of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees,  
23 and all such other relief, as this Court deems proper.  
24

25 **COUNT XII – WRONGFUL DEATH**

26 **(Against All Defendants)**

1 143. Plaintiffs hereby incorporate by reference all other paragraphs in this Complaint as if set  
2 forth fully herein.  
3

4 144. As a direct and proximate result of the acts and/or omissions of Defendants as set forth  
5 herein, the Decedents named in this action used the PRODUCTS in their perineal areas.  
6 Subsequent to such use, Decedents developed ovarian cancer, suffered substantial pain and  
7 suffering, both physical and emotional in nature, and subsequently died.  
8

9 145. Plaintiffs, on behalf of themselves and all of the next of kin or successors-in-interest of  
10 Decedents, are entitled to recover damages as Decedents would have if they were living, as a  
11 result of acts and/or omissions of Defendants.  
12

13 146. Plaintiffs, on behalf of themselves and all of Decedents' next of kin or successors-in-  
14 interest are also entitled to recover punitive damages and damages for substantial pain and  
15 suffering caused to Decedents from the acts and/or omissions of Defendants as fully set forth  
16 herein, including without limitations, punitive damages.  
17

18 147. As a direct and proximate result of Defendants' conduct, Plaintiffs and Decedents have  
19 been injured and sustained severe and permanent pain, suffering, disability, impairment, loss of  
20 enjoyment of life, loss of care and comfort, and economic damages.  
21

22 148. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory  
23 treble damages pursuant to California Civil Code Section 3345, and punitive damages in excess  
24 of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees,  
25 and all such other relief, as this Court deems proper.  
26

27 **COUNT XIII - PUNITIVE DAMAGES**

(Against All Defendants)

1  
2  
3 149. Plaintiffs hereby incorporate by reference all other paragraphs in this Complaint as if set  
4 forth fully herein.

5 150. California Code of Civil Procedure Section 3294 provides that "In an action for the  
6 breach of an obligation not arising from contract, where it is proven by clear and convincing  
7 evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in  
8 addition to the actual damages, may recover damages for the sake of example and by way of  
9 punishing the defendant."

10 151. The Defendants have acted with oppression, fraud, and/or malice in the following ways,  
11 in addition to the acts and/or omissions described throughout this Complaint:

12 a. Defendants knew of the unreasonably high risk of ovarian cancer posed by the  
13 PRODUCTS before manufacturing, marketing, distributing and/or selling the  
14 PRODUCTS, yet purposefully proceeded with such action;

15 b. Despite their knowledge of the high risk of ovarian cancer associated with the  
16 PRODUCTS, Defendants affirmatively minimized this risk through marketing and  
17 promotional efforts and product labeling;

18 c. Through the actions outlined above, Defendants expressed a reckless indifference  
19 to the safety of users of the PRODUCTS, including Plaintiffs. Defendants knew of the  
20 dangers and risks of the PRODUCTS, yet they concealed and/or omitted this information  
21 from labels and warnings contained on the PRODUCTS in furtherance of their  
22 conspiracy and concerted action. These actions were outrageous because of Defendants'  
23 evil motive or a reckless indifference to the safety of users of the PRODUCTS.  
24  
25  
26  
27  
28



1 152. As a direct and proximate result of the Defendants' acts of oppression, fraud and/or  
2 malice described throughout this Complaint, Plaintiffs have sustained damages as set forth above.

3 153. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory,  
4 treble damages pursuant to California Civil Code Section 3345, and punitive damages in excess  
5 of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees,  
6 and all such other relief, as this Court deems proper.  
7

8 **COUNT XIV – LOSS OF CONSORTIUM**

9 **(Against All Defendants)**

10  
11 154. Plaintiffs hereby incorporate by reference all other paragraphs in this Complaint as if set  
12 forth fully herein.

13 155. Plaintiffs and Decedents' spouses were entitled to the comfort, care, affection,  
14 companionship, services, society, advice, guidance, counsel, and consortium of their spouses.

15 156. As a direct and proximate result of one or more of those wrongful acts or omissions of  
16 the Defendants described herein, Plaintiffs and Decedents' spouses have been and will be  
17 deprived of the comfort, care, affection, companionship, services, society, advice, guidance,  
18 counsel, and consortium.

