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SUPERIOR COURT OF CALIFORNIA

BY AND FOR THE COUNTY OF SAN DIEGO

LOUISA GUTIERREZ, an individual, DEBBIE LUNA, an individual, on behalf of themselves and all persons similarly situated,

Plaintiff,

v.

JOHNSON & JOHNSON, a New Jersey Corporation, JOHNSON & JOHNSON CONSUMER, INC., a New Jersey Corporation, VALEANT PHARMACEUTICALS NORTH AMERICA LLC, a New Jersey Limited Liability Company, AND DOES 1-100, inclusive

Defendants.

CASE NO. 37-2019-00025810-CU-NP-CTL

CLASS ACTION COMPLAINT FOR VIOLATIONS OF:

(1) THE CONSUMER LEGAL REMEDIES ACT (Civil Code § 1750, et seq.,)

(2) THE FALSE ADVERTISING LAW (Business and Professions Code § 17500, et seq.,), and

(3) THE UNFAIR COMPETITION LAW (Business & Professions Code § 17200, et seq.)

DEMAND FOR JURY TRIAL

Plaintiffs Louisa Gutierrez and Debbie Luna (collectively "Plaintiffs"), individually, on behalf of all others similarly situated (the "Class" or the "Class Members" as defined below), and on behalf of the general public, allege:

INTRODUCTION

1. This is consumer class action seeking restitution of all monies unlawfully earned by Defendants Johnson & Johnson, Inc., Valeant Pharmaceuticals, LLC and Johnson & Johnson Consumer, Inc. (collectively, "Defendants") for the sale of their Baby Powder and Shower to Shower products ("Talcum Products"). Defendants have consistently informed the public, the Plaintiffs, and the Class Members that no asbestos or asbestiform fibers are found within the Talcum Products, when in fact, Defendants have known for decades that not only do the Talcum Products contain asbestos or asbestiform fibers, but the methods used by Defendants to look for asbestos and asbestiform fibers in the talc used for the Talcum Products are and were inadequate.

2. The reason for this deception is simple: asbestos and talc containing asbestiform fibers are chemicals known to the State of California to cause cancer. Under the Safe Drinking Water and Toxic II Enforcement Act of 1986, Health and Safety Code §25249.6, a.k.a "Proposition 65", businesses must provide persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the State of California to cause cancer. The purpose of this requirement is to ensure that California citizens are made fully aware of the presence of toxins in consumer products, allowing them to make an informed choice/decision about whether or not to consume products with toxins known to cause cancer. Knowing that no reasonable consumer would purchase the Talcum Products knowing that the Talcum Products contain or might contain asbestos or asbestiform fibers, Defendants have persisted in obfuscating the potential harm to Plaintiffs, the Class, and the general public.

3. This is a class action alleging violations of the Consumer Legal Remedies Act ("CLRA"), Civil Code § 1750, *et seq*., the False Advertising Law ("FAL"), Business & Professions Code § 17500, *et seq*., and the Unfair Competition Law ("UCL"), Business & Professions Code §17200, *et seq*., that seeks, among other things, injunctive relief, restitution, and disgorgement to remedy to a class of all purchasers of Talcum Products resulting decades of Defendants' on-going

failure to warn and otherwise negligent, reckless and/or knowing sale of Talcum Products containing asbestos and talc containing asbestiform fibers without providing the notice required by law, and worse, making false representations that the Talcum Products are safe and "free of asbestos". This action further seeks to remedy Defendants' unfair, unlawful, and fraudulent business practices, and to ensure that all California consumers are warned that they are being exposed to asbestos and talc containing asbestiform fibers before purchasing and/or using Talcum Products.

4. Indeed, as Defendants were required as a matter of law to inform Plaintiffs and the members of the Class as defined below that their Talcum Products contained, or could contain, carcinogenic substances, namely talc containing asbestiform fibers, the information withheld from Plaintiff, the Class Members (as defined below), and the general public, must be deemed a material representation.

5. While there have been a number of actions seeking individual recovery for injuries suffered because of prolonged use of the Talcum Products, and while there is an action based on Defendants' failure to comply with Prop. 65 and label the Talcum Products with the proper warning label, Plaintiffs are unaware of any class action on behalf of a class of purchasers of the Talcum Products filed in the State of California.

6. In accordance with Cal. Business & Professions Code §17203, ("Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure,") Plaintiffs bring this action on behalf of themselves, and all a class of persons similarly situated. The Class, as alleged herein, is defined as:

> Plaintiffs and all persons who purchased the Talcum Products within the state of California at any time from four years prior to the filing of this complaint and ongoing until date of judgment and/or preliminary approval of class action settlement.

Specifically excluded from the proposed Class are Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by Defendants, and their heirs, successors, assigns,

or other persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or any of them; the judicial officer or judicial officers assigned to this action, any member of the judicial officers' immediate family. Also excluded from the Class are any persons who, as of the date the Complaint is filed, have an action pending against one or more of the Defendants resulting the sale of and any injuries resulting from, any of the Talcum Products.

PARTIES, VENUE AND JURISDICTION

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, §10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." The statutes under which this action is brought do not specify any other basis for jurisdiction. The damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limit of the Superior Court and will be established according to proof at trial.

8. At all relevant times, Plaintiffs are and were citizens of the State of California and purchased the Talcum Products in the State of California. At all relevant times, the Talcum Products were manufactured and packaged in one centralized location from the same raw talc and shipped to all fifty states. Thus, consumers that purchased and used the Talcum Products in any of the other 49 states outside of California would be exposed to the same talc containing asbestos and talc containing asbestiform fibers as a consumer that purchased Talcum Products, and vice versa.

9. Plaintiff Louisa Gutierrez is a citizen of the State of California, and a resident of Riverside County. On a regular basis for the past thirty years, Plaintiff Louisa Gutierrez purchased the Talcum Products in the State of California until she became aware of the connection between the Talcum Products and asbestos at the end of 2018 by reading, amongst other stories, the report by Reuters that the Talcum Products contained asbestos and/or talc containing asbestiform fibers. Had Plaintiff Louisa Gutierrez been aware that the Talcum products contained, or could contained asbestos and/or talc containing asbestiform fibers, Plaintiff Louisa Gutierrez would never have purchased or used any of the Talcum Products.

10. Plaintiff Debbie Luna is a citizen of the State of California, and a resident of San Diego County. Plaintiff Debbie Luna purchased the Talcum Products in the State of California for

for herself and her infant child until she became aware of the connection between the Talcum Products and asbestos at the end of 2018 by reading, amongst other stories, the report by Reuters that the Talcum Products contained asbestos and/or talc containing asbestiform fibers. Had Plaintiff Debbie Luna been aware that the Talcum products contained, or could contained asbestos and/or talc containing asbestiform fibers, Plaintiff Debbie Luna would never have purchased or used any of the Talcum Products.

11. Defendant Johnson & Johnson is a New Jersey corporation that is transacting and conducting substantial business within the State of California. Johnson & Johnson mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold and/or otherwise placed in the stream of commerce Baby Powder products which contain or contained asbestos and talc containing asbestiform fibers without warnings to which Plaintiffs, the Class, and the consuming public in this State were exposed.

12. Defendant Valeant Pharmaceuticals North America, LLC, ("Valeant") is a New Jersey limited liability company that is and was doing business in the State of New Jersey and in the State of California. Valeant, mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold and/or otherwise placed in the stream of commerce Shower to Shower products which contain or contained asbestos and talc containing asbestiform fibers without warnings to which Plaintiffs, the Class, and the consuming public in this State were exposed.

13. At all pertinent times, Defendants Johnson & Johnson and Valeant were engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Talcum Products containing Asbestos and Talc Containing Asbestiform Fibers. At all pertinent times, Johnson & Johnson and Valeant regularly transacted, solicited, and conducted business in all States of the United States, including the State of California.

14. Johnson & Johnson and Valeant have derived substantial revenue from goods and products purchased and used in the State of California. Johnson & Johnson and Valeant expected or should have expected its acts to have consequences within the State of California, and derived substantial revenue from interstate commerce.

15. Johnson & Johnson and Valeant mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed , supplied, distributed, sold and/or otherwise placed in the stream of commerce the Talcum Products containing Asbestos and talc containing asbestiform fibers without warnings to which Plaintiffs, the Class, and the consuming public in this State were exposed.

16. Defendant Johnson & Johnson Consumer Inc. (f/k/a Johnson & Johnson Consumer Companies, Inc.) is a New Jersey corporation that is and was doing business in the State of New Jersey and in the State of California. Johnson & Johnson Consumer Inc. mined, milled , processed, imparted, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold and/or otherwise placed in the stream of commerce the Talcum Products containing asbestos and talc containing asbestiform fibers without warnings to which Plaintiff and the consuming public in this State were exposed.

17. Defendants DOES 1-100 are the fictitious names of corporations, partnerships or other business entities or organizations whose identities are not presently known and that participated in a conspiracy with other corporations, partnerships or other business entities or organizations, including the named Defendants herein, and/or mined, milled, processed, imported, converted, compounded, designed , manufactured, marketed , supplied, distributed, sold and/or otherwise placed in the stream of commerce the Talcum Products containing asbestos and talc containing asbestiform fibers without warnings to which Plaintiff and the consuming public in this State were exposed.

FACTUAL BACKGROUND

18. For decades, Defendants have manufactured the Talcum Products containing asbestos and talc containing asbestiform fibers that were and are continuing to be sold and marketed as safe for daily use by consumers to give off a pleasant smell, mask odors, prevent chaffing and/or absorb moisture. Defendants' Talcum Products were advertised as healthful for babies, children and adults and to be applied regularly to maintain freshness, keep skin soft, mask odors with a floral fragrance, prevent chaffing and/or absorb moisture.

19. Defendants and the Cosmetic, Toiletry & Fragrance Association (n/k/a Personal Care Products Council) ("CTFA") made false statements to Plaintiffs, the Class, the general public, news media and government agencies that exercise regulatory authority over the

cosmetic industry, including, but not limited to, the U.S. Food & Drug Administration ("FDA"), the National Institute of Occupational Health and Safety ("OSHA"), the National Institute for Occupational Safety and Health ("NIOSH"), the Mine Health and Safety Administration ("MHS"), and the National Toxicology Program ("NTP"), which, in turn, proximately caused Plaintiffs' and the Class Members' harm through intentional efforts to deceive the general public and regulatory authorities as to the safety of and presence of carcinogens, including asbestos and talc containing asbestiform fibers in the Talcum Products.

20. Defendants and CTFA, for decades, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos and talc containing asbestiform fibers in the Talcum Products and that demonstrated the existence of health hazards to those exposed to asbestos and talc containing asbestiform fibers.

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

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

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

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

25. Defendants and their affiliates, employees, agents and/or suppliers were members of the National Safety Council. In March of 1933, Waldemar C. Dreesen of the United States Public Health Service reported to the National Safety Council the results of a study conducted among tremolite, talc and slate workers. The study indicated that the talc was a hydrous calcium magnesium silicate, being 45% talc and 45% tremolite, and the National Safety Council stated "The results of the study seemed to indicate a relationship between the amount of dust inhaled and the effect of this dust on the lungs of the workers." As early as 1934, the National Safety Council was publishing that "a cause of severe pulmonary injury is asbestos, a silicate of magnesium." In the September 1935 issue of National Safety News, an article entitled "No Halfway Measures in Dust Control" by Arthur S. Johnson reported lowered lung capacity resulting from "asbestosis" and "similar conditions" that developed "from exposure to excess of many mineral dusts .relatively low in free silica content." The article further noted that claims for disabilities from workers who alleged exposure to "clay, talc, emery, and carborundum dusts" had "claims prosecuted successfully." The article concluded that "[i]n the absence of adequate diagnoses, occupational histories and a more satisfactory method of adjudicating claims than prosecution at common law, we must conclude that it is necessary to find a practical method for controlling all mineral dusts."

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

27. In 1968, a study presented at the American Industrial Hygiene Conference & Exposition and published in the American Industrial Hygiene Association Journal concluded

that "[a]ll of the 22 talcum products analyzed have a...fiber content...averaging 19%. The fibrous material was predominantly talc but contained minor amounts of tremolite, anthophyllite, and chrysotile as these are often present in fibrous talc mineral deposits ...Unknown significant amounts of such materials in products that may be used without precautions may create an unsuspected problem ." L. J. Cralley, et al., Fibrous and Mineral Content of Cosmetic Talcum Products, 29 AM. IND. HYG. Assoc. J. 350-354 (1968). Defendants were aware of these findings.

28. In 1968, a scientific study of store-bought, commercially available talcum powders conducted by the Occupational Health Program, National Center for Urban Industrial Health, was published and presented by the American Industrial Hygiene Association. Defendants were aware of this study. The study revealed that, contrary to popular belief, talcum powders were not entirely pure, but rather contained various fibrous minerals, including tremolite, anthophyllite and chrysotile. The study explained that such fibrous content was not unexpected because these types of fibers are often present in fibrous talc mineral deposits. Available documents indicate that during the same year and in the years following, at least one company began testing store-bought talcum powders for asbestos content. Despite tests showing some talcum powders contained asbestos, there is no evidence that positive results or the brand names of contaminated products were communicated to any governmental agency, the media or the public.

29. According to a December 2018 report by Reuters, by at least 1967 and 1969, Defendants investigated the existence of tremolite in its Talcum Products, finding that asbestiform fibers were commonly found in its Talcum Products. From the report:

> In 1964, J&J's Windsor Minerals Inc subsidiary bought a cluster of talc mines in Vermont, with names like Argonaut, Rainbow, Frostbite and Black Bear. By 1966, it was blasting and bulldozing white rock out of the Green Mountain state. J&J used the milled powder in its cosmetic powders and sold a less-refined grade to roofing, flooring and tire companies for use in manufacturing.
>
> Ten years after tremolite turned up in the Italian talc, it showed up in Vermont talc, too. In 1967, J&J found traces of tremolite and another mineral that can occur as asbestos, according to a table attached to a Nov. 1, 1967, memo[1] by William Ashton, the executive in charge of J&J's talc supply for decades.
>
> J&J continued to search for sources of clean talc. But in an April 9, 1969, memo[2] to a company doctor, Ashton said it was "normal" to find tremolite in many U.S. talc

[1] Attached hereto at Exhibit 1.

[2] Attached hereto at Exhibit 2.

> deposits. He suggested J&J rethink its approach. "Historically, in our Company, Tremolite has been bad," Ashton wrote. "How bad is Tremolite medically, and how much of it can safely be in a talc base we might develop?"
>
> Since pulmonary disease, including cancer, appeared to be on the rise, "it would seem to be prudent to limit any possible content of Tremolite … to an absolute minimum," came the reply from another physician executive days later.
>
> The doctor told Ashton that J&J was receiving safety questions from pediatricians. Even Robert Wood Johnson II, the founder's son and then-retired CEO, had expressed "concern over the possibility of the adverse effects on the lungs of babies or mothers," he wrote.
>
> "We have replied," the doctor wrote, that "we would not regard the usage of our powders as presenting any hazard." Such assurances would be impossible, he added, "if we do include Tremolite in more than unavoidable trace amounts."
>
> The memo is the earliest J&J document reviewed by Reuters that discusses tremolite as more than a scratchy nuisance. The doctor urged Ashton to consult with company lawyers because "it is not inconceivable that we could become involved in litigation."

Lisa Girion, "Johnson & Johnson knew for decades that asbestos lurked in its Baby Powder," Reuters (December 14, 2018), https://www.reuters.com/investigates/special-report/johnsonandjohnson-cancer/.

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

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

Asbestos and talc containing asbestiform fibers hazards) associated with cosmetic talcum powder products, such as Defendants' The Talcum Products.

32. In 1971, the New York City of Environmental Protection Administration Air Resources Board conducted a study of two "leading" brands of talcum powder using transmission electron microscopy ("TEM") and X-ray diffraction ("XRD") analysis, and found them to contain 5-25% tremolite and anthophyllite asbestos.

33. Soon thereafter, a symposium was held in August of 1974 at the FDA to discuss the issue of asbestos content of talcum powders with the talc industry, government officials, and doctors and scientists from Mt. Sinai Hospital, which was then the epicenter of the medical and scientific study of asbestos. Among other statements, participants and attendees heard: that asbestos should be banned in talcum powders; models should be set up to measure the levels exposure to asbestos experienced by persons using talcum powder containing asbestos at the lowest level of microscopic detection; and that finding asbestos in talc and talcum powder is extremely difficult, and the only truly reliable way to determine the asbestos content of talc and talcum powder is through TEM and electron diffraction. Defendants and CTFA, aware of the foregoing and citing costs as well as their fear ·of the public learning talc was contaminated with asbestos, ignored and completely rejected any measures to meaningfully test talc products to make sure they were free from asbestos, asbestiform talc and other carcinogens.

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

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

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

36. A December 10, 1973, report of the CTFA's Talc Subcommittee disclosed that optical microscope analyses of talcs from the Italian, Montana I & 11, Alabama, Vermont, and North Carolina mines had failed the proposed FDA's method because of elevated chrysotile concentrations. This December I0, 1973, CTFA report also showed that several laboratories had reported chrysotile in many of the talc samples sent by the CTFA for evaluation of analytical methods as well as the several identifications of asbestos in talc mentioned.

37. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, including Defendants and their talc suppliers, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers associated with cosmetic talcum powder products, such as Talc Defendants' products. On September 3, 1973, the FDA sent CTFA a letter regarding various means

of measuring asbestos in talc, stating that "conventional methods employing X-ray diffraction or differential thermal analysis are not sufficiently reliable to produce quantitative results of the desired precision." The FDA further advised CTFA that it "has been exploring refractory optical microscopy as a means of measuring asbestos in talc." CTFA responded to the FDA's public notice on its proposed optical microscopy method on December 26, 1973. CTFA contended that the proposed method was not "reliable" for the detection of asbestos in talc, recommended a "collaborative effort between FDA and industry to develop such a method,'.' and urged deferment of the proposed rule. Minutes of CTFA's Talc Subcommittee meeting on March 15, 1976, indicate that the FDA's "Dr. Shaffner suggested the possibility of having industry report periodically on the results of its analysis to the FDA." Dr. Estrin of CTFA responded that "the subcommittee would give serious consideration to this suggestion."

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

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

40. Regarding the FDA's proposed 1972 rule-making, the FDA Director of Product Development and Cosmetics, Dr. Schaffner, invited representatives of the talc industry to a meeting in August of 1972 to discuss the results of Dr. Lewin's study and inform them that the FDA was preparing to release a "Proposed Statement of Policy On Asbestos in Cosmetics Containing Talc." Schaffner explained that he was duty-bound and must publicize the brand names of the talcum powders that contained asbestos. CTFA's president, Dr. Merritt, strongly objected to the FDA alerting the general public and publishing the brand names of the talcum powders, as it

would cause the manufactures "economic hardship." Merritt also threatened to sue the FDA to prevent the disclosure of the brand names. As a result, the FDA, Defendants and CTFA never revealed or publicized the brand names of the talcum powders that contained asbestos, much to the detriment of the plaintiffs and the general public.

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

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

43. Defendants and the CTFA also did not disclose to the FDA that the overwhelming majority of talcum powder manufacturers and sellers were not testing their products for asbestos, and even if they were testing, it was done so superficially: only four or so grams per 20 tons of pre-shipment and pre-processed talc, as an example. Defendants and CTFA also failed to the inform the FDA that they were not testing off-the-shelf talc powder products, but rather

old samples that were never from the end products themselves. They also failed to inform the FDA that they were limiting their testing of talc to only one type of asbestos fiber to the exclusion of all other fiber types that are commonly found in talc deposits. What is more, to the extent Defendants found asbestos in their samples, these positive results were not reported to the FDA. Instead, on their behalf, CTFA sent letters to the FDA in March of 1976 fraudulently claiming that industry testing had shown all talcum powder products to be completely free of asbestos.

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

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

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

47. CTFA subsequently began in earnest to produce a voluntary protocol and methodology that would provide Defendants cover from both lawsuits and regulation. Egregiously, as concerned media members, citizens and regulators began asking more

questions about which other brands of talcum powder contained asbestos, Defendants and CTFA falsely represented that talcum powders have never contained asbestos or asbestiform-talc.

48. Defendants, their talc suppliers, and third parties funded by Defendants collectively met with and corresponded with CTFA, as well as collectively met with the FDA and other government agencies, to individually and collectively advocate for the use of "voluntary" XRD testing of miniscule portions of the tons of talc to be used in consumer products. Defendants' "voluntary" method-that was developed collectively by Defendants and CTFA and advocated to the FDA in lieu of regulations requiring asbestos labeling or warnings on talcum powder products-was inadequate because levels of asbestos contamination in talc commonly fell below the detection limit of the testing methods. Defendants and CTFA also knew that asbestos contamination was not uniformly distributed, such that the miniscule amounts tested would not reveal the true level of contamination in talc products, such as The Talcum Products to which Plaintiff and the consuming public in this State were exposed.

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

50. CTFA "Method J4-I," published on October 7, 1976, states that TEM-SAED "offers greater sensitivity, but is not presented since it is unsuitable for normal quality control applications." The published method, rather, relies on XRD with "the level of detection of amphibole by this method [being] 0.5% and above." CTFA met with and corresponded with Defendants and third parties, to individually and collectively advocate to the FDA for the use of inadequate XRD testing on miniscule portions of the tons of talc obtained from the mining sources to be used in the consumer products, followed by fewer "periodic" tests by TEM. This voluntary method was developed by CTFA and Defendants, and was advocated to the FDA by CTFA and Defendants in lieu of regulations requiring labeling and warnings on talcum powder products, even though CTFA and Defendants knew that the J4-l method would not reveal the true

level of asbestos in the talc that reached consumers. In fact, the first "round robin" tests, which analyzed a "CTFA Tremolite-Spiked Talc," resulted in 6 of 7 participating laboratories failing to detect the tremolite. In other words, 84% of the industry's laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA's own J4-1 method. There is no evidence that CTFA or Defendants ever shared this remarkable failure with the FDA or the public.

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

52. Defendants and CTFA made and published such representations, claiming that their testing method was adequate, that they were ensuring that talcum powder products were safe, and that the talc reaching consumers in the Talcum Products was "safe," despite having substantial knowledge and evidence to the contrary. Defendants intentionally and knowingly

did so to avoid FDA, CalEPA, OEHHA and other governmental agency regulations that, like California's Proposition 65, would have required them to place warnings· regarding the asbestos and talc containing asbestiform fibers content of their talcum products, and thereby inform the public in this State, including Plaintiffs, that their Talcum Products contain asbestos and talc containing asbestiform fibers.

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

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

55. Between 1970 and the 1990s, tests conducted by and on behalf of Defendants and the talc industry continued to show that talc and talcum powder products contained asbestos. None of these positive tests have ever been produced or made known to any regulatory agency, and knowledge of 'their existence is only because of civil litigation. Defendants intentionally and knowingly did so to avoid FDA and California's Proposition 65 regulations that may have required them to place warnings regarding the asbestos content of their products, including the Talcum Products, and thereby inform the public, including Plaintiffs, that the Talcum Products contained asbestos and talc containing asbestiform fibers.

56. Defendants and CTFA 's failure to disclose these positive results and the inadequacies of their testing protocols continued through the 1980s, 1990s and 2000s, even when various government agencies, including California's Environmental Protection Agency ("CalEPA") and Office of Environmental Health Hazard Assessment ("OEHHA") and others, raised concerns about the safety of talc, including the issue of asbestos content.

57. To this day, many talc-containing products presently on the market, including the talcum products contain asbestos and talc containing asbestiform fibers. Instead of publicizing this fact, Defendants and CTFA continue to deny all the above to protect their pecuniary interests, to the severe detriment of the public, including Plaintiffs and the members of the Class.

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

59. Defendants (and other entities in the talc industry and cosmetic industries, including the CTFA), individually and collectively, failed to report to the FDA, CalEPA, OEHHA and other regulatory agencies, tests performed both internally and by outside laboratories confirming the presence of asbestos and talc containing asbestiform fibers in both their finished products, including the Talcum Products, as well as talc shipments from suppliers Defendants obtained talc from and other sources that were used to produce finished products.

60. Defendants, and even the outside laboratories, including McCone Associates, sent letters to CTFA, to be and which were forwarded to the FDA, stating that results of testing of talc used by them after 1972 had not revealed the presence of amphibole or chrysotile asbestos,

when in fact all of these entities had received or performed tests indicating the contrary when such false representations were made.

61. After 1976, Defendants and CTFA continued to obtain and/or receive results of testing performed internally and externally indicating the presence of Asbestos and talc containing asbestiform fibers in the Talcum Products.

62. Defendants failed to place any warning on their Talcum Products despite CalEPA and OEHHA regulations otherwise, or ever disclose the fact that these products contain asbestos or talc containing asbestiform fibers, at any point, up to and including the present, despite the clear hazard and direct information that their Talcum Products did and continue to contain asbestos or talc containing asbestiform fibers.

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

64. Defendants and CTFA, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder products, including the Talcum Products, to which Plaintiffs and the consuming public in this State have been exposed .

65. Defendants and CTFA, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data and embarked upon a plan of deception intended to deprive the public at large in this State and elsewhere, including Plaintiffs, of alarming medical and scientific findings, many of which remained in their exclusive possession and under their exclusive control.

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

a. to withhold from users of their products including Plaintiffs, the Class, and the general consuming public of this State-and from persons who they knew and should have known would be exposed thereto--information regarding the health risks of inhaling and/or ingesting and/or perineal (genital) application of the Talcum Products;

b. to eliminate, suppress or prevent investigation into the health hazards of exposure to asbestos and other carcinogens in talc and talcum powder products;

c. to ensure that asbestos-containing talc and talcum powder products became widely used in commerce, irrespective of the potential and actual risk of harm to the users and consumers from the asbestos and other carcinogens therein; and

d. to falsely represent that talc and talcum powder products, including those of Defendants, were safe and healthful for use by consumers such as Plaintiffs, the Class Members, and the general consuming public of this State.

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

68. CTFA, as well as Defendants and other entities in the talc industry and cosmetic industries, individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in Defendants' and other CTFA members ' finished products as well as talc shipments from talc suppliers and other sources that were used to produce finished products. Instead, CTFA sent letters to the FDA stating that results of testing of talc used by the industry after 1972 had not revealed the presence of amphiboles or chrysotile, when in fact all of these entities had received or performed tests indicating the contrary by 1976, when such intentionally false misrepresentations were made. CTFA and Defendants made and published such representations claiming that their collective testing method was adequate, they were ensuring that talcum powder products, including The

Talcum Products, were safe, and that their testing of talc reaching consumers was "safe," despite knowing the contrary.

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

70. CTFA and Defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, marketing, distribution and use of asbestos-containing talcum powder products, and controlled the level of knowledge and information available to the public in this State regarding the hazards of exposure to asbestos and talc with asbestiform fibers and other carcinogens from talc and talc-containing products, including the Talcum Products.

71. CTFA and Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including Plaintiffs, the Class, and the general consuming public in this State, of the serious bodily harm and/or death which may result from the

inhalation and/or ingestion and/or perineal (genital) application of asbestos and talc containing asbestiform fibers from their Talcum Products.

72. CTFA and Defendants, through agreement and consciously parallel behavior, knowingly and intentionally released , published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder, and specifically talc and talcum powder used in the production of the Talcum Products to which Plaintiffs, the Class, and the general consuming public in this State were exposed.

73. CTFA and Defendants, through agreement and consciously parallel behavior, suppressed, altered, changed, destroyed and/or revised reports, data, tests, studies and other documents regarding the potential presence of asbestos and other carcinogens in talc and talc-containing products, including Defendants' the Talcum Products to which Plaintiffs, the Class, and the consuming public in this State were exposed.

74. As recently as 2016, Defendants made material misrepresentations to the FDA regarding asbestos and talc containing asbestiform fibers in their talcum powder products.

75. However, as a matter of law, Defendants were required to inform the public that their products contained, or possibly contained carcinogens such as asbestos and talc containing asbestiform fibers. Health & Safety Code §25249.6 provides:

> No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. ..

76. "Knowingly" refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. "No knowledge that the discharge, release or exposure is unlawful is required (27 Cal. Code Regs, title 27, §25102(n)).

77. Proposition 65 also provides that any person "violating or threatening to violate" the statute may be enjoined in a court of competent jurisdiction. (Health & Saf. Code §25249.7) The phrase "threatening to violate" is defined to mean creating "a condition in which there is

substantial likelihood that a violation will occur." (Health & Saf. Code §25249.1 1(e)). Violaters are liable for civil penalties of up to $2,500 per day for each violation of the Act. (Health & Saf. Code §25249.7).

78. Asbestos is listed by the State of California as a chemical known to cause cancer. Asbestos is therefore subject to the "clear and reasonable" warning requirements of

79. Due to the high toxicity of asbestos in causing cancer, the No Significant Risk Level ("NSRL") or ("Safe Harbor") for inhalation of asbestos is 100 fibers/day (inhalation) (27 Cal. Code Regs, Title 27, CR 25709(b)). Defendants manufacture, distribute, market and/or sell in California the Talcum Products containing asbestos in levels exceeding the NSRL for inhalation through normal and intended use of the products.

80. There is no Safe Harbor established for perineal (genital) exposure to asbestos.

81. Talc Containing Asbestiform Fibers is also listed by the State of California as a chemical known to cause cancer. Talc Containing Asbestiform Fibers is therefore subject to the "clear and reasonable" warning requirements of Proposition 65 for cancer.

82. There are no Safe Harbors established for exposure to Talc Containing Asbestiform Fibers.

83. Since there is no established Safe Harbor for perineal (genital) exposure to Asbestos, or for inhalation or perineal (genital) exposure to Talc Containing Asbestiform Fibers, the named Defendants must demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. See, 27 Cal. Code of Regs, Title 27, §25801 et. seq. Clearly, at 1,000 times the asbestos and talc containing asbestiform fibers levels in question, the named Defendants are unable to show "no observable effect."

84. At all times relevant to this action, Defendants have knowingly exposed California consumers to asbestos and talc containing asbestiform fibers in the offending the Talcum Products talcum powder products without clear and reasonable warning to such individuals.

85. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers, disclosing the cancer-causing effects, on the Talcum Products.

86. At all times relevant to this action, Defendants' representatives have failed to warn California consumers that their Talcum Products contain cancer-causing asbestos and talc containing asbestiform fibers.

87. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers on their marketing materials.

88. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers on store shelves.

89. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers on their 16 websites. To the contrary, Defendants continue to represent on their websites that the Talcum Products are "asbestos free."

90. Further, by failing to place a clear and reasonable Proposition 65 label on for their websites, products, or advertising, Defendants both actively and passively asserted to Plaintiffs, the Class, and the general consuming public, that the Talcum Products were safe and legal to use for all purposes, when, as alleged above, they were not. Plaintiffs and the Class had a reasonable presumption that the sale of the Talcum Products, all of which were placed on retail store shelves, and which were openly available for sale without any warning labels at all, was safe, and in compliance with California law. *Steroid Hormone Product Cases* (2010) 181 Cal. App. 4th 145, 156-57.

CLASS ACTION ALLEGATIONS

91. Plaintiffs bring this action on behalf of themselves, the general public, and all others similarly situated. Plaintiffs seek to represent the following class:

> Plaintiffs and all persons who purchased the Talcum Products within the state of California at any time from four years prior to the filing of this complaint and ongoing until date of judgment and/or preliminary approval of class action settlement.

All Class members are hereinafter referred to as the "Class." Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the proposed Class are Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by Defendants, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or any of them; the judicial officer or judicial officers assigned to this action, any member of the judicial officers' immediate family. Also excluded from the Class are any persons who, as of the date the Complaint is filed, have an action pending against one or more of the Defendants resulting from the sale of, or injuries related to the use of, any of the Talcum Products.

92. This action has been brought and may be properly maintained as a class action, pursuant to the provisions of the California Code of Civil Procedure Section 382 and California Civil Code Section 1781.

93. Numerosity – Code Civ. Proc. § 382; Civ. Code § 1781(b)(1): Members of the Class are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believes, and on that basis allege, that the proposed class contains thousands of members. The precise number of Class members is unknown to Plaintiffs. Class members are likely to be known by Defendants, or Defendants' customers, however, and thus, may be notified of the pendency of this action by mail, supplemented (if deemed necessary and appropriate by the Court) by published notice.

94. Existence and Predominance of Commons Questions of Fact and Law – Code of Civ. Proc. § 382; Civ. Code § 1781(b)(2): Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class members. These common legal and factual questions include:

i. Whether the Talcum Products contain asbestos or asbestiform fibers;

ii. Whether Defendants knew or should have known that the Talcum Products contained asbestos or asbestiform fibers;

iii. Whether Defendants failure to label the Talcum Products as possibly containing known carcinogens violates Health & Safety Code § 259249.5;

iv. Whether Defendants violated Health & Safety Code § 111792 by failing to notify the California Division of Environmental and Occupational Disease Control that the Talcum Products contain asbestos and/or asbestiform fibers;

v. Whether Defendants could lawfully sell the Talcum Products in the State of California without complying with Health & Safety Code §§ 11792 and 259249.2;

vi. Whether the sale of the Talcum Products in California at retail establishments constituted an affirmative statement by Defendants to Plaintiffs and the Class Members that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2;

vii. Whether the affirmative statement by Defendants through the sale the Talcum Products in California at retail establishments that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2 was a misrepresentation as to the Talcum Product's source, sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2);

viii. Whether the affirmative statement by Defendants through the sale the Talcum Products in California at retail establishments that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2 constituted a representation, whether express or implied, that the Talcum Products have sponsorship, approval, characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code § 1770(a)(5);

ix. Whether the affirmative statement by Defendants through the sale the Talcum Products in California at retail establishments that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2 constituted a representation that the Talcum Products are of a particular standard, quality, or grade, or of a particular style or model, when they are of another in violation of Civil Code § 1770(a)(7);

x. Whether the affirmative statements by Defendants that the Talcum Products were "asbestos-free" constituted a misrepresentation as to the Talcum Products source, sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2);

xi. Whether the affirmative statements by Defendants that the Talcum Products were "asbestos-free" constituted a representation, whether express or implied, that the Talcum Products have sponsorship, approval, characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code § 1770(a)(5);

xii. Whether the affirmative statements by Defendants that the Talcum Products were "asbestos-free" constituted a representation that the Talcum Products are of a particular standard, quality, or grade, or of a particular style or model, when they are of another in violation of Civil Code § 1770(a)(7);

xiv. Whether the affirmative statements by Defendants that the Talcum Products are and were "asbestos-free" constitutes false advertising under Business & Professions Code § 17500, et seq.;

xv. Whether the sale of the Talcum Products constituted an unlawful business practice in violation of Business & Professions Code § 17200, et seq.;

xvi. Whether the sale of the Talcum Products constituted a deceptive business practice in violation of Business & Professions Code § 17200, et seq.;

xvii. Whether the sale of the Talcum Products constituted an unfair business practice in violation of Business & Professions Code § 17200, et seq.;

xviii. Whether Defendants have been unjustly enriched by their sale of the Talcum Products to Plaintiffs and the members of the Class; and,

xix. The appropriate amount of restitutionary disgorgement owed to Plaintiffs and the Class.

95. Typicality – Code Civ. Proc. § 382; Civ. Code § 1781(b)(3): Plaintiffs' claims are typical of the claims of the Class since Plaintiffs purchased the Talcum Products from Defendants as did members of the Class. Furthermore, Plaintiffs and all members of the Class sustained injury in fact by losing money as a result of Defendants' wrongful conduct.

96. Adequacy – Code Civ. Proc. § 382; Civ. Code § 1781(b)(4): Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and she intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

97. Superiority – Code Civ. Proc. § 382: The class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and members of the Class. Although the monetary injury suffered by each individual Class member may total several hundred dollars, injury of such magnitude is nonetheless relatively small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Violation of the Consumers Legal Remedies Act
[Civil Code § 1750 *et seq*.]
(On behalf of Plaintiffs and the Class Against All Defendants)

98. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

99. The Talcum Products are "goods" within the meaning of the Consumer Legal Remedies Act, Civil Code sections 1761(a) and 1770 (the "CLRA").

100. Each Defendant is a "person" within the meaning of the CLRA, Civil Code sections 1761(c) and 1770.

100. Purchasers of the Talcum Products, including Plaintiffs Gutierrez and Luna, and the

Class, are "consumers" within the meaning of the CLRA, Civil Code sections 1761(d) and 1770.

102. Plaintiffs and each and every Class Member's purchases of the Talcum Products constitute "transactions" within the meaning of the CLRA, Civil Code sections 1761(e) and 1770.

103. Defendants' unfair or deceptive acts or practices as described herein, were undertaken by Defendants in transactions intended to result or which resulted in the sale of goods to consumers, and were intended to induce, and did in fact induce, Plaintiffs and the Class to purchase for personal use such products, which they would not have otherwise purchased. Indeed, as one official with the U.S. Food and Drug Administration was quoted in 1971 as saying with regard to the possible presence of asbestos and/or talc containing asbestiform fibers in baby powder, "No mother was going to powder her baby with 1% of a known carcinogen irregardless [sic] of the large safety factor."[3]

104. Defendants' practices, acts and course of conduct with respect to their distribution and sale of the Talcum Products violate the CLRA in that Defendants' representation that its talcum powder products are safe and free from asbestos or asbestiform fibers constitutes: (1) a misrepresentation as to the Talcum Products source, sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2); (2) a representation, whether express or implied, that the Talcum Products have sponsorship, approval, characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code § 1770(a)(5); and (3) a representation that the Talcum Products are of a particular standard, quality, or grade, or of a particular style or model, when they are of another in violation of Civil Code § 1770(a)(7). Here, despite decades of evidence that the Talcum Products contain, or could contain asbestos or asbestiform fibers, Defendants continue to advertise that their products are safe.

105. Defendants' practices, acts and course of conduct in connection with its sale of the Talcum Products are likely to mislead a reasonable consumer acting reasonably under the circumstances to his or her detriment. Further, the misrepresentation of the safety of the Talcum Products are clearly material to the determination to purchase the Talcum Products, as the potential harm to the consumer or the consumer's family is significantly greater than the value conferred by

[3] See Exhibit 3.

the purchase of the Talcum Products ("No mother was going to powder her baby with 1% of a known carcinogen irregardless [sic] of the large safety factor."), there are equivalent products that confer a similar benefit to the consumer that the Talcum Products provided, and, as a result, no reasonable consumer, including Plaintiffs and the Class Members, would purchase the Talcum Products had they known that the Talcum Products were not, in fact, safe as Defendants, advertised, but that these products contained, or possibly contained, asbestos or asbestiform fibers, which are known carcinogens.

106. As a direct and proximate result of Defendants' violations of law, Plaintiffs and the Class have suffered damages by not receiving what was promised to them in exchange for the purchase of the Talcum Products, which Defendants contended were safe, and did not contain asbestos or asbestiform fibers.

107. By filing this Complaint, Plaintiffs seek an order enjoining Defendants from the continued sale of Talcum Products; an Order enjoining Defendants from collecting money from the Class from the sale of such products; and an Order requiring Defendants to notify the class of its violations of the CLRA and the remedy it will provide to them. Plaintiff and the Class are entitled to equitable relief in the form of restitutionary disgorgement of all earnings, profits, compensation and benefits obtained by Defendants as a result of its violations of the CLRA, along with other appropriate relief including reasonable attorneys' fees and expenses.

SECOND CAUSE OF ACTION
Violation of the False Advertising Law
[Business And Professions Code Section 17500, Et Seq.]
(On Behalf of Plaintiffs and the Class Against all Defendants)

108. Plaintiffs hereby incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

109. Plaintiffs bring this cause of action pursuant to California Business & Professions Code § 17500. California Business & Profession s Code § 17500 provides that it is unlawful for any person, firm, corporation or association to dispose of property or perform services, or to induce the public to enter into any obligation relating thereto, through the use of untrue or misleading statements.

110. Plaintiffs and the Class Members purchased the Talcum Products and have suffered injury in fact and have lost money or property as a result of the unlawful, unfair, or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.

111. At all times herein alleged, Defendants have committed acts of disseminating untrue and misleading statements as defined by California Business & Professions Code § 17500 by engaging in the following acts and practices with intent to induce members of the public to purchase and use the Talcum Products:(a) Representing that the Talcum Products are safe for their intended and foreseeable use and "free of asbestos," knowing that said representations were false, and concealing that the Talcum Products, or at least some of them, contain asbestos and talc containing asbestiform fibers and have a serious propensity to cause injuries to users; (b) Issuing promotional literature and commercials deceiving potential users of the Talcum Products by relaying positive information and concealing material relevant information regarding the safety and efficacy of the Talcum Products; and other unfair, unlawful and fraudulent conduct.

112. The foregoing practices constitute false and misleading advertising within the meaning of California Business & Professions Code § 17500.

113. The acts of untrue and misleading statements by Defendants described here in above present a continuing threat to members of the public in that the acts alleged herein are continuous and ongoing, and the public will continue to suffer the harm alleged herein .

114. As a result of their conduct described above, Defendants have been and will be unjustly enriched. Specifically, Defendants have been unjustly enriched by receipt of hundreds of millions of dollars in ill-gotten gains from Plaintiffs and the Class Members from the sale of the Talcum Products in California, sold in large part as a result of the acts and omissions described herein.

115. Pursuant to California Business & Professions Code § 17535, Plaintiffs seeks an order of this Court compelling the Defendants to provide restitution and injunctive relief calling for Defendants, and each of them, to cease unfair business practices in the future.

116. Plaintiffs seek restitutionary disgorgment of the monies collected from Plaintiffs and the Class, by Defendants, and each of them, and other injunctive relief to cease such false and misleading advertising in the future.

117. Defendants' actions described above were performed willfully, intentionally, and with reckless disregard of the life and safety of the Plaintiffs, the Class, and the general public.

THIRD CAUSE OF ACTION
Violation of the Unfair Competition Law
[Business and Professions Code Section 17200, et seq.]
(on Behalf of Plaintiffs and the Class Against all Defendants)

118. Plaintiffs hereby incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows.

119. California Business & Professions Code § 17200 provides that unfair competition shall mean and include "all unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising."

120. Plaintiffs and the Class purchased the Talcum Products and have suffered injury in fact and have lost money or property as a result of the unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.

121. The acts and practices described above violate California Health and Safety Code §25249.5, et seq. (Proposition 65) and therefore satisfy and violate the "unlawful" prong of § 17200.

122. The acts and practices described above also violate the California Safe Cosmetic Act of 2005 (Cal. Health & Safety Code §§ 111791 et seq.) for failing to notify the California Safe Cosmetics Program that the Talcum Products contain asbestos and talc containing asbestiform fibers -- ingredients known to cause cancer. The California Safe Cosmetics Act is a California State law that was enacted in 2005 and is implemented by the California Safe Cosmetics Program in the California Department of Public Health. The Act requires companies to report cosmetics products sold within the state that contain ingredients known or suspected to cause cancer, birth defects, or other reproductive harm. The violations of Cal. Health & Safety Code §§ 11191 et seq. also satisfy and violate the "unlawful" prong of § 17200.