19 157. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory,  
20 treble damages pursuant to California Civil Code Section 3345, and punitive damages, together  
21 with interest, costs of suit, attorneys' fees, and all such other relief as this Court deems proper.  
22

23 **TOLLING STATUTE OF LIMITATIONS**

24  
25 158. Plaintiffs hereby incorporate by reference all other paragraphs in this Complaint as if set  
26 forth fully herein.

1 159. Plaintiffs have suffered an illness that has a latency period and does not arise until many  
2 years after exposure. Plaintiffs' illnesses did not distinctly manifest themselves until they were  
3 made aware that their ovarian cancer could be caused by their use of the Defendants' products.  
4 Consequently, the discovery rule applies to these cases, and the statute of limitations has been  
5 tolled until the day that Plaintiffs knew or had reason to know that their (or decedents') ovarian  
6 cancer was linked to their (or decedents') use of the Defendants' products.  
7

8 160. Furthermore, the running of any statute of limitations has been equitably tolled by reason  
9 of Defendants' fraudulent concealment and conduct. Through their affirmative  
10 misrepresentations and omissions, Defendants actively concealed from Plaintiffs, decedents, and  
11 consumers the true risks associated with PRODUCTS.  
12

13 161. As a result of Defendants' actions, Plaintiffs, decedents, and consumers were unaware,  
14 and could not reasonably know or have learned through reasonable diligence, that Plaintiffs and  
15 decedents had been exposed to the risks alleged herein and that those risks were the direct and  
16 proximate result of Defendants' acts and omissions.  
17

18 162. Furthermore, Defendants are estopped from relying on any statute of limitations because  
19 of their concealment of the truth regarding the safety of PRODUCTS. Defendants were under a  
20 duty to disclose the true character, quality and nature of PRODUCTS because this was non-  
21 public information over which they continue to have exclusive control. Defendants knew that  
22 this information was not available to Plaintiffs, their medical providers and/or their health  
23 facilities, yet they failed to disclose the information to the public.  
24

25 163. Defendants had the ability to and did spend enormous amounts of money in furtherance  
26 of their purposes of marketing and promoting a profitable product, notwithstanding the known or  
27

1 reasonably knowable risks. Plaintiffs, decedents, consumers, and medical professionals could not  
2 have afforded to and could not have possibly conducted studies to determine the nature, extent  
3 and identity of related health risks, and they were forced to rely on Defendants' representations.

4  
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment against all Defendants as follows, individually and  
7 under survival claims:

- 8 (1) Judgment for Plaintiffs and against Defendants;
- 9 (2) For medical and related expenses, according to proof;
- 10 (3) For loss of earnings and/or earning capacity, according to proof;
- 11 (4) For exemplary or punitive damages, according to proof;
- 12 (5) For treble damages pursuant to California Civil Code Section 3345;
- 13 (6) For mental and physical suffering, according to proof;
- 14 (7) For Plaintiffs' cost of suit herein;
- 15 (8) For disgorgement of profits, according to proof;
- 16 (9) Default judgment as a sanction for the bad faith destruction of evidence, if any, and  
17 according to proof, if any;
- 18 (10) For such other and further relief as this court may deem just and proper, including  
19 prejudgment interest.

20  
21  
22 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows under wrongful death  
23 claims:

- 24 (1) Judgment for Plaintiffs and against Defendants;
- 25 (2) For loss of support, gifts, and benefits, according to proof;
- 26 (3) For the reasonable value of household services that the decedent would have provided;

1 (4) For the lost of decedent's love, companionship, comfort, care, assistance, protection,  
2 society, moral support, training, and guidance;

3 (5) For costs of suit herein;

4 (6) Default judgment as a sanction for the bad faith destruction of evidence, if any, and  
5 according to proof, if any;

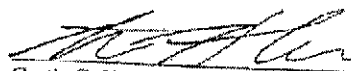
6 (7) For such other and further relief as this Court may deem just and proper, including  
7 prejudgment interest.  
8

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand a jury trial on all claims so triable in this action.

11 DATED: June 1, 2016

Respectfully submitted,

12  
13 

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