123. The acts and practices described above also violate the Consumer Legal Remedies Act, and the False Advertising Law, as described above, in that Defendants have represented to Plaintiffs, the Class and the general public, that their products are safe and "asbestos-free." Thus, the statements made by Defendants that the Talcum Products were safe and "asbestos-free" are constitute unlawful acts within the meaning of California Business & Professions Code § 17200.

124. Further, by selling the Talcum Products openly in retail establishments throughout the State of California, Defendants violated and violate the Consumer Legal Remedies Act, by passively intimating that the Talcum Products complied with all of California's laws, and were safe to use, when, in fact, they were not. This conduct, prohibited by the CLRA, also constitutes unlawful acts within the meaning of California Business & Professions Code § 17200.

125. The acts and practices described above were and are also likely to mislead the general public and therefore constitute unfair business practices within the meaning of California Business & Professions Code § 17200, including unfair, unlawful, and/or fraudulent practices.

126. The acts of untrue and misleading advertising set forth in presiding paragraphs are incorporated by reference and are, by definition, violations of California Business & Professions Code § 17200. This conduct is set forth fully herein, and includes, but is not limited to: (a) Representing that the Talcum Products are safe for their intended and foreseeable use and "free of asbestos," knowing that said representations were false, and concealing that the Talcum Products contain Asbestos and Talc Containing Asbestiform Fibers and had a serious propensity to cause injuries to users; (b) Issuing promotional literature and commercials deceiving potential users of the Talcum Products by relaying positive information and concealing material relevant information regarding the safety and efficacy of the Talcum Products; (c) Selling the Talcum Products freely and openly without any indication of the associated health risks; and other unfair, unlawful and fraudulent conduct.

127. These practices constitute unlawful, unfair and/or fraudulent business acts or practices, within the meaning of California Business & Professions Code § 17200. The fraudulent conduct includes representing that the Talcum Products were safe for their intended use and failing to warn Plaintiff and the Class Members of the risks associated with the Talcum Products.

128. The unlawful, unfair and fraudulent business practices of Defendants described above present a continuing threat to members of the public in that Defendants continue to engage in the conduct described therein.

129. As a result of their conduct described above, Defendants have been and will be unjustly enriched. Specifically, Defendants have been unjustly enriched by receipt of millions of dollars in ill-gotten gains from the sale of the Talcum Products in California to Plaintiffs and the Class, sold in large part as a result of the acts and omissions described herein.

130. Plaintiffs, on behalf of themselves, and on behalf of the Class, pursuant to California Business & Professions Code § 17203, seeks an order of this court compelling the Defendants to provide restitutionary disgorgement and injunctive relief calling for Defendants, and each of them, to cease unfair business practices in the future.

DEMAND FOR JURY TRIAL

131. Plaintiffs hereby demand trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class and the general public, pray for judgment against Defendants as follows:

1. For an order certifying that this action may be maintained as a class action against Defendants, appointing Plaintiffs and their counsel to represent the Class, as alleged herein, and directing that reasonable notice of this action be given by Defendants to the members of the Class;
2. For an order awarding reimbursement, restitution and disgorgement from Defendants of the benefits unjustly conferred by Plaintiffs and the Class;
3. For an order awarding injunctive and other equitable relief;
4. For an order awarding declaratory relief;
5. For an order awarding pre- and post-judgment interest to the Class, at the highest rate allowed by law;
6. For an order awarding costs, including experts' fees, and attorneys' fees and expenses,

and the costs of prosecuting this action; and

7. For an order awarding granting such other and further relief as is just and proper.

Dated: May 15, 2019

POTTER HANDY LLP

By: _____

Mark Potter, Esq.
James M. Treglio, Esq.

Attorneys for Plaintiffs and the Class

EXHIBIT 1

Johnson & Johnson

New Brunswick, N. J.

Nov.1,1967

Subject:

Metropolitan Talc
Lot G 716
Preliminary Evaluation

The talc used for this evaluation was produced in the Plainfield plant and was delivered to us by Mr. Don Perry about Oct. 1,1967.

Perfume Retention and Aroma

The Metro talc shows greater retention for perfume than does our Vermont talc and the indications are that the rate of escape is very close to that devloped with Italian talc. We ran a gravimetric rate loss test on talcs containing 1% P-5 in open dishes and find the rate loss very close to Italian talc at both 70 and 100F for the Metro and significantly faster for the Vermont. (Graphs 1 & 2)

The Metro talc does not show the chalky note under circumstances which create that aroma in Vermont talcs. Since the original problem in perfumery developed at a low dose of P-5 we elected to set up a storage test with the three talcs (Italian, Vermont, Metro) and P-5 at 0.1% incubated at 120F for three weeks. The Vermont article develops a chalky tone whereas the other two did not.

The above tests lead us to believe that the commercial dose of either P or P-5 would provide a satisfactory aroma life with Metro type talc. Our tests were limited in that we did not include the neutralizer at this point.

Chemical and Physical Properties

Except for fineness the Metro talc fits the physical characteristics which we find adequate. (Table I) The shipment on hand is slightly on the coarse side; a slightly increased grind should bring it into range.

Mineralogically the talc is predominantly platy although a large percentage of the plates are broken and lath shaped. The lath shape of some of the particles appears to have resulted from the grinding method since the cleavage of the crystals from a sample of the

Plaintiff's Exhibit J&J 124

rock is normal. Optically, by count, the product is at least 93% talc plus 3-5% Dolomite and 1% or less of Tremolite. The associate minerals are liberated from the talc crystals.

The talc has high slip, good flow character and is remarkably white. It is probably the whitest commercially available talc which we have observed at the 200 mesh grind level.

The carbonate Dolomite is actually calcium magnesium carbonate. This assays about 5% using the strong acid method and close to 4% using the titration method. This carbonate level requires up to 1% of sesquicitrate to maintain our historic pH limits in the finished product. A 1% neutralizer content is prohibitively high. Sesquicitrate in the 0.2% area brings the initial pH of the product close to neutral and there might be some merit in considering such a product but of course the effect would be to drift up to the higher alkaline ranges over the 18 hr control test we now use. (Graph 111)

Talc Source and Processing

The talc ore processed in Plainfield comes from the deposit in Madoc Ontario which we explored at depth some years ago.

The Madoc deposit has a lot in common with Italian talc from the geological and mineralogical points of view. The associate minerals in the district are very similar and the crystal habit of the talcs are also very similar to the Italian situation. Thus there would be every reason to expect the two talcs to perform about the same when their processing conditions were reasonably close.

The Madoc deposit is a relatively large source of talc but it contains several grades of ore which are given different names. The highest grade up there is the Henderson section and it is that section which is presently being worked to supply the crudes for the Plainfield plant. As far as we know the reserves at Madoc were of the 150,000 ton order for the Henderson type at the 600 foot levels.

The process used to upgrade the talc is based on electrostatic separation. This is a dry process so there would be no effects resulting from wetting or flotation reagentry.

Next Steps

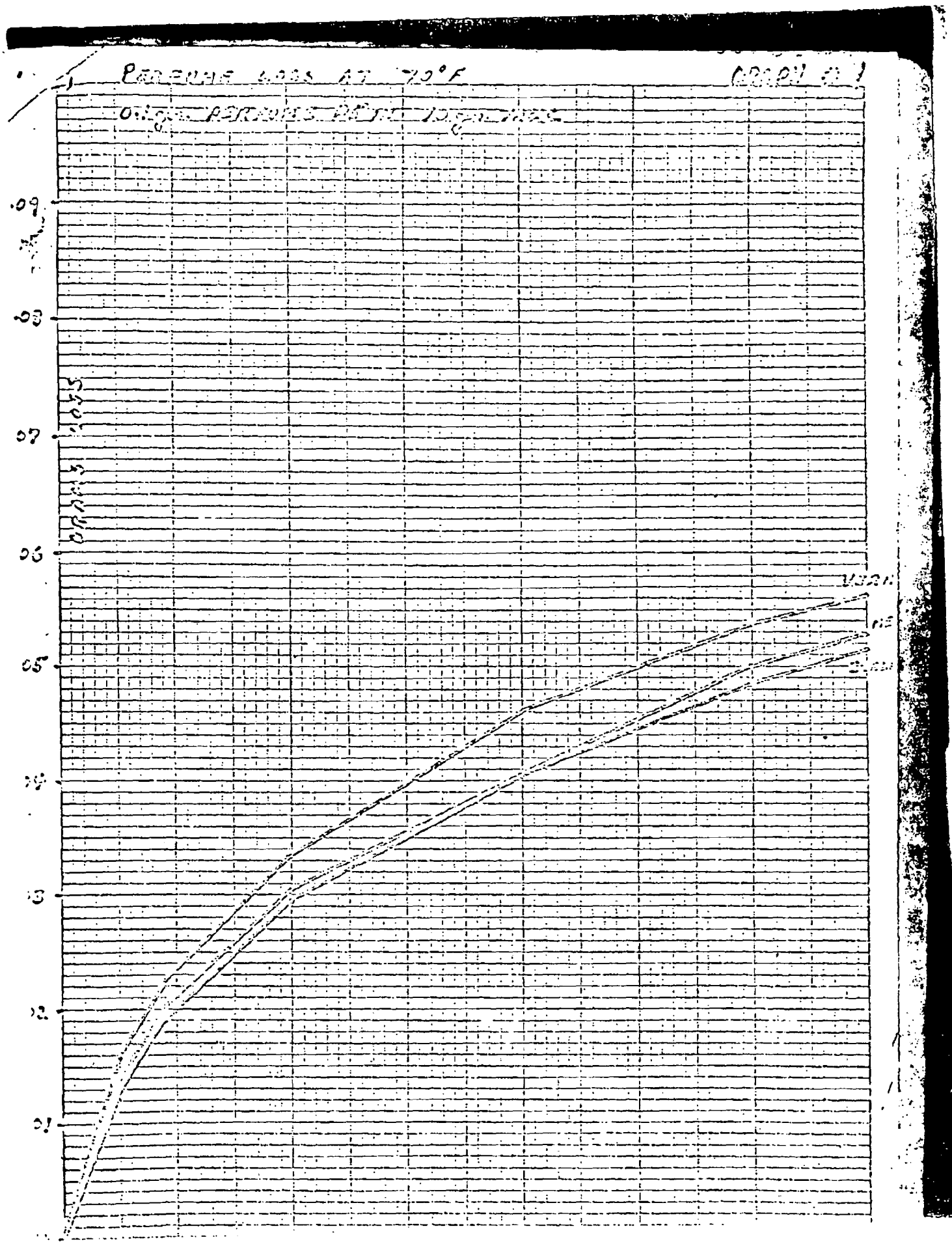
Mr. Russell and I shall be visiting Mr. Ferry at the Plainfield plant in the next few days. We will get an idea of the capabilities and determine what is

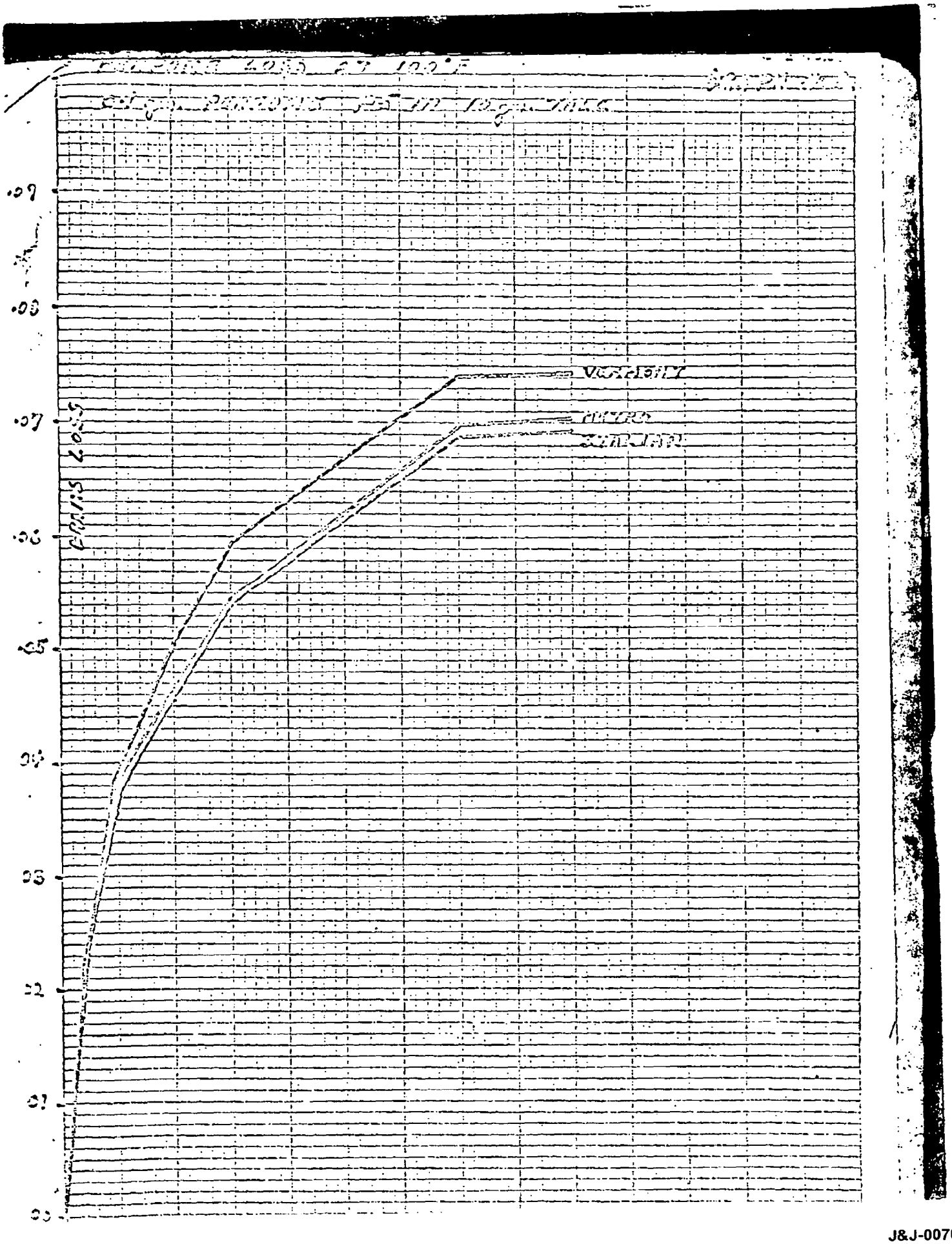
involved in reducing the carbonate level and making arrangements for a couple tons of it for a large scale run.

Meanwhile we have 200 lbs of the above described Metro talc on hand here which I plan to make available to whomever would like to run some tests with it. Although I am personally impressed with the laboratory scale work Russell and I have done, a larger confirmation on a pilot plant batch could prove useful. For example this should be made up with whatever perfume levels are used in the plant today and might evaluate the holding power for the perfume in the powder puff unit also.

Mr. Russell prepared and arranged the attached data.

W.Ashton





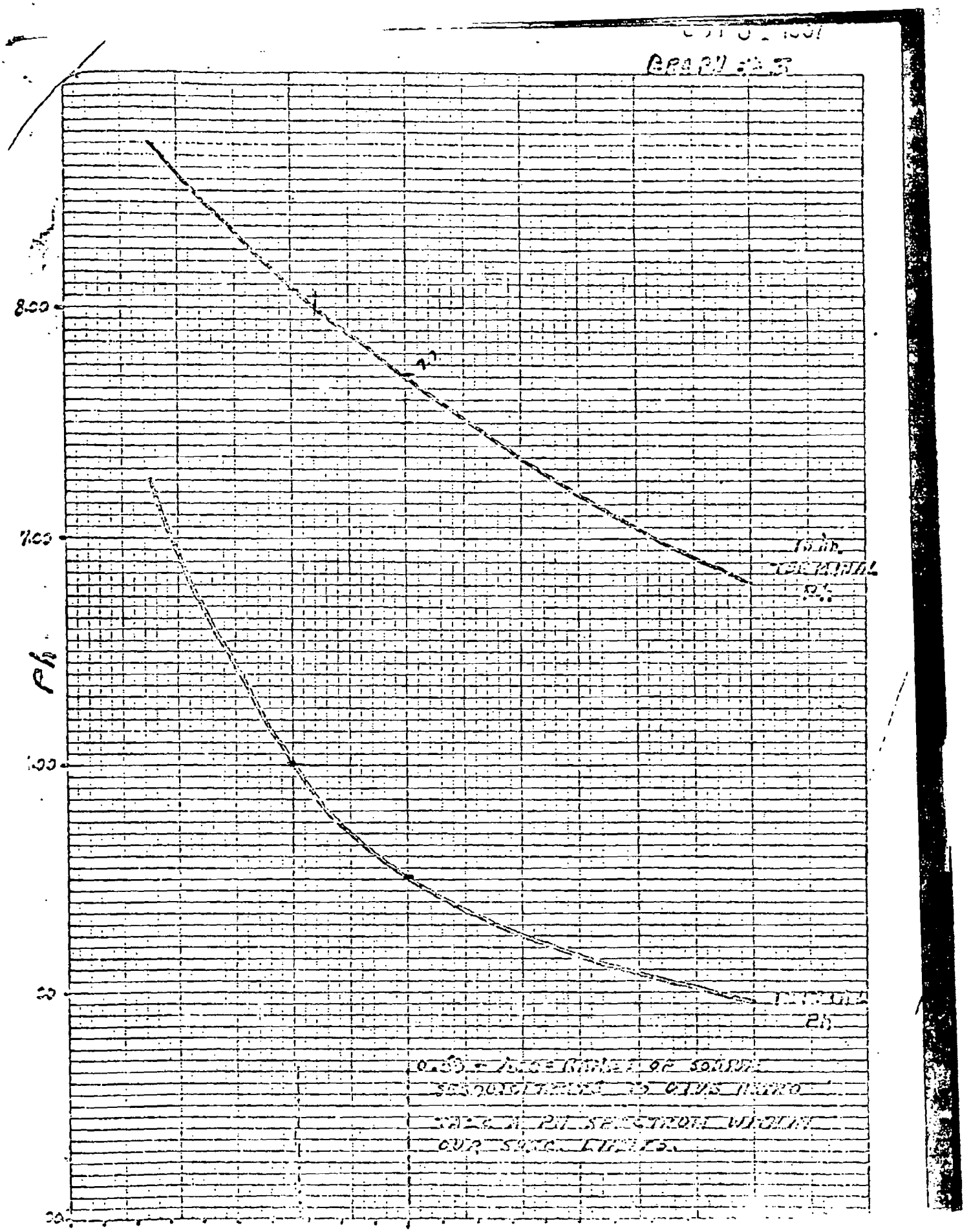


TABLE I

Physical & Chemical Data

t	Metro #1	Vermont S4-23	Ital. 42771E
sture %	0.09	0.07	0.01
. in Acid %	5.08	1.60	3.00
cation %	4.08	0.80	1.50
Dens. lb/ft^3	24.7	25.4	23.4
or	White	Off White Grey-Green cast	White with creamy cast
ness %			
-60	100%	100%	100%
than -100	99.98%	99.90%	100%
-200	96.85%	99.0%	99.7%
y Metals ppm	less than 10	less than 10	less than 10
nic ppm	0.3	less than 2 ppm	0.7
Soluble Iron	passes	passes	passes
ction (2 oz) max.	130 cc	125 cc	137 cc
nco TAPPED) min.	72 cc	73 cc	72 cc

P S C . . M

OCT 31 1967

TABLE II

Microscopic Mineralogical Assay

	Metro #1	Vermont Talc S4-23	Vermont Talc Batch 994*	Italian Talc
Total Talc	93%	99%	94%	93 - 99%
Platy	90%	96%	86%	88 - 90%
Nonplaty	3%	3%	8%	5 - 9%
Carbonates	5	1	1-2	1-3
Tremolite	1	trace	trace	1-2
Serpentine	trace	trace	4	none
Opaques	< 1	trace	trace	trace

*Produced August 21,1967 at West Windsor

R.S. Russell

Johnson & Johnson

New Brunswick, N. J.
April 9, 1969

Subject: Alternate Domestic Talc Sources
File No. 101

Dr. G. Hildick-Smith

Pete, we have to firm up the position the Company should have on the presence of the mineral Tremolite in talc. Your staff will have to do this for us since the objections to that mineral have been mainly medical or clinical as opposed to chemical or physical.

The reason we have to firm up our position is that we have moved into high gear on some alternate talc sources and it is normal to find different levels of Tremolite in many U.S. talcs. We are looking at some of those.

Historically, in our Company, Tremolite has been bad because it has needle type crystals. Our position has been that these can stand on end, penetrate the skin, and cause irritation; consequently, talcs exceeding trace contents have never been approved. Over the past year or two, the medical literature has made reference to potential hazards of talcs containing Tremolite and I have seen some articles under the umbra of environmental health agencies from here and abroad which pinpoint severe objections to that mineral in talcum powders.

Unfortunately, Tremolite has different varieties and can be easily confused with other members of the mineral class into which it falls. Chemically, it is mainly a calcium silicate with varying amounts of magnesium silicate and sometimes it carries iron with it in minor amounts. Some varieties of it match asbestos, and I gather there has been a lot of attention given to the hazards of inhaling minerals of that type lately.

Plaintiff's Exhibit J&J 202

There is nothing we can do about the confused state of affairs on Tremolite from the mineralogical and chemical points of view as far as historic literature is concerned.

The question is...How bad is Tremolite medically, and how much of it can safely be in a talc base we might develop?

W. H. Ashton

pm
cc: Dr. R. A. Fuller
Dr. E. R. L. Gaughran
Mr. R. J. Mortimer
Dr. T. H. Shelley
Dr. R. L. Sundberg

EXHIBIT 2

CC

Johnson & Johnson

New Brunswick, N. J.

April 15, 1969

Subject: ALTERNATE DOMESTIC TALC SOURCES

Project Code #101

Mr. W. H. Ashton:

Your inquiry of April 9th, 1969 addressed to Dr. G. Hildick-Smith has been referred to my attention for reply.

Over the years, I have reviewed the literature on the hazards relating to the inhalation of talc particles on several different occasions. In your memorandum, you indicate that Tremolite does have needle-type crystals and that our position has been that these could penetrate the skin and cause irritation. Actually, to the best of my knowledge, we have no factual information on this subject. It would seem logical that it could occur, although whether or not it would be of clinical significance would be conjectural.

We have been concerned to a much greater extent with regard to possible dangers relative to the inhalation of the talc with a spicule or needle-like crystalline structure as compared with the flat, platelet-type of crystalline structure. There are reports in the literature concerning talcosis which, as you know, is a form of pneumoconiosis attributed to the inhalation of talc. Reported studies have suggested that this does not occur in connection with the flat, platelet-type of talc, but does occur in connection with the spicule-type of crystalline structure characteristic of Tremolite. The reported instances have been extremely few but have, without exception, involved inhalations of high concentrations on an occupational basis of many years duration. Furthermore, we have occasionally received inquiries from various individuals, including General Johnson and several pediatricians, expressing concern over the possibility of the adverse effects on the lungs of babies or mothers who might inhale any substantial amounts of our talc formulations. In the past, we have replied to the effect that since our talc is essentially all of the platelet-type of crystalline structure, and is of a size which would not be likely to enter the pulmonary alveoli, we would not regard the usage of our powders as presenting any hazard. Obviously, if we do include Tremolite in more than unavoidable trace amounts, this sort of negation of such inquiries could no longer pertain.

Plaintiff's Exhibit J&J 195

Mr. W. H. Ashton April 15th, 1969

Upon various occasions we have discussed the possibility of carrying out studies on animals which might provide factual information with regard to whether or not variable exposures to talc suspended in the environmental atmosphere might be productive of fibrotic and/or inflammatory reactions in lungs. For a variety of reasons, these have never been carried out here.

Since pulmonary diseases, including inflammatory, fibroplastic, and neoplastic types, appear to be on the increase, it would seem to be prudent to limit any possible content of Tremolite in our powder formulations to an absolute minimum. To the best of my knowledge, we have never been faced with any litigation involving either skin or lung penetration by our talc formulations. Some years ago, we were faced with a more or less serious problem resulting from what we consider to have been an unjust accusation of danger due to the presence of a small amount of boric acid in our talc. This created such a furor that we were more or less compelled to remove boric acid from the formulation. It is conceivable that a similar situation might eventually arise if it became known that our talc formulations contained any significant amount of Tremolite. Since the usage of these products is so widespread, and the existence of pulmonary disease is increasing, it is not inconceivable that we could become involved in litigation in which pulmonary fibrosis or other changes might be rightfully or wrongfully attributed to inhalation of our powder formulations. It might be that someone in the Law Department should be consulted with regard to the defensibility of our position in the event that such a situation could ever arise.

It is my personal feeling that until we have at least substantial evidence, based on animal work, to the effect that the presence of Tremolite in our talc does not produce adverse effects, we should not extend its usage beyond an absolute minimum previously mentioned.

T. M. Thompson, M.D.

TMT:JAG

cc: Dr. R. A. Fuller
Dr. Gavin Hildick-Smith
Mr. W. J. Ryan
Dr. G. H. Lord
Dr. J. E. Willson
Dr. J. Bothwell

EXHIBIT 3

Johnson & Johnson
BABY PRODUCTS COMPANY

February 13, 1975

SUBJECT: CTFA Talc Subcommittee Meeting
with Food and Drug Administration
Washington, D.C. February 7, 1975

TO: Distribution

[illegible] discussions.

This meeting was held in Dr. R.N. Schaffner's office on February 7, 1975 at 1:00 PM. Representing FDA were: Dr. R. Schaffner, Mr. H. Eiermann, Mr. H. Davis, Dr. W. Horowitz and Dr. Yates. The CTFA was represented by: Dr. N. Estrin, Mr. G. Sandland, Dr. M. Berdick, Dr. R. Rolle and G. Lee.

Dr. Estrin introduced Mr. Sandland as chairman of the CTFA Talc Subcommittee and indicated that the purpose of our meeting was to present the analytical methodology which had been developed by the CTFA Task Force as applicable to cosmetic talcs.

FDA indicated that there had been no eminent plans to publish new proposed methodology in this regard and did not give us the impression that this matter was being assigned any urgency. They reported no further work with the optical microscopy method. Dr. Horowitz was asked by Dr. Schaffner to elaborate on the only apparent area of analytical activity which is being directed towards Food Regulatory. This is being carried out under contract by the Franklin Institute, who are investigating an SEM method. They're attempting to develop methodology for detecting low levels of asbestos contamination and have experienced difficulty in presenting a uniform sample to the SEM. It's expected that this study may take one to two years. Any further steps to be taken with regards to Food Regulation will therefore have to wait on developments from the Franklin Institute.

When questioned as to FDA efforts and progress in the approach of "concentrating asbestos" to increase the level

Plaintiff's Exhibit J&J 60

J&J-0089804

of sensitivity, Dr. Yates replied in a tone of frustration that all attempts have met with failure; they had investigated heavy density liquid separation. Dr. Yates did not state that efforts would be continued in this direction, but we volunteered help in evaluating methodology should they develop something.

Dr. Rolle outlined the proposed CTFA methods and the expected limits of detection. It was emphasized to the FDA that these were methods evaluated and recommended for cosmetic talc and would be practical to apply for industrial [illegible] any naturally-occurring chrysotile in talc for his methods [illegible] Dr. Rolle supported this by stating [illegible] has examined numerous talcs from around the world for cosmetics application and have not found chrysotile. The writer reiterated similar J&J experience with domestic and overseas talcs. Dr. Schaffner agreed that no one has purported to have seen chrysotile in cosmetic talc except Professor Lewin. At this point, Dr. Schaffner asked us what Professor Lewin was doing (if anything) in talc analysis. Dr. Rolle outlined a conversation he had had with Professor Lewin the day before and Dr. Schaffner directed Dr. Horowitz to interview Professor Lewin for his most current views regarding chrysotile in talc. Dr. Berdick made the point that if chrysotile is not expected to be found in talc, then the FDA should not propose regulations to cover chrysotile. After an exchange of philosophy, where Mr. Eiermann took a strong stand for chrysotile in talc regulation, Dr. Schaffner suggested that if the CTFA would submit supporting data attesting to the absence of chrysotile in talc the FDA would take the matter under consideration. Mr. Sandland indicated that the CTFA will be proposing self-regulatory action by amending its present CTFA Talc Standard to include the asbestiform tremolite proposal.

Mr. G. Sandland stated that a regulation of 1% asbestos in talc was not only achievable by throughly tested methods, but also gave a safety factor of 48,300 (Sivertson calculation). Mr. Eiermann bluntly said that the calculation was wrong since the standard of 2 fibers/cc. is not a time weighted average. Before we had a chance for rebuttal Dr. Schaffner said that the Sivertson calculation was foolish since no mother was going to powder her baby with 1% of a known carcinogen irregardless of the large safety factor. Because of Dr. Schaffner's strong stand we did not correct Mr. Eiermann's misunderstanding of the calculation.

Dr. Schaffner emphasized that there is an ultimate and more important need for talc clinical safety data in order to satisfy the consumerist advocates. The writer assured him that this would be forthcoming from J&J.

Copies of the DTA and X-Ray Diffraction Detection Procedures together with the Sivertson Report "An Estimate of a Safe Level of Asbestos in Baby Powder Talc" were distributed to the FDA representatives and the meeting was closed with Dr. Estrin thanking the FDA for the opportunity of exchange and discussion.

The general impression received by the writer was that the FDA was not anxious to publish further proposals relative to "asbestos-in-talc" pending outcome of the Franklin Institute Study, as long as the consumerist advocates remain quiescent. It is also evident that the FDA would depend on clinical data to defend the safety of talc.

In a post-meeting caucus of the CTFA attendees, it was agreed that the CTFA would proceed to compile information from consultants and manufacturers which attest to the fact that chrysotile has never been found in cosmetic talcs and submit this to the FDA.

G. Lee

paj

EXHIBIT B

CT Corporation

Service of Process Transmittal

07/08/2019
CT Log Number 535821601

TO: Stephanie Youngman
Johnson & Johnson
1 Johnson and Johnson Plz
New Brunswick, NJ 08933-0002

RE: **Process Served in California**

FOR: Johnson & Johnson Consumer Inc. (Domestic State: NJ)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Louisa Gutierrez, etc. and Debbie Luna, etc. on behalf of themselves and all persons similarly situated, Pltfs. vs. Johnson & Johnson, etc., et al., Dfts. // To: Johnson & Johnson Consumer, Inc. *Name discrepancy noted.*
DOCUMENT(S) SERVED:	Summons, Instructions, First Amended Complaint, Exhibit(s), Cover Sheet(s), Notice(s)
COURT/AGENCY:	San Diego County - Superior Court - San Diego, CA Case # 37201900025810CUNPCTL
NATURE OF ACTION:	Product Liability Litigation - Personal Injury - Class Action - Baby Powder and Shower to Shower products
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE:	By Process Server on 07/08/2019 at 13:34
JURISDICTION SERVED :	California
APPEARANCE OR ANSWER DUE:	Within 30 days after service (Document(s) may contain additional answer dates)
ATTORNEY(S) / SENDER(S):	James M. Treglio Potter Handy LLP 9845 Erma Road, Suite 300 San Diego, CA 92131 858-375-7385
ACTION ITEMS:	CT has retained the current log, Retain Date: 07/09/2019, Expected Purge Date: 07/14/2019 Image SOP Email Notification, RA-JJCUS LDSOP RA-JJCUS-LDSOP@its.jnj.com Email Notification, Amy McLaren cls-ctsopsupport@wolterskluwer.com
SIGNED:	C T Corporation System
ADDRESS:	818 West Seventh Street Los Angeles, CA 90017
TELEPHONE:	213-337-4615

SUM-100

SUMMONS On Amended Complaint
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
Clerk of the Superior Court
JUN 19 2019
By: K. Sorianosos, Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

JOHNSON & JOHNSON, a New Jersey Corporation,
Additional Parties Attachment form is attached.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LOUISA GUTIERREZ, an individual, DEBBIE LUNA, an individual, on behalf of themselves and all persons similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.
¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego Superior Court, Hall of Justice
330 West Broadway,
San Diego, CA 92101

CASE NUMBER:
(Número del Caso):
37-2019-00025810-CU-NP-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
James M. Treglio (SBN 228077), Potter Handy, LLP,
9845 Erma Road, Suite 300, San Diego, CA 92131 Telephone: (858) 375-7385

DATE: *(Fecha)* JUN 25 2019 Clerk, by *(Secretario)* K. Sorianosos Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

(SEAL)

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☑ on behalf of *(specify):* Johnson & Johnson Consumer, Inc.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify):*
4. ☑ by personal delivery on *(date):* 7/8/19 - 11:35 AM

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

SUM-200(A)

SHORT TITLE:	CASE NUMBER:
Louisa Gutierrez et al., v. Johnson & Johnson, et al.,	37-2019-00025810-CU-NP-CTL

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☑ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

JOHNSON & JOHNSON CONSUMER, INC., a New Jersey Corporation, BAUSCH HEALTH US LLC, f/k/a VALEANT PHARMACEUTICALS NORTH AMERICA LLC, a New Jersey Limited Liability Company, AND DOES 1-100, inclusive

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

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SUPERIOR COURT OF CALIFORNIA

BY AND FOR THE COUNTY OF SAN DIEGO

LOUISA GUTIERREZ, an individual, DEBBIE LUNA, an individual, on behalf of themselves and all persons similarly situated,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey Corporation, JOHNSON & JOHNSON CONSUMER, INC., a New Jersey Corporation, BAUSCH HEALTH US, LLC, f/k/a VALEANT PHARMACEUTICALS NORTH AMERICA LLC, a New Jersey Limited Liability Company, AND DOES 1-100, inclusive

Defendants.

CASE NO. 37-2019-00025810-CU-NP-CTL

FIRST AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF:

(1) THE CONSUMER LEGAL REMEDIES ACT (Civil Code § 1750, et seq.,)

(2) THE FALSE ADVERTISING LAW (Business and Professions Code § 17500, et seq.,), and

(3) THE UNFAIR COMPETITION LAW (Business & Professions Code § 17200, et seq.)

DEMAND FOR JURY TRIAL

Plaintiffs Louisa Gutierrez and Debbie Luna (collectively "Plaintiffs"), individually, on behalf of all others similarly situated (the "Class" or the "Class Members" as defined below), and on behalf of the general public, allege:

INTRODUCTION

1. This is consumer class action seeking restitution of all monies unlawfully earned by Defendants Johnson & Johnson, Inc., Bausch Health US, LLC, f/k/a Valeant Pharmaceuticals North America, LLC and Johnson & Johnson Consumer, Inc. (collectively, "Defendants") for the sale of their of Baby Powder and Shower to Shower products ("Talcum Products"). Defendants have consistently informed the public, the Plaintiffs, and the Class Members that no asbestos or asbestiform fibers are found within the Talcum Products, when in fact, Defendants have known for decades that not only do the Talcum Products contain asbestos or asbestiform fibers, but the methods used by Defendants to look for asbestos and asbestiform fibers in the talc used for the Talcum Products are and were inadequate.

2. The reason for this deception is simple: asbestos and talc containing asbestiform fibers are chemicals known to the State of California to cause cancer. Under the Safe Drinking Water and Toxic II Enforcement Act of 1986, Health and Safety Code §25249.6, a.k.a "Proposition 65", businesses must provide persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the State of California to cause cancer. The purpose of this requirement is to ensure that California citizens are made fully aware of the presence of toxins in consumer products, allowing them to make an informed choice/decision about whether or not to consume products with toxins known to cause cancer. Knowing that no reasonable consumer would purchase the Talcum Products knowing that the Talcum Products contain or might contain asbestos or asbestiform fibers, Defendants have persisted in obfuscating the potential harm to Plaintiffs, the Class, and the general public.

3. This is a class action alleging violations of the Consumer Legal Remedies Act ("CLRA"), Civil Code § 1750, *et seq.*, the False Advertising Law ("FAL"), Business & Professions Code § 17500, *et seq.*, and the Unfair Competition Law ("UCL"), Business & Professions Code §17200, *et seq.*, that seeks, among other things, injunctive relief, restitution, and disgorgement to

remedy to a class of all purchasers of Talcum Products resulting decades of Defendants' on-going failure to warn and otherwise negligent, reckless and/or knowing sale of Talcum Products containing asbestos and talc containing asbestiform fibers without providing the notice required by law, and worse, making false representations that the Talcum Products are safe and "free of asbestos". This action further seeks to remedy Defendants' unfair, unlawful, and fraudulent business practices, and to ensure that all California consumers are warned that they are being exposed to asbestos and talc containing asbestiform fibers before purchasing and/or using Talcum Products.

4. Indeed, as Defendants were required as a matter of law to inform Plaintiffs and the members of the Class as defined below that their Talcum Products contained, or could contain, carcinogenic substances, namely talc containing asbestiform fibers, the information withheld from Plaintiff, the Class Members (as defined below), and the general public, must be deemed a material representation.

5. While there have been a number of actions seeking individual recovery for injuries suffered because of prolonged use of the Talcum Products, and while there is an action based on Defendants' failure to comply with Prop. 65 and label the Talcum Products with the proper warning label, Plaintiffs are unaware of any class action on behalf of a class of purchasers of the Talcum Products filed in the State of California.

6. In accordance with Cal. Business & Professions Code §17203, ("Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure,") Plaintiffs bring this action on behalf of themselves, and all a class of persons similarly situated. The Class, as alleged herein, is defined as:

> Plaintiffs and all persons who purchased the Talcum Products within the state of California at any time from four years prior to the filing of this complaint and ongoing until date of judgment and/or preliminary approval of class action settlement.

Specifically excluded from the proposed Class are Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants,

partners, joint venturers, or entities controlled by Defendants, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or any of them; the judicial officer or judicial officers assigned to this action, any member of the judicial officers' immediate family. Also excluded from the Class are any persons who, as of the date the Complaint is filed, have an action pending against one or more of the Defendants resulting the sale of and any injuries resulting from, any of the Talcum Products.

PARTIES, VENUE AND JURISDICTION

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, §10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." The statutes under which this action is brought do not specify any other basis for jurisdiction. The damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limit of the Superior Court and will be established according to proof at trial.

8. At all relevant times, Plaintiffs are and were citizens of the State of California and purchased the Talcum Products in the State of California. At all relevant times, the Talcum Products were manufactured and packaged in one centralized location from the same raw talc and shipped to all fifty states. Thus, consumers that purchased and used the Talcum Products in any of the other 49 states outside of California would be exposed to the same talc containing asbestos and talc containing asbestiform fibers as a consumer that purchased Talcum Products, and vice versa.

9. Plaintiff Louisa Gutierrez is a citizen of the State of California, and a resident of Riverside County. On a regular basis for the past thirty years, Plaintiff Louisa Gutierrez purchased the Talcum Products in the State of California until she became aware of the connection between the Talcum Products and asbestos at the end of 2018 by reading, amongst other stories, the report by Reuters that the Talcum Products contained asbestos and/or talc containing asbestiform fibers. Had Plaintiff Louisa Gutierrez been aware that the Talcum products contained, or could contained asbestos and/or talc containing asbestiform fibers, Plaintiff Louisa Gutierrez would never have purchased or used any of the Talcum Products.

10. Plaintiff Debbie Luna is a citizen of the State of California, and a resident of San Diego County. Plaintiff Debbie Luna purchased the Talcum Products in the State of California for for herself and her infant child until she became aware of the connection between the Talcum Products and asbestos at the end of 2018 by reading, amongst other stories, the report by Reuters that the Talcum Products contained asbestos and/or talc containing asbestiform fibers. Had Plaintiff Debbie Luna been aware that the Talcum products contained, or could contained asbestos and/or talc containing asbestiform fibers, Plaintiff Debbie Luna would never have purchased or used any of the Talcum Products.

11. Defendant Johnson & Johnson is a New Jersey corporation that is transacting and conducting substantial business within the State of California. Johnson & Johnson mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold and/or otherwise placed in the stream of commerce Baby Powder products which contain or contained asbestos and talc containing asbestiform fibers without warnings to which Plaintiffs, the Class, and the consuming public in this State were exposed.

12. Defendant Bausch Health US, LLC, formerly known as Valeant Pharmaceuticals North America, LLC, ("Bausch") is a New Jersey limited liability company that is and was doing business in the State of New Jersey and in the State of California. Bausch, mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold and/or otherwise placed in the stream of commerce Shower to Shower products which contain or contained asbestos and talc containing asbestiform fibers without warnings to which Plaintiffs, the Class, and the consuming public in this State were exposed.

13. At all pertinent times, Defendants Johnson & Johnson and Bausch were engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Talcum Products containing Asbestos and Talc Containing Asbestiform Fibers. At all pertinent times, Johnson & Johnson and Bausch regularly transacted, solicited, and conducted business in all States of the United States, including the State of California.

14. Johnson & Johnson and Bausch have derived substantial revenue from goods and products purchased and used in the State of California. Johnson & Johnson and Bausch expected

or should have expected its acts to have consequences within the State of California, and derived substantial revenue from interstate commerce.

15. Johnson & Johnson and Bausch mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed , supplied, distributed, sold and/or otherwise placed in the stream of commerce the Talcum Products containing Asbestos and talc containing asbestiform fibers without warnings to which Plaintiffs, the Class, and the consuming public in this State were exposed.

16. Defendant Johnson & Johnson Consumer Inc. (f/k/a Johnson & Johnson Consumer Companies, Inc.) is a New Jersey corporation that is and was doing business in the State of New Jersey and in the State of California. Johnson & Johnson Consumer Inc. mined, milled , processed, imparted, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold and/or otherwise placed in the stream of commerce the Talcum Products containing asbestos and talc containing asbestiform fibers without warnings to which Plaintiff and the consuming public in this State were exposed.

17. Defendants DOES 1-100 are the fictitious names of corporations, partnerships or other business entities or organizations whose identities are not presently known and that participated in a conspiracy with other corporations, partnerships or other business entities or organizations, including the named Defendants herein, and/or mined, milled, processed, imported, converted, compounded, designed , manufactured, marketed , supplied, distributed, sold and/or otherwise placed in the stream of commerce the Talcum Products containing asbestos and talc containing asbestiform fibers without warnings to which Plaintiff and the consuming public in this State were exposed.

FACTUAL BACKGROUND

18. For decades, Defendants have manufactured the Talcum Products containing asbestos and talc containing asbestiform fibers that were and are continuing to be sold and marketed as safe for daily use by consumers to give off a pleasant smell, mask odors, prevent chaffing and/or absorb moisture. Defendants' Talcum Products were advertised as healthful for babies, children and adults and to be applied regularly to maintain freshness, keep skin soft, mask odors with a floral fragrance, prevent chaffing and/or absorb moisture.

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

20. Defendants and CTFA, for decades, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos and talc containing asbestiform fibers in the Talcum Products and that demonstrated the existence of health hazards to those exposed to asbestos and talc containing asbestiform fibers.

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

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

23. Defendants and their talc suppliers, which have been and still are the largest talc producers and/or talc-containing product manufactures in the world, admit that they have long employed and/or consulted with doctors, scientists, geologists, mineralogists and .toxicologists,

and that they have long maintained extensive medical and scientific libraries and archives containing materials relating to the health hazards of talc and the presence of carcinogens, including asbestos and asbestiform talc, in talc and talc deposits.

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

25. Defendants and their affiliates, employees, agents and/or suppliers were members of the National Safety Council. In March of 1933, Waldemar C. Dreesen of the United States Public Health Service reported to the National Safety Council the results of a study conducted among tremolite, talc and slate workers. The study indicated that the talc was a hydrous calcium magnesium silicate, being 45% talc and 45% tremolite, and the National Safety Council stated "The results of the study seemed to indicate a relationship between the amount of dust inhaled and the effect of this dust on the lungs of the workers." As early as 1934, the National Safety Council was publishing that "a cause of severe pulmonary injury is asbestos, a silicate of magnesium." In the September 1935 issue of National Safety News, an article entitled "No Halfway Measures in Dust Control" by Arthur S. Johnson reported lowered lung capacity resulting from "asbestosis" and "similar conditions" that developed "from exposure to excess of many mineral dusts .relatively low in free silica content." The article further noted that claims for disabilities from workers who alleged exposure to "clay, talc, emery, and carborundum dusts" had "claims prosecuted successfully." The article concluded that "[i]n the absence of adequate diagnoses, occupational histories and a more satisfactory method of adjudicating claims than prosecution at common law, we must conclude that it is necessary to find a practical method for controlling all mineral dusts."

26. In 1936, the National Safety Council published an article entitled "Lesser Known Facts About Occupational Diseases" that found "exposure to asbestos fibers, present in the weaving and grinding of dry asbestos material, offers another type of dust which may cause fatalities among workers." In 1958, The New York Department of Labor published Industrial

code Rule No. 12 establishing regulations applying to all employees and employers relating to dangerous air contaminants and listing both asbestos and talc as such substances.

27. In 1968, a study presented at the American Industrial Hygiene Conference & Exposition and published in the American Industrial Hygiene Association Journal concluded that "[a]ll of the 22 talcum products analyzed have a...fiber content...averaging 19%. The fibrous material was predominantly talc but contained minor amounts of tremolite, anthophyllite, and chrysotile as these are often present in fibrous talc mineral deposits ...Unknown significant amounts of such materials in products that may be used without precautions may create an unsuspected problem ." L. J. Cralley, et al., Fibrous and Mineral Content of Cosmetic Talcum Products, 29 AM. IND. HYG. Assoc. J. 350-354 (1968). Defendants were aware of these findings.

28. In 1968, a scientific study of store-bought, commercially available talcum powders conducted by the Occupational Health Program, National Center for Urban Industrial Health, was published and presented by the American Industrial Hygiene Association. Defendants were aware of this study. The study revealed that, contrary to popular belief, talcum powders were not entirely pure, but rather contained various fibrous minerals, including tremolite, anthophyllite and chrysotile. The study explained that such fibrous content was not unexpected because these types of fibers are often present in fibrous talc mineral deposits. Available documents indicate that during the same year and in the years following, at least one company began testing store-bought talcum powders for asbestos content. Despite tests showing some talcum powders contained asbestos, there is no evidence that positive results or the brand names of contaminated products were communicated to any governmental agency, the media or the public.

29. According to a December 2018 report by Reuters, by at least 1967 and 1969, Defendants investigated the existence of tremolite in its Talcum Products, finding that asbestiform fibers were commonly found in its Talcum Products. From the report:

> In 1964, J&J's Windsor Minerals Inc subsidiary bought a cluster of talc mines in Vermont, with names like Argonaut, Rainbow, Frostbite and Black Bear. By 1966, it was blasting and bulldozing white rock out of the Green Mountain state. J&J used the milled powder in its cosmetic powders and sold a less-refined grade to roofing, flooring and tire companies for use in manufacturing.
>
> Ten years after tremolite turned up in the Italian talc, it showed up in Vermont talc, too. In 1967, J&J found traces of tremolite and another mineral that can occur as

> asbestos, according to a table attached to a Nov. 1, 1967, memo[1] by William Ashton, the executive in charge of J&J's talc supply for decades.
>
> J&J continued to search for sources of clean talc. But in an April 9, 1969, memo[2] to a company doctor, Ashton said it was "normal" to find tremolite in many U.S. talc deposits. He suggested J&J rethink its approach. "Historically, in our Company, Tremolite has been bad," Ashton wrote. "How bad is Tremolite medically, and how much of it can safely be in a talc base we might develop?"
>
> Since pulmonary disease, including cancer, appeared to be on the rise, "it would seem to be prudent to limit any possible content of Tremolite ... to an absolute minimum," came the reply from another physician executive days later.
>
> The doctor told Ashton that J&J was receiving safety questions from pediatricians. Even Robert Wood Johnson II, the founder's son and then-retired CEO, had expressed "concern over the possibility of the adverse effects on the lungs of babies or mothers," he wrote.
>
> "We have replied," the doctor wrote, that "we would not regard the usage of our powders as presenting any hazard." Such assurances would be impossible, he added, "if we do include Tremolite in more than unavoidable trace amounts."
>
> The memo is the earliest J&J document reviewed by Reuters that discusses tremolite as more than a scratchy nuisance. The doctor urged Ashton to consult with company lawyers because "it is not inconceivable that we could become involved in litigation."

Lisa Girion, "Johnson & Johnson knew for decades that asbestos lurked in its Baby Powder," Reuters (December 14, 2018), https://www.reuters.com/investigates/special-report/johnsonandjohnson-cancer/.

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

[1] Attached hereto at Exhibit 1.

[2] Attached hereto at Exhibit 2.

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

32. In 1971, the New York City of Environmental Protection Administration Air Resources Board conducted a study of two "leading" brands of talcum powder using transmission electron microscopy ("TEM") and X-ray diffraction ("XRD") analysis, and found them to contain 5-25% tremolite and anthophyllite asbestos.

33. Soon thereafter, a symposium was held in August of 1974 at the FDA to discuss the issue of asbestos content of talcum powders with the talc industry, government officials, and doctors and scientists from Mt. Sinai Hospital, which was then the epicenter of the medical and scientific study of asbestos. Among other statements, participants and attendees heard: that asbestos should be banned in talcum powders; models should be set up to measure the levels exposure to asbestos experienced by persons using talcum powder containing asbestos at the lowest level of microscopic detection; and that finding asbestos in talc and talcum powder is extremely difficult, and the only truly reliable way to determine the asbestos content of talc and talcum powder is through TEM and electron diffraction. Defendants and CTFA, aware of the foregoing and citing costs as well as their fear of the public learning talc was contaminated with asbestos, ignored and completely rejected any measures to meaningfully test talc products to make sure they were free from asbestos, asbestiform talc and other carcinogens.

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

35. Dr. Lewin of New York University disclosed twice in 1972 that asbestos had been found in cosmetic talc. In a report to the FDA on August 3, 1972, Dr. Lewin reported that of 195 talc products, 20 had tremolite, 7 had chrysotile, 9 had both tremolite and chrysotile, and 7 had substantial percentages of one of both. XRD had been used as the first step in analysis and the presence of asbestos and was verified by the use of optical microscopy to disclose the presence of significant numbers of fibers. Shortly thereafter, Dr. Lewin reported to Whittaker, Clark & Daniels Inc. on September 30, 1972, that Italian talc 1615 contained about 2% tremolite and 0.5% chrysotile as determined with XRD and detailed microscopic exam. In a July 31, 1973, review of Dr. Lewin's testing of 195 talc samples, the FDA found "good semi-quantitative agreement" for tremolite on selected samples re-analyzed using optical microscope analysis by FDA and XRD by Pfizer. Agreement was not as good for chrysotile, but the review did warn that optical microscopy could "completely miss the presence of chrysotile if the fibers are submicroscopic, which may well be the case in finely-milled talc." In 1972, ES Laboratories reported that "1615" talc contained 1 % chrysotile and that "4615" talc contained 3% chrysotile and 3% anthophyllite. An August 23, 1973, report by Johns-Manville on TEM analysis of commercial talcs reported that nine of fourteen samples contained chrysotile. Only five samples did not have detectable levels of chrysotile. Pages from the laboratory notebook of Colgate-Palmolive Co. scientist Paul Briscese from March 7, 1976, show that Old Regal (North Carolina) talc tested positive for tremolite, New Montana talc tested positive for anthophyllite and tremolite, and Italian talc tested positive for tremolite.

36. A December 10, 1973, report of the CTFA's Talc Subcommittee disclosed that optical microscope analyses of talcs from the Italian, Montana I & 11, Alabama, Vermont, and North Carolina mines had failed the proposed FDA's method because of elevated chrysotile concentrations. This December 10, 1973, CTFA report also showed that several laboratories had reported chrysotile in many of the talc samples sent by the CTFA for evaluation of analytical methods as well as the several identifications of asbestos in talc mentioned.

37. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. CTFA, an exclusive lobbying and advocacy group

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

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

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

40. Regarding the FDA's proposed 1972 rule-making, the FDA Director of Product Development and Cosmetics, Dr. Schaffner, invited representatives of the talc industry to a meeting in August of 1972 to discuss the results of Dr. Lewin's study and inform them that the

FDA was preparing to release a "Proposed Statement of Policy On Asbestos in Cosmetics Containing Talc." Schaffner explained that he was duty-bound and must publicize the brand names of the talcum powders that contained asbestos. CTFA's president, Dr. Merritt, strongly objected to the FDA alerting the general public and publishing the brand names of the talcum powders, as it would cause the manufactures "economic hardship." Merritt also threatened to sue the FDA to prevent the disclosure of the brand names. As a result, the FDA, Defendants and CTFA never revealed or publicized the brand names of the talcum powders that contained asbestos, much to the detriment of the plaintiffs and the general public.

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

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

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

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

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

46. Defendants and CTFA responded to these developments by falsely claiming that the industry was doing "everything" it could to solve the problem; issuing press releases falsely

claiming that chrysotile had never been found in talcum powders; and intentionally suppressing data that showed tremolite was commonly found in talc and talcum powder.

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

48. Defendants, their talc suppliers, and third parties funded by Defendants collectively met with and corresponded with CTFA, as well as collectively met with the FDA and other government agencies, to individually and collectively advocate for the use of "voluntary" XRD testing of miniscule portions of the tons of talc to be used in consumer products. Defendants' "voluntary" method-that was developed collectively by Defendants and CTFA and advocated to the FDA in lieu of regulations requiring asbestos labeling or warnings on talcum powder products-was inadequate because levels of asbestos contamination in talc commonly fell below the detection limit of the testing methods. Defendants and CTFA also knew that asbestos contamination was not uniformly distributed, such that the miniscule amounts tested would not reveal the true level of contamination in talc products, such as The Talcum Products to which Plaintiff and the consuming public in this State were exposed.

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

50. CTFA "Method J4-I," published on October 7, 1976, states that TEM-SAED "offers greater sensitivity, but is not presented since it is unsuitable for normal quality control applications." The published method, rather, relies on XRD with "the level of detection of amphibole by this method [being] 0.5% and above." CTFA met with and corresponded with Defendants and third parties, to individually and collectively advocate to the FDA for the use of

inadequate XRD testing on miniscule portions of the tons of talc obtained from the mining sources to be used in the consumer products, followed by fewer "periodic" tests by TEM. This voluntary method was developed by CTFA and Defendants, and was advocated to the FDA by CTFA and Defendants in lieu of regulations requiring labeling and warnings on talcum powder products, even though CTFA and Defendants knew that the J4-I method would not reveal the true level of asbestos in the talc that reached consumers. In fact, the first "round robin" tests, which analyzed a "CTFA Tremolite-Spiked Talc," resulted in 6 of 7 participating laboratories failing to detect the tremolite. In other words, 84% of the industry's laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA's own J4-1 method. There is no evidence that CTFA or Defendants ever shared this remarkable failure with the FDA or the public.

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

greater concentrations than 0.5%, a concentration that could allow more than a billion asbestos fibers per gram of talc to be passed off as "asbestos-free ."

52. Defendants and CTFA made and published such representations, claiming that their testing method was adequate, that they were ensuring that talcum powder products were safe, and that the talc reaching consumers in the Talcum Products was "safe," despite having substantial knowledge and evidence to the contrary. Defendants intentionally and knowingly did so to avoid FDA, CalEPA, OEHHA and other governmental agency regulations that, like California's Proposition 65, would have required them to place warnings· regarding the asbestos and talc containing asbestiform fibers content of their talcum products, and thereby inform the public in this State, including Plaintiffs, that their Talcum Products contain asbestos and talc containing asbestiform fibers.

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

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

55. Between 1970 and the 1990s, tests conducted by and on behalf of Defendants and the talc industry continued to show that talc and talcum powder products contained asbestos.

None of these positive tests have ever been produced or made known to any regulatory agency, and knowledge of 'their existence is only because of civil litigation. Defendants intentionally and knowingly did so to avoid FDA and California's Proposition 65 regulations that may have required them to place warnings regarding the asbestos content of their products, including the Talcum Products, and thereby inform the public, including Plaintiffs, that the Talcum Products contained asbestos and talc containing asbestiform fibers.

56. Defendants and CTFA 's failure to disclose these positive results and the inadequacies of their testing protocols continued through the 1980s, 1990s and 2000s, even when various government agencies, including California's Environmental Protection Agency ("CalEPA") and Office of Environmental Health Hazard Assessment ("OEHHA") and others, raised concerns about the safety of talc, including the issue of asbestos content.

57. To this day, many talc-containing products presently on the market, including the talcum products contain asbestos and talc containing asbestiform fibers. Instead of publicizing this fact, Defendants and CTFA continue to deny all the above to protect their pecuniary interests, to the severe detriment of the public, including Plaintiffs and the members of the Class.

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

59. Defendants (and other entities in the talc industry and cosmetic industries, including the CTFA), individually and collectively, failed to report to the FDA, CalEPA, OEHHA and other regulatory agencies, tests performed both internally and by outside laboratories confirming the presence of asbestos and talc containing asbestiform fibers in both their

finished products, including the Talcum Products, as well as talc shipments from suppliers Defendants obtained talc from and other sources that were used to produce finished products.

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

61. After 1976, Defendants and CTFA continued to obtain and/or receive results of testing performed internally and externally indicating the presence of Asbestos and talc containing asbestiform fibers in the Talcum Products.

62. Defendants failed to place any warning on their Talcum Products despite CalEPA and OEHHA regulations otherwise, or ever disclose the fact that these products contain asbestos or talc containing asbestiform fibers, at any point, up to and including the present, despite the clear hazard and direct information that their Talcum Products did and continue to contain asbestos or talc containing asbestiform fibers.

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

64. Defendants and CTFA, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder products, including the Talcum Products, to which Plaintiffs and the consuming public in this State have been exposed .

65. Defendants and CTFA, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data and embarked upon a plan of

deception intended to deprive the public at large in this State and elsewhere, including Plaintiffs, of alarming medical and scientific findings, many of which remained in their exclusive possession and under their exclusive control.

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

a. to withhold from users of their products including Plaintiffs, the Class, and the general consuming public of this State-and from persons who they knew and should have known would be exposed thereto--information regarding the health risks of inhaling and/or ingesting and/or perineal (genital) application of the Talcum Products;

b. to eliminate, suppress or prevent investigation into the health hazards of exposure to asbestos and other carcinogens in talc and talcum powder products;

c. to ensure that asbestos-containing talc and talcum powder products became widely used in commerce, irrespective of the potential and actual risk of harm to the users and consumers from the asbestos and other carcinogens therein; and

d. to falsely represent that talc and talcum powder products, including those of Defendants, were safe and healthful for use by consumers such as Plaintiffs, the Class Members, and the general consuming public of this State.

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

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

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

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

70. CTFA and Defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, marketing, distribution and use of asbestos-containing talcum powder products, and controlled the level of knowledge and information available to the public in this State regarding the hazards of exposure to asbestos and talc with asbestiform fibers and other carcinogens from talc and talc-containing products, including the Talcum Products.

71. CTFA and Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including Plaintiffs, the Class, and the general consuming public in this State, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion and/or perineal (genital) application of asbestos and talc containing asbestiform fibers from their Talcum Products.

72. CTFA and Defendants, through agreement and consciously parallel behavior, knowingly and intentionally released , published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder, and specifically talc and talcum powder used in the production of the Talcum Products to which Plaintiffs, the Class, and the general consuming public in this State were exposed.

73. CTFA and Defendants, through agreement and consciously parallel behavior, suppressed, altered, changed, destroyed and/or revised reports, data, tests, studies and other documents regarding the potential presence of asbestos and other carcinogens in talc and talc-containing products, including Defendants' the Talcum Products to which Plaintiffs, the Class, and the consuming public in this State were exposed.

74. As recently as 2016, Defendants made material misrepresentations to the FDA regarding asbestos and talc containing asbestiform fibers in their talcum powder products.

75. However, as a matter of law, Defendants were required to inform the public that their products contained, or possibly contained carcinogens such as asbestos and talc containing asbestiform fibers. Health & Safety Code §25249.6 provides:

> No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. ..

76. "Knowingly" refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. "No knowledge that the discharge, release or exposure is unlawful is required (27 Cal. Code Regs, title 27, §25102(n)).

77. Proposition 65 also provides that any person "violating or threatening to violate" the statute may be enjoined in a court of competent jurisdiction. (Health & Saf. Code §25249.7) The phrase "threatening to violate" is defined to mean creating "a condition in which there is substantial likelihood that a violation will occur." (Health & Saf. Code §25249.1 1(e)). Violaters are liable for civil penalties of up to $2,500 per day for each violation of the Act. (Health & Saf. Code §25249.7).

78. Asbestos is listed by the State of California as a chemical known to cause cancer. Asbestos is therefore subject to the "clear and reasonable" warning requirements of

79. Due to the high toxicity of asbestos in causing cancer, the No Significant Risk Level ("NSRL") or ("Safe Harbor") for inhalation of asbestos is 100 fibers/day (inhalation) (27 Cal. Code Regs, Title 27, CR 25709(b)). Defendants manufacture, distribute, market and/or sell in California the Talcum Products containing asbestos in levels exceeding the NSRL for inhalation through normal and intended use of the products.

80. There is no Safe Harbor established for perineal (genital) exposure to asbestos.

81. Talc Containing Asbestiform Fibers is also listed by the State of California as a chemical known to cause cancer. Talc Containing Asbestiform Fibers is therefore subject to the "clear and reasonable" warning requirements of Proposition 65 for cancer.

82. There are no Safe Harbors established for exposure to Talc Containing Asbestiform Fibers.

83. Since there is no established Safe Harbor for perineal (genital) exposure to Asbestos, or for inhalation or perineal (genital) exposure to Talc Containing Asbestiform Fibers, the named Defendants must demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. See, 27 Cal. Code of Regs, Title 27, §25801 et. seq. Clearly, at 1,000 times the asbestos and talc containing asbestiform fibers levels in question, the named Defendants are unable to show "no observable effect."

84. At all times relevant to this action, Defendants have knowingly exposed California consumers to asbestos and talc containing asbestiform fibers in the offending the Talcum Products talcum powder products without clear and reasonable warning to such individuals.

85. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers, disclosing the cancer-causing effects, on the Talcum Products.

86. At all times relevant to this action, Defendants' representatives have failed to warn California consumers that their Talcum Products contain cancer-causing asbestos and talc containing asbestiform fibers.

87. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers on their marketing materials.

88. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers on store shelves.

89. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers on their 16 websites. To the contrary, Defendants continue to represent on their websites that the Talcum Products are "asbestos free."

90. Further, by failing to place a clear and reasonable Proposition 65 label on for their websites, products, or advertising, Defendants both actively and passively asserted to Plaintiffs, the Class, and the general consuming public, that the Talcum Products were safe and legal to use for all purposes, when, as alleged above, they were not. Plaintiffs and the Class had a reasonable presumption that the sale of the Talcum Products, all of which were placed on retail store shelves, and which were openly available for sale without any warning labels at all, was safe, and in compliance with California law. *Steroid Hormone Product Cases* (2010) 181 Cal. App. 4th 145, 156-57.

CLASS ACTION ALLEGATIONS

91. Plaintiffs bring this action on behalf of themselves, the general public, and all others similarly situated. Plaintiffs seek to represent the following class:

> Plaintiffs and all persons who purchased the Talcum Products within the state of California at any time from four years prior to the filing of this complaint and ongoing until date of judgment and/or preliminary approval of class action settlement.

All Class members are hereinafter referred to as the "Class." Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the proposed Class are Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by Defendants, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or any of them; the judicial officer or judicial officers assigned to this action, any member of the judicial officers' immediate family. Also excluded from the Class are any persons who, as of the date the Complaint is filed, have an action pending against one or more of the Defendants resulting from the sale of, or injuries related to the use of, any of the Talcum Products.

92. This action has been brought and may be properly maintained as a class action, pursuant to the provisions of the California Code of Civil Procedure Section 382 and California Civil Code Section 1781.

93. Numerosity – Code Civ. Proc. § 382; Civ. Code § 1781(b)(1): Members of the Class are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believes, and on that basis allege, that the proposed class contains thousands of members. The precise number of Class members is unknown to Plaintiffs. Class members are likely to be known by Defendants, or Defendants' customers, however, and thus, may be notified of the pendency of this action by mail, supplemented (if deemed necessary and appropriate by the Court) by published notice.

94. Existence and Predominance of Commons Questions of Fact and Law – Code of Civ. Proc. § 382; Civ. Code § 1781(b)(2): Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class members. These common legal and factual questions include:

i. Whether the Talcum Products contain asbestos or asbestiform fibers;

ii. Whether Defendants knew or should have known that the Talcum Products contained asbestos or asbestiform fibers;

iii. Whether Defendants failure to label the Talcum Products as possibly containing known carcinogens violates Health & Safety Code § 259249.5;

iv. Whether Defendants violated Health & Safety Code § 111792 by failing to notify the California Division of Environmental and Occupational Disease Control that the Talcum Products contain asbestos and/or asbestiform fibers;

v. Whether Defendants could lawfully sell the Talcum Products in the State of California without complying with Health & Safety Code §§ 11792 and 259249.2;

vi. Whether the sale of the Talcum Products in California at retail establishments constituted an affirmative statement by Defendants to Plaintiffs and the Class Members that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2;

vii. Whether the affirmative statement by Defendants through the sale the Talcum Products in California at retail establishments that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2 was a misrepresentation as to the Talcum Product's source, sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2);

viii. Whether the affirmative statement by Defendants through the sale the Talcum Products in California at retail establishments that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2 constituted a representation, whether express or implied, that the Talcum Products have sponsorship, approval, characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code § 1770(a)(5);

ix. Whether the affirmative statement by Defendants through the sale the Talcum Products in California at retail establishments that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792

and 259249.2 constituted a representation that the Talcum Products are of a particular standard, quality, or grade, or of a particular style or model, when they are of another in violation of Civil Code § 1770(a)(7);

x. Whether the affirmative statements by Defendants that the Talcum Products were "asbestos-free" constituted a misrepresentation as to the Talcum Products source, sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2);

xi. Whether the affirmative statements by Defendants that the Talcum Products were "asbestos-free" constituted a representation, whether express or implied, that the Talcum Products have sponsorship, approval, characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code § 1770(a)(5);

xii. Whether the affirmative statements by Defendants that the Talcum Products were "asbestos-free" constituted a representation that the Talcum Products are of a particular standard, quality, or grade, or of a particular style or model, when they are of another in violation of Civil Code § 1770(a)(7);

xiv. Whether the affirmative statements by Defendants that the Talcum Products are and were "asbestos-free" constitutes false advertising under Business & Professions Code § 17500, et seq.;

xv. Whether the sale of the Talcum Products constituted an unlawful business practice in violation of Business & Professions Code § 17200, et seq.;

xvi. Whether the sale of the Talcum Products constituted a deceptive business practice in violation of Business & Professions Code § 17200, et seq.;

xvii. Whether the sale of the Talcum Products constituted an unfair business practice in violation of Business & Professions Code § 17200, et seq.;

xviii. Whether Defendants have been unjustly enriched by their sale of the Talcum Products to Plaintiffs and the members of the Class; and,

xix. The appropriate amount of restitutionary disgorgement owed to Plaintiffs and the Class.

95. Typicality – Code Civ. Proc. § 382; Civ. Code § 1781(b)(3): Plaintiffs' claims are typical of the claims of the Class since Plaintiffs purchased the Talcum Products from Defendants as did members of the Class. Furthermore, Plaintiffs and all members of the Class sustained injury in fact by losing money as a result of Defendants' wrongful conduct.

96. Adequacy – Code Civ. Proc. § 382; Civ. Code § 1781(b)(4): Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and she intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

97. Superiority – Code Civ. Proc. § 382: The class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and members of the Class. Although the monetary injury suffered by each individual Class member may total several hundred dollars, injury of such magnitude is nonetheless relatively small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Violation of the Consumers Legal Remedies Act
[Civil Code § 1750 *et seq.*]
(On behalf of Plaintiffs and the Class Against All Defendants)

98. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

99. The Talcum Products are "goods" within the meaning of the Consumer Legal

Remedies Act, Civil Code sections 1761(a) and 1770 (the "CLRA").

100. Each Defendant is a "person" within the meaning of the CLRA, Civil Code sections 1761(c) and 1770.

100. Purchasers of the Talcum Products, including Plaintiffs Gutierrez and Luna, and the Class, are "consumers" within the meaning of the CLRA, Civil Code sections 1761(d) and 1770.

102. Plaintiffs and each and every Class Member's purchases of the Talcum Products constitute "transactions" within the meaning of the CLRA, Civil Code sections 1761(e) and 1770.

103. Defendants' unfair or deceptive acts or practices as described herein, were undertaken by Defendants in transactions intended to result or which resulted in the sale of goods to consumers, and were intended to induce, and did in fact induce, Plaintiffs and the Class to purchase for personal use such products, which they would not have otherwise purchased. Indeed, as one official with the U.S. Food and Drug Administration was quoted in 1971 as saying with regard to the possible presence of asbestos and/or talc containing asbestiform fibers in baby powder, "No mother was going to powder her baby with 1% of a known carcinogen irregardless [sic] of the large safety factor."[3]

104. Defendants' practices, acts and course of conduct with respect to their distribution and sale of the Talcum Products violate the CLRA in that Defendants' representation that its talcum powder products are safe and free from asbestos or asbestiform fibers constitutes: (1) a misrepresentation as to the Talcum Products source, sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2); (2) a representation, whether express or implied, that the Talcum Products have sponsorship, approval, characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code § 1770(a)(5); and (3) a representation that the Talcum Products are of a particular standard, quality, or grade, or of a particular style or model, when they are of another in violation of Civil Code § 1770(a)(7). Here, despite decades of evidence that the Talcum Products contain, or could contain asbestos or asbestiform fibers, Defendants continue to advertise that their products are safe.

105. Defendants' practices, acts and course of conduct in connection with its sale of the

[3] See Exhibit 3.

Talcum Products are likely to mislead a reasonable consumer acting reasonably under the circumstances to his or her detriment. Further, the misrepresentation of the safety of the Talcum Products are clearly material to the determination to purchase the Talcum Products, as the potential harm to the consumer or the consumer's family is significantly greater than the value conferred by the purchase of the Talcum Products ("No mother was going to powder her baby with 1% of a known carcinogen irregardless [sic] of the large safety factor."), there are equivalent products that confer a similar benefit to the consumer that the Talcum Products provided, and, as a result, no reasonable consumer, including Plaintiffs and the Class Members, would purchase the Talcum Products had they known that the Talcum Products were not, in fact, safe as Defendants, advertised, but that these products contained, or possibly contained, asbestos or asbestiform fibers, which are known carcinogens.

106. As a direct and proximate result of Defendants' violations of law, Plaintiffs and the Class have suffered damages by not receiving what was promised to them in exchange for the purchase of the Talcum Products, which Defendants contended were safe, and did not contain asbestos or asbestiform fibers.

107. By filing this Complaint, Plaintiffs seek an order enjoining Defendants from the continued sale of Talcum Products; an Order enjoining Defendants from collecting money from the Class from the sale of such products; and an Order requiring Defendants to notify the class of its violations of the CLRA and the remedy it will provide to them. Plaintiff and the Class are entitled to equitable relief in the form of restitutionary disgorgement of all earnings, profits, compensation and benefits obtained by Defendants as a result of its violations of the CLRA, along with other appropriate relief including reasonable attorneys' fees and expenses.

SECOND CAUSE OF ACTION
Violation of the False Advertising Law
[Business And Professions Code Section 17500, Et Seq.]
(On Behalf of Plaintiffs and the Class Against all Defendants)

108. Plaintiffs hereby incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

109. Plaintiffs bring this cause of action pursuant to California Business & Professions Code § 17500. California Business & Profession s Code § 17500 provides that it is unlawful for any person, firm, corporation or association to dispose of property or perform services, or to induce the public to enter into any obligation relating thereto, through the use of untrue or misleading statements.

110. Plaintiffs and the Class Members purchased the Talcum Products and have suffered injury in fact and have lost money or property as a result of the unlawful, unfair, or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.

111. At all times herein alleged, Defendants have committed acts of disseminating untrue and misleading statements as defined by California Business & Professions Code § 17500 by engaging in the following acts and practices with intent to induce members of the public to purchase and use the Talcum Products:(a) Representing that the Talcum Products are safe for their intended and foreseeable use and "free of asbestos," knowing that said representations were false, and concealing that the Talcum Products, or at least some of them, contain asbestos and talc containing asbestiform fibers and have a serious propensity to cause injuries to users; (b) Issuing promotional literature and commercials deceiving potential users of the Talcum Products by relaying positive information and concealing material relevant information regarding the safety and efficacy of the Talcum Products; and other unfair, unlawful and fraudulent conduct.

112. The foregoing practices constitute false and misleading advertising within the meaning of California Business & Professions Code § 17500.

113. The acts of untrue and misleading statements by Defendants described here in above present a continuing threat to members of the public in that the acts alleged herein are continuous and ongoing, and the public will continue to suffer the harm alleged herein .

114. As a result of their conduct described above, Defendants have been and will be unjustly enriched. Specifically, Defendants have been unjustly enriched by receipt of hundreds of millions of dollars in ill-gotten gains from Plaintiffs and the Class Members from the sale of the Talcum Products in California, sold in large part as a result of the acts and omissions described herein.

115. Pursuant to California Business & Professions Code § 17535, Plaintiffs seeks an order of this Court compelling the Defendants to provide restitution and injunctive relief calling for Defendants, and each of them, to cease unfair business practices in the future.

116. Plaintiffs seek restitutionary disgorgment of the monies collected from Plaintiffs and the Class, by Defendants, and each of them, and other injunctive relief to cease such false and misleading advertising in the future.

117. Defendants' actions described above were performed willfully, intentionally, and with reckless disregard of the life and safety of the Plaintiffs, the Class, and the general public.

THIRD CAUSE OF ACTION
Violation of the Unfair Competition Law
[Business and Professions Code Section 17200, et seq.]
(on Behalf of Plaintiffs and the Class Against all Defendants)

118. Plaintiffs hereby incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows.

119. California Business & Professions Code § 17200 provides that unfair competition shall mean and include "all unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising."

120. Plaintiffs and the Class purchased the Talcum Products and have suffered injury in fact and have lost money or property as a result of the unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.

121. The acts and practices described above violate California Health and Safety Code §25249.5, et seq. (Proposition 65) and therefore satisfy and violate the "unlawful" prong of § 17200.

122. The acts and practices described above also violate the California Safe Cosmetic Act of 2005 (Cal. Health & Safety Code §§ 111791 et seq.) for failing to notify the California Safe Cosmetics Program that the Talcum Products contain asbestos and talc containing asbestiform fibers -- ingredients known to cause cancer. The California Safe Cosmetics Act is a California State law that was enacted in 2005 and is implemented by the California Safe Cosmetics Program in the California Department of Public Health. The Act requires companies to report cosmetics products sold within the state that contain ingredients known or suspected to cause cancer, birth

defects, or other reproductive harm. The violations of Cal. Health & Safety Code §§ 11191 et seq. also satisfy and violate the "unlawful" prong of § 17200.

123. The acts and practices described above also violate the Consumer Legal Remedies Act, and the False Advertising Law, as described above, in that Defendants have represented to Plaintiffs, the Class and the general public, that their products are safe and "asbestos-free." Thus, the statements made by Defendants that the Talcum Products were safe and "asbestos-free" are constitute unlawful acts within the meaning of California Business & Professions Code § 17200.

124. Further, by selling the Talcum Products openly in retail establishments throughout the State of California, Defendants violated and violate the Consumer Legal Remedies Act, by passively intimating that the Talcum Products complied with all of California's laws, and were safe to use, when, in fact, they were not. This conduct, prohibited by the CLRA, also constitutes unlawful acts within the meaning of California Business & Professions Code § 17200.

125. The acts and practices described above were and are also likely to mislead the general public and therefore constitute unfair business practices within the meaning of California Business & Professions Code § 17200, including unfair, unlawful, and/or fraudulent practices.

126. The acts of untrue and misleading advertising set forth in presiding paragraphs are incorporated by reference and are, by definition, violations of California Business & Professions Code § 17200. This conduct is set forth fully herein, and includes, but is not limited to: (a) Representing that the Talcum Products are safe for their intended and foreseeable use and "free of asbestos," knowing that said representations were false, and concealing that the Talcum Products contain Asbestos and Talc Containing Asbestiform Fibers and had a serious propensity to cause injuries to users; (b) Issuing promotional literature and commercials deceiving potential users of the Talcum Products by relaying positive information and concealing material relevant information regarding the safety and efficacy of the Talcum Products; (c) Selling the Talcum Products freely and openly without any indication of the associated health risks; and other unfair, unlawful and fraudulent conduct.

127. These practices constitute unlawful, unfair and/or fraudulent business acts or practices, within the meaning of California Business & Professions Code § 17200. The fraudulent

conduct includes representing that the Talcum Products were safe for their intended use and failing to warn Plaintiff and the Class Members of the risks associated with the Talcum Products.

128. The unlawful, unfair and fraudulent business practices of Defendants described above present a continuing threat to members of the public in that Defendants continue to engage in the conduct described therein.

129. As a result of their conduct described above, Defendants have been and will be unjustly enriched. Specifically, Defendants have been unjustly enriched by receipt of millions of dollars in ill-gotten gains from the sale of the Talcum Products in California to Plaintiffs and the Class, sold in large part as a result of the acts and omissions described herein.

130. Plaintiffs, on behalf of themselves, and on behalf of the Class, pursuant to California Business & Professions Code § 17203, seeks an order of this court compelling the Defendants to provide restitutionary disgorgement and injunctive relief calling for Defendants, and each of them, to cease unfair business practices in the future.

DEMAND FOR JURY TRIAL

131. Plaintiffs hereby demand trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class and the general public, pray for judgment against Defendants as follows:

1. For an order certifying that this action may be maintained as a class action against Defendants, appointing Plaintiffs and their counsel to represent the Class, as alleged herein, and directing that reasonable notice of this action be given by Defendants to the members of the Class;
2. For an order awarding reimbursement, restitution and disgorgement from Defendants of the benefits unjustly conferred by Plaintiffs and the Class;
3. For an order awarding injunctive and other equitable relief;
4. For an order awarding declaratory relief;
5. For an order awarding pre- and post-judgment interest to the Class, at the highest rate

allowed by law;

6. For an order awarding costs, including experts' fees, and attorneys' fees and expenses, and the costs of prosecuting this action; and

7. For an order awarding granting such other and further relief as is just and proper.

Dated: May 29, 2019

POTTER HANDY LLP

By: _____

Mark Potter, Esq.
James M. Treglio, Esq.

Attorneys for Plaintiffs and the Class

EXHIBIT 1

Johnson & Johnson

New Brunswick, N. J.

Nov.1,1967

Subject:

Metropolitan Talc
Lot G 716
Preliminary Evaluation

The talc used for this evaluation was produced in the Plainfield plant and was delivered to us by Mr. Don Perry about Oct. 1,1967.

Perfume Retention and Aroma

The Metro talc shows greater retention for perfume than does our Vermont talc and the indications are that the rate of escape is very close to that devloped with Italian talc. We ran a gravimetric rate loss test on talcs containing 1% P-5 in open dishes and find the rate loss very close to Italian talc at both 70 and 100F for the Metro and significantly faster for the Vermont. (Graphs 1 & 2)

The Metro talc does not show the chalky note under circumstances which create that aroma in Vermont talcs. Since the original problem in perfumery developed at a low dose of P-5 we elected to set up a storage test with the three talcs (Italian, Vermont, Metro) and P-5 at 0.1% incubated at 120F for three weeks. The Vermont article develops a chalky tone whereas the other two did not.

The above tests lead us to believe that the commercial dose of either P or P-5 would provide a satisfactory aroma life with Metro type talc. Our tests were limited in that we did not include the neutralizer at this point.

Chemical and Physical Properties

Except for fineness the Metro talc fits the physical characteristics which we find adequate. (Table I) The shipment on hand is slightly on the coarse side; a slightly increased grind should bring it into range.

Mineralogically the talc is predominantly platy although a large percentage of the plates are broken and lath shaped. The lath shape of some of the particles appears to have resulted from the grinding method since the cleavage of the crystals from a sample of the

Plaintiff's Exhibit J&J 124

J&J-0076514

rock is normal. Optically, by count, the product is at least 93% talc plus 3-5% Dolomite and 1% or less of Tremolite. The associate minerals are liberated from the talc crystals.

The talc has high slip, good flow character and is remarkably white. It is probably the whitest commercially available talc which we have observed at the 200 mesh grind level.

The carbonate Dolomite is actually calcium magnesium carbonate. This assays about 5% using the strong acid method and close to 4% using the titration method. This carbonate level requires up to 1% of sesquicitrate to maintain our historic pH limits in the finished product. A 1% neutralizer content is prohibitively high. Sesquicitrate in the 0.2% area brings the initial pH of the product close to neutral and there might be some merit in considering such a product but of course the effect would be to drift up to the higher alkaline ranges over the 18 hr control test we now use. (Graph 111)

Talc Source and Processing

The talc ore processed in Plainfield comes from the deposit in Madoc Ontario which we explored at depth some years ago.

The Madoc deposit has a lot in common with Italian talc from the geological and mineralogical points of view. The associate minerals in the district are very similar and the crystal habit of the talcs are also very similar to the Italian situation. Thus there would be every reason to expect the two talcs to perform about the same when their processing conditions were reasonably close.

The Madoc deposit is a relatively large source of talc but it contains several grades of ore which are given different names. The highest grade up there is the Henderson section and it is that section which is presently being worked to supply the crudes for the Plainfield plant. As far as we know the reserves at Madoc were of the 150,000 ton order for the Henderson type at the 600 foot levels.

The process used to upgrade the talc is based on electrostatic separation. This is a dry process so there would be no effects resulting from wetting or flotation reagentry.

Next Steps

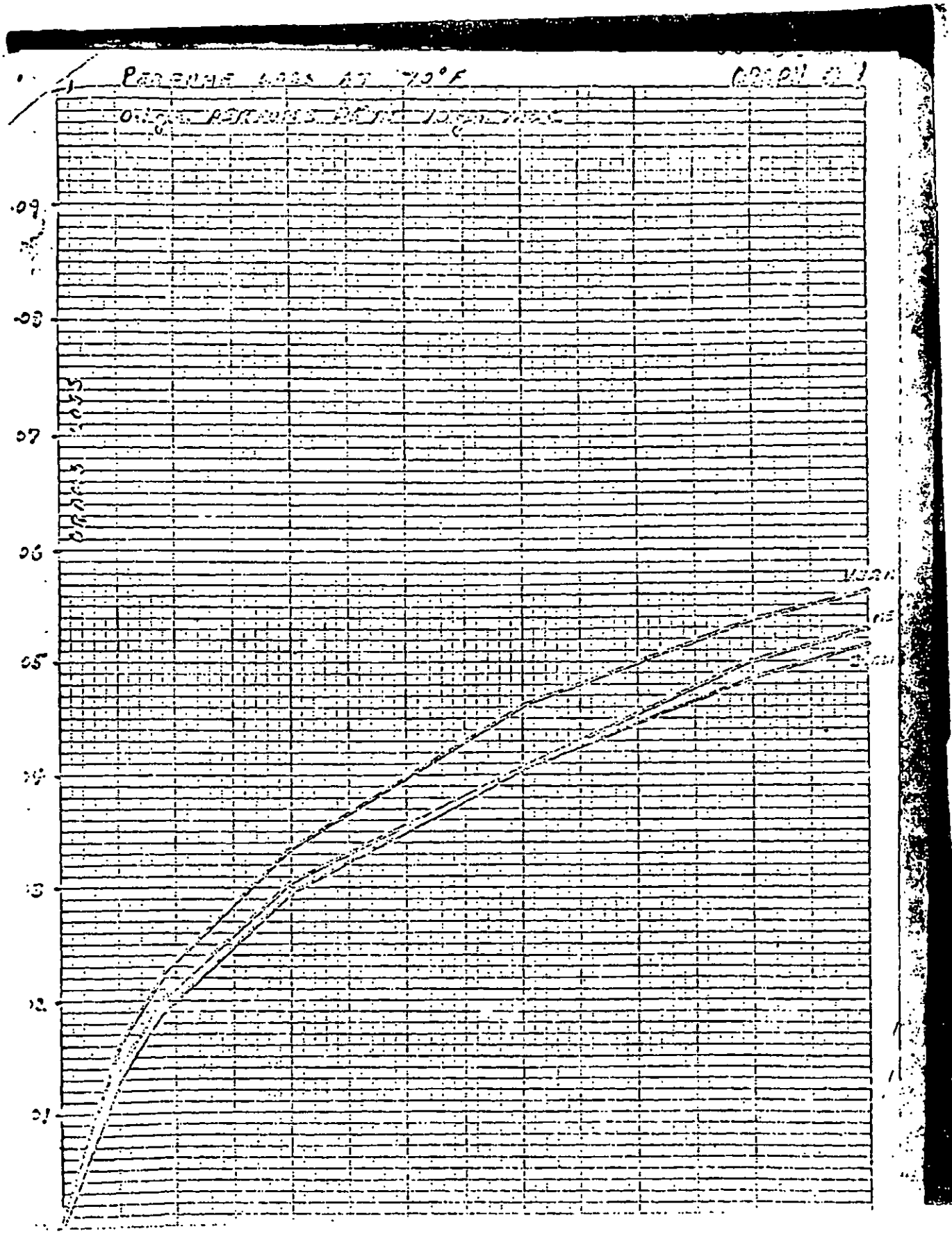
Mr. Russell and I shall be visiting Mr. Ferry at the Plainfield plant in the next few days. We will get an idea of the capabilities and determine what is

involved in reducing the carbonate level and making arrangements for a couple tons of it for a large scale run.

Meanwhile we have 200 lbs of the above described Metro talc on hand here which I plan to make available to whomever would like to run some tests with it. Although I am personally impressed with the laboratory scale work Russell and I have done, a larger confirmation on a pilot plant batch could prove useful. For example this should be made up with whatever perfume levels are used in the plant today and might evaluate the holding power for the perfume in the powder puff unit also.

Mr. Russell prepared and arranged the attached data.

W. Ashton



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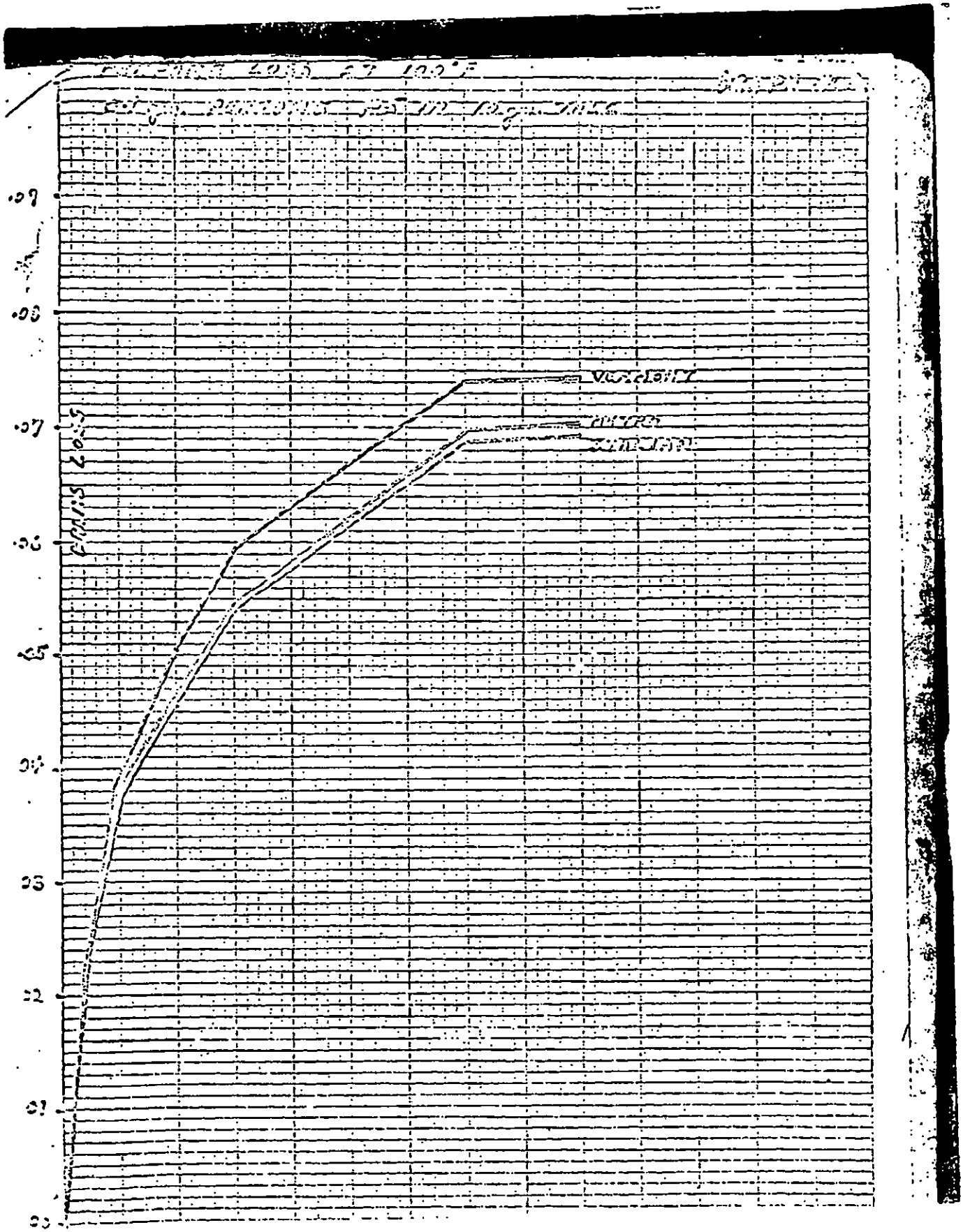

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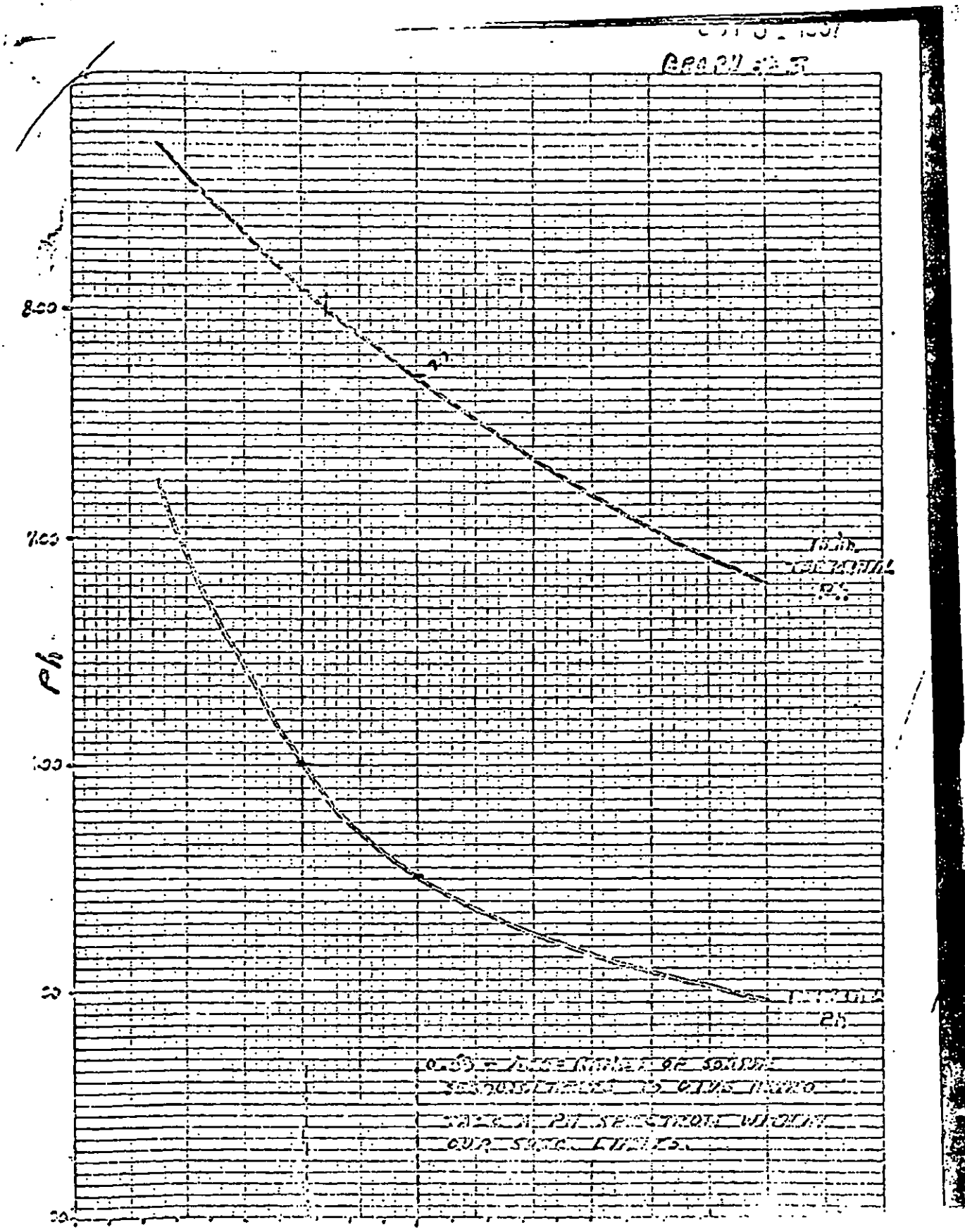
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OCT 31 1967

TABLE I

Physical & Chemical Data

t	Metro #1	Vermont S4-23	Ital. 42771E
sture %	0.09	0.07	0.01
in Acid %	5.08	1.60	3.00
cation %	4.08	0.80	1.50
Dens. lb/ft^3	24.7	25.4	23.4
or	White	Off White Grey-Green cast	White with creamy cast
ness %			
-60	100%	100%	100%
than -100	99.98%	99.90%	100%
-200	96.85%	99.0%	99.7%
y Metals ppm	less than 10	less than 10	less than 10
nic ppm	0.3	less than 2 ppm	0.7
Soluble Iron	passes	passes	passes
ction (2 oz) max.	130 cc	125 cc	137 cc
nco TAPPED) min.	72 cc	73 cc	72 cc

P C C . . . 0/.

J&J-0076520

OCT 31 1967

TABLE II

Microscopic Mineralogical Assay

	Metro #1	Vermont Talc S4-23	Vermont Talc Batch 994*	Italian Talc
Total Talc	93%	99%	94%	93 - 95%
Platy	90%	95%	86%	88 - 90%
Nonplaty	3%	3%	8%	5 - 9%
Carbonates	5	1	1-2	1-3
Tremolite	1	trace	trace	1-2
Serpentine	trace	trace	4	none
Opaques	< 1	trace	trace	trace

*Produced August 21,1967 at West Windsor

R.S. Russell

Johnson & Johnson

New Brunswick, N. J.
April 9, 1969

Subject: Alternate Domestic Talc Sources
File No. 101

Dr. G. Hildick-Smith

Pete, we have to firm up the position the Company should have on the presence of the mineral Tremolite in talc. Your staff will have to do this for us since the objections to that mineral have been mainly medical or clinical as opposed to chemical or physical.

The reason we have to firm up our position is that we have moved into high gear on some alternate talc sources and it is normal to find different levels of Tremolite in many U.S. talcs. We are looking at some of those.

Historically, in our Company, Tremolite has been bad because it has needle type crystals. Our position has been that these can stand on end, penetrate the skin, and cause irritation; consequently, talcs exceeding trace contents have never been approved. Over the past year or two, the medical literature has made reference to potential hazards of talcs containing Tremolite and I have seen some articles under the umbra of environmental health agencies from here and abroad which pinpoint severe objections to that mineral in talcum powders.

Unfortunately, Tremolite has different varieties and can be easily confused with other members of the mineral class into which it falls. Chemically, it is mainly a calcium silicate with varying amounts of magnesium silicate and sometimes it carries iron with it in minor amounts. Some varieties of it match asbestos, and I gather there has been a lot of attention given to the hazards of inhaling minerals of that type lately.

Plaintiff's
Exhibit
J&J 202

There is nothing we can do about the confused state of affairs on Tremolite from the mineralogical and chemical points of view as far as historic literature is concerned.

The question is...How bad is Tremolite medically, and how much of it can safely be in a talc base we might develop?

W. H. Ashton

pm
cc: Dr. R. A. Fuller
Dr. E. R. L. Gaughran
Mr. R. J. Mortimer
Dr. T. H. Shelley
Dr. R. L. Sundberg

EXHIBIT 2

cc

Johnson & Johnson

New Brunswick, N. J.

April 15, 1969

Subject: ALTERNATE DOMESTIC TALC SOURCES

Project Code #101

Mr. W. H. Ashton:

Your inquiry of April 9th, 1969 addressed to Dr. G. Hildick-Smith has been referred to my attention for reply.

Over the years, I have reviewed the literature on the hazards relating to the inhalation of talc particles on several different occasions. In your memorandum, you indicate that Tremolite does have needle-type crystals and that our position has been that these could penetrate the skin and cause irritation. Actually, to the best of my knowledge, we have no factual information on this subject. It would seem logical that it could occur, although whether or not it would be of clinical significance would be conjectural.

We have been concerned to a much greater extent with regard to possible dangers relative to the inhalation of the talc with a spicule or needle-like crystalline structure as compared with the flat, platelet-type of crystalline structure. There are reports in the literature concerning talcosis which, as you know, is a form of pneumoconiosis attributed to the inhalation of talc. Reported studies have suggested that this does not occur in connection with the flat, platelet-type of talc, but does occur in connection with the spicule-type of crystalline structure characteristic of Tremolite. The reported instances have been extremely few but have, without exception, involved inhalations of high concentrations on an occupational basis of many years duration. Furthermore, we have occasionally received inquiries from various individuals, including General Johnson and several pediatricians, expressing concern over the possibility of the adverse effects on the lungs of babies or mothers who might inhale any substantial amounts of our talc formulations. In the past, we have replied to the effect that since our talc is essentially all of the platelet-type of crystalline structure, and is of a size which would not be likely to enter the pulmonary alveoli, we would not regard the usage of our powders as presenting any hazard. Obviously, if we do include Tremolite in more than unavoidable trace amounts, this sort of negation of such inquiries could no longer pertain.

Plaintiff's Exhibit J&J 195

Mr. W. H. Ashton April 15th, 1969

Upon various occasions we have discussed the possibility of carrying out studies on animals which might provide factual information with regard to whether or not variable exposures to talc suspended in the environmental atmosphere might be productive of fibrotic and/or inflammatory reactions in lungs. For a variety of reasons, these have never been carried out here.

Since pulmonary diseases, including inflammatory, fibroplastic, and neoplastic types, appear to be on the increase, it would seem to be prudent to limit any possible content of Tremolite in our powder formulations to an absolute minimum. To the best of my knowledge, we have never been faced with any litigation involving either skin or lung penetration by our talc formulations. Some years ago, we were faced with a more or less serious problem resulting from what we consider to have been an unjust accusation of danger due to the presence of a small amount of boric acid in our talc. This created such a furor that we were more or less compelled to remove boric acid from the formulation. It is conceivable that a similar situation might eventually arise if it became known that our talc formulations contained any significant amount of Tremolite. Since the usage of these products is so widespread, and the existence of pulmonary disease is increasing, it is not inconceivable that we could become involved in litigation in which pulmonary fibrosis or other changes might be rightfully or wrongfully attributed to inhalation of our powder formulations. It might be that someone in the Law Department should be consulted with regard to the defensibility of our position in the event that such a situation could ever arise.

It is my personal feeling that until we have at least substantial evidence, based on animal work, to the effect that the presence of Tremolite in our talc does not produce adverse effects, we should not extend its usage beyond an absolute minimum previously mentioned.

T. M. Thompson, M.D.

TMT:JAG

cc: Dr. R. A. Fuller
Dr. Gavin Hildick-Smith
Mr. W. J. Ryan
Dr. G. H. Lord
Dr. J. E. Willson
Dr. J. Bothwell

EXHIBIT 3

Johnson & Johnson
BABY PRODUCTS COMPANY

February 13, 1975

SUBJECT: CTFA Talc Subcommittee Meeting
with Food and Drug Administration
Washington, D.C. February 7, 1975

To: Distribution

[illegible] Dr. Yates [illegible] the following is a summary of the major discussions.

This meeting was held in Dr. R.N. Schaffner's office on February 7, 1975 at 1:00 PM. Representing FDA were: Dr. R. Schaffner, Mr. H. Biermann, Mr. H. Davis, Dr. W. Horowitz and Dr. Yates. The CTFA was represented by: Dr. N. Estrin, Mr. G. Sandland, Dr. M. Berdick, Dr. R. Rolle and G. Lee.

Dr. Estrin introduced Mr. Sandland as chairman of the CTFA Talc Subcommittee and indicated that the purpose of our meeting was to present the analytical methodology which had been developed by the CTFA Task Force as applicable to cosmetic talcs.

FDA indicated that there had been no eminent plans to publish new proposed methodology in this regard and did not give us the impression that this matter was being assigned any urgency. They reported no further work with the optical microscopy method. Dr. Horowitz was asked by Dr. Schaffner to elaborate on the only apparent area of analytical activity which is being directed towards Food Regulatory. This is being carried out under contract by the Franklin Institute, who are investigating an SEM method. They're attempting to develop methodology for detecting low levels of asbestos contamination and have experienced difficulty in presenting a uniform sample to the SEM. It's expected that this study may take one to two years. Any further steps to be taken with regards to Food Regulation will therefore have to wait on developments from the Franklin Institute.

When questioned as to FDA efforts and progress in the approach of "concentrating asbestos" to increase the level

Plaintiff's
Exhibit
J&J 60

of sensitivity, Dr. Yates replied in a tone of frustration that all attempts have met with failure; they had investigated heavy density liquid separation. Dr. Yates did not state that efforts would be continued in this direction, but we volunteered help in evaluating methodology should they develop something.

Dr. Rolle outlined the proposed CTFA methods and the expected limits of detection. It was emphasized to the FDA that these were methods evaluated and recommended for cosmetic talc and would be practical to apply for industrial [illegible] any natural-occurring chrysotile in talc for his methods [illegible] found chrysotile. The writer reiterated similar J&J experience with domestic and overseas talcs. Dr. Schaffner agreed that no one has purported to have seen chrysotile in cosmetic talc except Professor Lewin. At this point, Dr. Schaffner asked us what Professor Lewin was doing (if anything) in talc analysis. Dr. Rolle outlined a conversation he had had with Professor Lewin the day before and Dr. Schaffner directed Dr. Horowitz to interview Professor Lewin for his most current views regarding chrysotile in talc. Dr. Berdick made the point that if chrysotile is not expected to be found in talc, then the FDA should not propose regulations to cover chrysotile. After an exchange of philosophy, where Mr. Eiermann took a strong stand for chrysotile in talc regulation, Dr. Schaffner suggested that if the CTFA would submit supporting data attesting to the absence of chrysotile in talc the FDA would take the matter under consideration. Mr. Sandland indicated that the CTFA will be proposing self-regulatory action by amending its present CTFA Talc Standard to include the asbestiform tremolite proposal.

Mr. G. Sandland stated that a regulation of 1% asbestos in talc was not only achievable by throughly tested methods, but also gave a safety factor of 48,300 (Sivertson calculation). Mr. Eiermann bluntly said that the calculation was wrong since the standard of 2 fibers/cc is not a time weighted average. Before we had a chance for rebuttal Dr. Schaffner said that the Sivertson calculation was foolish since no mother was going to powder her baby with 1% of a known carcinogen irregardless of the large safety factor. Because of Dr. Schaffner's strong stand we did not correct Mr. Eiermann's misunderstanding of the calculation.

Dr. Schaffner emphasized that there is an ultimate and more important need for talc clinical safety data in order to satisfy the consumerist advocates. The writer assured him that this would be forthcoming from J&J.

Copies of the DTA and X-Ray Diffraction Detection Procedures together with the Sivertson Report "An Estimate of a Safe Level of Asbestos in Baby Powder Talc" were distributed to the FDA representatives and the meeting was closed with Dr. Estrin thanking the FDA for the opportunity of exchange and discussion.

The general impression received by the writer was that the FDA was not anxious to publish further proposals relative to "asbestos-in-talc" pending outcome of the Franklin Institute Study, as long as the consumerist advocates remain quiescent. It is also evident that the FDA would depend on clinical data to defend the safety of talc.

In a post-meeting caucus of the CTFA attendees, it was agreed that the CTFA would proceed to compile information from consultants and manufacturers which attest to the fact that chrysotile has never been found in cosmetic talcs and submit this to the FDA.

G. Lee

paj

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
James M. Treglio (SBN 228077)
Potter Handy LLP
7385 Erma Road, Suite 300
San Diego, CA 92131
TELEPHONE NO.: (858) 375-7385 FAX NO.: (888) 422-5191
ATTORNEY FOR (Name): Plaintiffs Louisa Gutierrez and Debbie Luna

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Superior Court of California,
County of San Diego
05/20/2019 at 10:53:21 AM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Hall of Justice

CASE NAME:
Louisa Gutierrez et al. v. Johnson & Johnson, et al.,

CIVIL CASE COVER SHEET
☑ **Unlimited** (Amount demanded exceeds $25,000)
☐ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation
☐ **Counter** ☐ **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2019-00025810-CU-NP-CTL
JUDGE: Judge Eddie C Sturgeon
DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☑ Other non-PI/PD/WD tort (35)

Employment
☐ Wrongful termination (36)
☐ Other employment (15)

Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property
☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition *(not specified above)* (43)

2. This case ☑ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☑ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☑ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☑ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify)*: 3 - CLRA (Civil Code 1750), FAL (B&P 17500), UCL (B&P 17200)
5. This case ☑ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: May 15, 2019
James M. Treglio
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7067	
PLAINTIFF(S) / PETITIONER(S): Louisa Gutierrez et.al.	
DEFENDANT(S) / RESPONDENT(S): Johnson & Johnson et.al.	
GUTIERREZ VS JOHNSON & JOHNSON [IMAGED]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2019-00025810-CU-NP-CTL

CASE ASSIGNMENT

Judge: Eddie C Sturgeon Department: C-67

COMPLAINT/PETITION FILED: 05/20/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	02/21/2020	10:30 am	C-67	Eddie C Sturgeon

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars ($150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

EXHIBIT C

Computershare

Computershare Governance Services, Inc.
100 Beard Sawmill Road, Shelton, CT 06484

Bausch Health US, LLC
Kirsten O'Donnell
Bausch Health Companies, Inc.
400 Somerset Corporate Blvd.
Bridgewater NJ 08807

July 1, 2019

SERVICE OF PROCESS NOTICE

Item: 2019-95

The following is a courtesy summary of the enclosed document(s). **ALL information should be verified by you.**

Note: Any questions regarding the substance of the matter described below, including the status or to whom or where to respond, should be directed to the person set forth in line 12 below or to the court or government agency where the matter is being heard.

1.	**Client Entity:**	Bausch Health US, LLC
2.	**Title of Action:**	Louisa Gutierrez, an individual, Debbie Luna, an individual on behalf of themselves and all persons similarly situated vs. Johnson & Johnson, a New Jersey Corporation, et al.
3.	**Document(s) Served:**	Summons on Amended Complaint First Amended Class Action Complaint for Violations
4.	**Court/Agency:**	San Diego County Superior Court
5.	**State Served:**	California
6.	**Case Number:**	37-2019-00025810-CU-NP-CTL
7.	**Case Type:**	Consumer Legal Remedies Act
8.	**Method of Service:**	Hand Delivered
9.	**Date Received:**	Friday 6/28/2019
10.	**Date To Client:**	Monday 7/1/2019
11.	**# Days When Answer Due:** **Answer Due Date:**	30 07/28/2019 CAUTION: Client is solely responsible for verifying the accuracy of the estimated Answer Due Date. To avoid missing a crucial deadline, we recommend immediately confirming in writing with opposing counsel that the date of the service in their records matches the Date Received.
12.	**SOP Sender:** (Name, City, State, and Phone Number)	Potter Handy LLP San Diego, CA (858) 375-7385
13.	**Shipped To Client By:**	Email Only with PDF Link
14.	**Tracking Number:**	
15.	**Handled By:**	051
16.	**Notes:**	None.

NOTE: This notice and the information above is provided for general informational purposes only and should not be considered a legal opinion. The client and their legal counsel are solely responsible for reviewing the service of process and verifying the accuracy of all information. At ComputerShare, we take pride in developing systems that effectively manage risk so our clients feel comfortable with the reliability of our service. We always deliver service of process so our clients avoid the risk of a default judgment. As registered agent, our role is to receive and forward service of process. To decrease risk for our clients, it is not our role to determine the merits of whether service of process is valid and effective. It is the role of legal counsel to assess whether service of process is invalid or defective. Registered agent services are provided by United Agent Group Inc.

SUM-100

SUMMONS On Amended Complaint
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
Clerk of the Superior Court
JUN 19 2019
By: K. Sorianosos, Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

JOHNSON & JOHNSON, a New Jersey Corporation, Additional Parties Attachment form is attached.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LOUISA GUTIERREZ, an individual, DEBBIE LUNA, an individual, on behalf of themselves and all persons similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.
¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego Superior Court, Hall of Justice
330 West Broadway,
San Diego, CA 92101

CASE NUMBER:
(Número del Caso):
37-2019-00025810-CU-NP-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
James M. Treglio (SBN 228077), Potter Handy, LLP,
9845 Erma Road, Suite 300, San Diego, CA 92131 Telephone: (858) 375-7385

DATE: *(Fecha)* JUN 25 2019 Clerk, by *(Secretario)* K. Sorianosos, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☑ on behalf of *(specify):* BAUSCH HEALTH US LLC
   under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☒ by personal delivery on *(date):* 6/20/19

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

SUM-200(A)

SHORT TITLE:	CASE NUMBER:
Louisa Gutierrez et al., v. Johnson & Johnson, et al.,	37-2019-00025810-CU-NP-CTL

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☑ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

JOHNSON & JOHNSON CONSUMER, INC., a New Jersey Corporation, BAUSCH HEALTH US LLC, f/k/a VALEANT PHARMACEUTICALS NORTH AMERICA LLC, a New Jersey Limited Liability Company, AND DOES 1-100, inclusive

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

POTTER HANDY LLP
Mark D. Potter (SBN 166317)
mark@potterhandy.com
James M. Treglio (SBN 228077)
jimt@potterhandy.com
9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385
Fax: (888) 422-5191

Attorneys for Plaintiffs and the Class

SUPERIOR COURT OF CALIFORNIA

BY AND FOR THE COUNTY OF SAN DIEGO

LOUISA GUTIERREZ, an individual, DEBBIE LUNA, an individual, on behalf of themselves and all persons similarly situated,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey Corporation, JOHNSON & JOHNSON CONSUMER, INC., a New Jersey Corporation, BAUSCH HEALTH US, LLC, f/k/a VALEANT PHARMACEUTICALS NORTH AMERICA LLC, a New Jersey Limited Liability Company, AND DOES 1-100, inclusive

Defendants.

CASE NO. 37-2019-00025810-CU-NP-CTL

FIRST AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF:

(1) THE CONSUMER LEGAL REMEDIES ACT (Civil Code § 1750, et seq.,)

(2) THE FALSE ADVERTISING LAW (Business and Professions Code § 17500, et seq.,), and

(3) THE UNFAIR COMPETITION LAW (Business & Professions Code § 17200, et seq.)

DEMAND FOR JURY TRIAL

Plaintiffs Louisa Gutierrez and Debbie Luna (collectively "Plaintiffs"), individually, on behalf of all others similarly situated (the "Class" or the "Class Members" as defined below), and on behalf of the general public, allege:

INTRODUCTION

1. This is consumer class action seeking restitution of all monies unlawfully earned by Defendants Johnson & Johnson, Inc., Bausch Health US, LLC, f/k/a Valeant Pharmaceuticals North America, LLC and Johnson & Johnson Consumer, Inc. (collectively, "Defendants") for the sale of their of Baby Powder and Shower to Shower products ("Talcum Products"). Defendants have consistently informed the public, the Plaintiffs, and the Class Members that no asbestos or asbestiform fibers are found within the Talcum Products, when in fact, Defendants have known for decades that not only do the Talcum Products contain asbestos or asbestiform fibers, but the methods used by Defendants to look for asbestos and asbestiform fibers in the talc used for the Talcum Products are and were inadequate.

2. The reason for this deception is simple: asbestos and talc containing asbestiform fibers are chemicals known to the State of California to cause cancer. Under the Safe Drinking Water and Toxic II Enforcement Act of 1986, Health and Safety Code §25249.6, a.k.a "Proposition 65", businesses must provide persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the State of California to cause cancer. The purpose of this requirement is to ensure that California citizens are made fully aware of the presence of toxins in consumer products, allowing them to make an informed choice/decision about whether or not to consume products with toxins known to cause cancer. Knowing that no reasonable consumer would purchase the Talcum Products knowing that the Talcum Products contain or might contain asbestos or asbestiform fibers, Defendants have persisted in obfuscating the potential harm to Plaintiffs, the Class, and the general public.

3. This is a class action alleging violations of the Consumer Legal Remedies Act ("CLRA"), Civil Code § 1750, *et seq.*, the False Advertising Law ("FAL"), Business & Professions Code § 17500, *et seq.*, and the Unfair Competition Law ("UCL"), Business & Professions Code §17200, *et seq.*, that seeks, among other things, injunctive relief, restitution, and disgorgement to

remedy to a class of all purchasers of Talcum Products resulting decades of Defendants' on-going failure to warn and otherwise negligent, reckless and/or knowing sale of Talcum Products containing asbestos and talc containing asbestiform fibers without providing the notice required by law, and worse, making false representations that the Talcum Products are safe and "free of asbestos". This action further seeks to remedy Defendants' unfair, unlawful, and fraudulent business practices, and to ensure that all California consumers are warned that they are being exposed to asbestos and talc containing asbestiform fibers before purchasing and/or using Talcum Products.

4. Indeed, as Defendants were required as a matter of law to inform Plaintiffs and the members of the Class as defined below that their Talcum Products contained, or could contain, carcinogenic substances, namely talc containing asbestiform fibers, the information withheld from Plaintiff, the Class Members (as defined below), and the general public, must be deemed a material representation.

5. While there have been a number of actions seeking individual recovery for injuries suffered because of prolonged use of the Talcum Products, and while there is an action based on Defendants' failure to comply with Prop. 65 and label the Talcum Products with the proper warning label, Plaintiffs are unaware of any class action on behalf of a class of purchasers of the Talcum Products filed in the State of California.

6. In accordance with Cal. Business & Professions Code §17203, ("Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure,") Plaintiffs bring this action on behalf of themselves, and all a class of persons similarly situated. The Class, as alleged herein, is defined as:

> Plaintiffs and all persons who purchased the Talcum Products within the state of California at any time from four years prior to the filing of this complaint and ongoing until date of judgment and/or preliminary approval of class action settlement.

Specifically excluded from the proposed Class are Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants,

partners, joint venturers, or entities controlled by Defendants, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or any of them; the judicial officer or judicial officers assigned to this action, any member of the judicial officers' immediate family. Also excluded from the Class are any persons who, as of the date the Complaint is filed, have an action pending against one or more of the Defendants resulting the sale of and any injuries resulting from, any of the Talcum Products.

PARTIES, VENUE AND JURISDICTION

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, §10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." The statutes under which this action is brought do not specify any other basis for jurisdiction. The damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limit of the Superior Court and will be established according to proof at trial.

8. At all relevant times, Plaintiffs are and were citizens of the State of California and purchased the Talcum Products in the State of California. At all relevant times, the Talcum Products were manufactured and packaged in one centralized location from the same raw talc and shipped to all fifty states. Thus, consumers that purchased and used the Talcum Products in any of the other 49 states outside of California would be exposed to the same talc containing asbestos and talc containing asbestiform fibers as a consumer that purchased Talcum Products, and vice versa.

9. Plaintiff Louisa Gutierrez is a citizen of the State of California, and a resident of Riverside County. On a regular basis for the past thirty years, Plaintiff Louisa Gutierrez purchased the Talcum Products in the State of California until she became aware of the connection between the Talcum Products and asbestos at the end of 2018 by reading, amongst other stories, the report by Reuters that the Talcum Products contained asbestos and/or talc containing asbestiform fibers. Had Plaintiff Louisa Gutierrez been aware that the Talcum products contained, or could contained asbestos and/or talc containing asbestiform fibers, Plaintiff Louisa Gutierrez would never have purchased or used any of the Talcum Products.

10. Plaintiff Debbie Luna is a citizen of the State of California, and a resident of San Diego County. Plaintiff Debbie Luna purchased the Talcum Products in the State of California for for herself and her infant child until she became aware of the connection between the Talcum Products and asbestos at the end of 2018 by reading, amongst other stories, the report by Reuters that the Talcum Products contained asbestos and/or talc containing asbestiform fibers. Had Plaintiff Debbie Luna been aware that the Talcum products contained, or could contained asbestos and/or talc containing asbestiform fibers, Plaintiff Debbie Luna would never have purchased or used any of the Talcum Products.

11. Defendant Johnson & Johnson is a New Jersey corporation that is transacting and conducting substantial business within the State of California. Johnson & Johnson mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold and/or otherwise placed in the stream of commerce Baby Powder products which contain or contained asbestos and talc containing asbestiform fibers without warnings to which Plaintiffs, the Class, and the consuming public in this State were exposed.

12. Defendant Bausch Health US, LLC, formerly known as Valeant Pharmaceuticals North America, LLC, ("Bausch") is a New Jersey limited liability company that is and was doing business in the State of New Jersey and in the State of California. Bausch, mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold and/or otherwise placed in the stream of commerce Shower to Shower products which contain or contained asbestos and talc containing asbestiform fibers without warnings to which Plaintiffs, the Class, and the consuming public in this State were exposed.

13. At all pertinent times, Defendants Johnson & Johnson and Bausch were engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Talcum Products containing Asbestos and Talc Containing Asbestiform Fibers. At all pertinent times, Johnson & Johnson and Bausch regularly transacted, solicited, and conducted business in all States of the United States, including the State of California.

14. Johnson & Johnson and Bausch have derived substantial revenue from goods and products purchased and used in the State of California. Johnson & Johnson and Bausch expected

or should have expected its acts to have consequences within the State of California, and derived substantial revenue from interstate commerce.

15. Johnson & Johnson and Bausch mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed , supplied, distributed, sold and/or otherwise placed in the stream of commerce the Talcum Products containing Asbestos and talc containing asbestiform fibers without warnings to which Plaintiffs, the Class, and the consuming public in this State were exposed.

16. Defendant Johnson & Johnson Consumer Inc. (f/k/a Johnson & Johnson Consumer Companies, Inc.) is a New Jersey corporation that is and was doing business in the State of New Jersey and in the State of California. Johnson & Johnson Consumer Inc. mined, milled , processed, imparted, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold and/or otherwise placed in the stream of commerce the Talcum Products containing asbestos and talc containing asbestiform fibers without warnings to which Plaintiff and the consuming public in this State were exposed.

17. Defendants DOES 1-100 are the fictitious names of corporations, partnerships or other business entities or organizations whose identities are not presently known and that participated in a conspiracy with other corporations, partnerships or other business entities or organizations, including the named Defendants herein, and/or mined, milled, processed, imported, converted, compounded, designed , manufactured, marketed , supplied, distributed, sold and/or otherwise placed in the stream of commerce the Talcum Products containing asbestos and talc containing asbestiform fibers without warnings to which Plaintiff and the consuming public in this State were exposed.

FACTUAL BACKGROUND

18. For decades, Defendants have manufactured the Talcum Products containing asbestos and talc containing asbestiform fibers that were and are continuing to be sold and marketed as safe for daily use by consumers to give off a pleasant smell, mask odors, prevent chaffing and/or absorb moisture. Defendants' Talcum Products were advertised as healthful for babies, children and adults and to be applied regularly to maintain freshness, keep skin soft, mask odors with a floral fragrance, prevent chaffing and/or absorb moisture.

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

20. Defendants and CTFA, for decades, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos and talc containing asbestiform fibers in the Talcum Products and that demonstrated the existence of health hazards to those exposed to asbestos and talc containing asbestiform fibers.

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

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

23. Defendants and their talc suppliers, which have been and still are the largest talc producers and/or talc-containing product manufactures in the world, admit that they have long employed and/or consulted with doctors, scientists, geologists, mineralogists and .toxicologists,

and that they have long maintained extensive medical and scientific libraries and archives containing materials relating to the health hazards of talc and the presence of carcinogens, including asbestos and asbestiform talc, in talc and talc deposits.

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

25. Defendants and their affiliates, employees, agents and/or suppliers were members of the National Safety Council. In March of 1933, Waldemar C. Dreesen of the United States Public Health Service reported to the National Safety Council the results of a study conducted among tremolite, talc and slate workers. The study indicated that the talc was a hydrous calcium magnesium silicate, being 45% talc and 45% tremolite, and the National Safety Council stated "The results of the study seemed to indicate a relationship between the amount of dust inhaled and the effect of this dust on the lungs of the workers." As early as 1934, the National Safety Council was publishing that "a cause of severe pulmonary injury is asbestos, a silicate of magnesium." In the September 1935 issue of National Safety News, an article entitled "No Halfway Measures in Dust Control" by Arthur S. Johnson reported lowered lung capacity resulting from "asbestosis" and "similar conditions" that developed "from exposure to excess of many mineral dusts .relatively low in free silica content." The article further noted that claims for disabilities from workers who alleged exposure to "clay, talc, emery, and carborundum dusts" had "claims prosecuted successfully." The article concluded that "[i]n the absence of adequate diagnoses, occupational histories and a more satisfactory method of adjudicating claims than prosecution at common law, we must conclude that it is necessary to find a practical method for controlling all mineral dusts."

26. In 1936, the National Safety Council published an article entitled "Lesser Known Facts About Occupational Diseases" that found "exposure to asbestos fibers, present in the weaving and grinding of dry asbestos material, offers another type of dust which may cause fatalities among workers." In 1958, The New York Department of Labor published Industrial

code Rule No. 12 establishing regulations applying to all employees and employers relating to dangerous air contaminants and listing both asbestos and talc as such substances.

27. In 1968, a study presented at the American Industrial Hygiene Conference & Exposition and published in the American Industrial Hygiene Association Journal concluded that "[a]ll of the 22 talcum products analyzed have a...fiber content...averaging 19%. The fibrous material was predominantly talc but contained minor amounts of tremolite, anthophyllite, and chrysotile as these are often present in fibrous talc mineral deposits ...Unknown significant amounts of such materials in products that may be used without precautions may create an unsuspected problem ." L. J. Cralley, et al., Fibrous and Mineral Content of Cosmetic Talcum Products, 29 AM. IND. HYG. Assoc. J. 350-354 (1968). Defendants were aware of these findings.

28. In 1968, a scientific study of store-bought, commercially available talcum powders conducted by the Occupational Health Program, National Center for Urban Industrial Health, was published and presented by the American Industrial Hygiene Association. Defendants were aware of this study. The study revealed that, contrary to popular belief, talcum powders were not entirely pure, but rather contained various fibrous minerals, including tremolite, anthophyllite and chrysotile. The study explained that such fibrous content was not unexpected because these types of fibers are often present in fibrous talc mineral deposits. Available documents indicate that during the same year and in the years following, at least one company began testing store-bought talcum powders for asbestos content. Despite tests showing some talcum powders contained asbestos, there is no evidence that positive results or the brand names of contaminated products were communicated to any governmental agency, the media or the public.

29. According to a December 2018 report by Reuters, by at least 1967 and 1969, Defendants investigated the existence of tremolite in its Talcum Products, finding that asbestiform fibers were commonly found in its Talcum Products. From the report:

> In 1964, J&J's Windsor Minerals Inc subsidiary bought a cluster of talc mines in Vermont, with names like Argonaut, Rainbow, Frostbite and Black Bear. By 1966, it was blasting and bulldozing white rock out of the Green Mountain state. J&J used the milled powder in its cosmetic powders and sold a less-refined grade to roofing, flooring and tire companies for use in manufacturing.
>
> Ten years after tremolite turned up in the Italian talc, it showed up in Vermont talc, too. In 1967, J&J found traces of tremolite and another mineral that can occur as

> asbestos, according to a table attached to a Nov. 1, 1967, memo[1] by William Ashton, the executive in charge of J&J's talc supply for decades.
>
> J&J continued to search for sources of clean talc. But in an April 9, 1969, memo[2] to a company doctor, Ashton said it was "normal" to find tremolite in many U.S. talc deposits. He suggested J&J rethink its approach. "Historically, in our Company, Tremolite has been bad," Ashton wrote. "How bad is Tremolite medically, and how much of it can safely be in a talc base we might develop?"
>
> Since pulmonary disease, including cancer, appeared to be on the rise, "it would seem to be prudent to limit any possible content of Tremolite … to an absolute minimum," came the reply from another physician executive days later.
>
> The doctor told Ashton that J&J was receiving safety questions from pediatricians. Even Robert Wood Johnson II, the founder's son and then-retired CEO, had expressed "concern over the possibility of the adverse effects on the lungs of babies or mothers," he wrote.
>
> "We have replied," the doctor wrote, that "we would not regard the usage of our powders as presenting any hazard." Such assurances would be impossible, he added, "if we do include Tremolite in more than unavoidable trace amounts."
>
> The memo is the earliest J&J document reviewed by Reuters that discusses tremolite as more than a scratchy nuisance. The doctor urged Ashton to consult with company lawyers because "it is not inconceivable that we could become involved in litigation."

Lisa Girion, "Johnson & Johnson knew for decades that asbestos lurked in its Baby Powder," Reuters (December 14, 2018), https://www.reuters.com/investigates/special-report/johnsonandjohnson-cancer/.

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

[1] Attached hereto at Exhibit 1.

[2] Attached hereto at Exhibit 2.

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

32. In 1971, the New York City of Environmental Protection Administration Air Resources Board conducted a study of two "leading" brands of talcum powder using transmission electron microscopy ("TEM") and X-ray diffraction ("XRD") analysis, and found them to contain 5-25% tremolite and anthophyllite asbestos.

33. Soon thereafter, a symposium was held in August of 1974 at the FDA to discuss the issue of asbestos content of talcum powders with the talc industry, government officials, and doctors and scientists from Mt. Sinai Hospital, which was then the epicenter of the medical and scientific study of asbestos. Among other statements, participants and attendees heard: that asbestos should be banned in talcum powders; models should be set up to measure the levels exposure to asbestos experienced by persons using talcum powder containing asbestos at the lowest level of microscopic detection; and that finding asbestos in talc and talcum powder is extremely difficult, and the only truly reliable way to determine the asbestos content of talc and talcum powder is through TEM and electron diffraction. Defendants and CTFA, aware of the foregoing and citing costs as well as their fear ·of the public learning talc was contaminated with asbestos, ignored and completely rejected any measures to meaningfully test talc products to make sure they were free from asbestos, asbestiform talc and other carcinogens.

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

35. Dr. Lewin of New York University disclosed twice in 1972 that asbestos had been found in cosmetic talc. In a report to the FDA on August 3, 1972, Dr. Lewin reported that of 195 talc products, 20 had tremolite, 7 had chrysotile, 9 had both tremolite and chrysotile, and 7 had substantial percentages of one of both. XRD had been used as the first step in analysis and the presence of asbestos and was verified by the use of optical microscopy to disclose the presence of significant numbers of fibers. Shortly thereafter, Dr. Lewin reported to Whittaker, Clark & Daniels Inc. on September 30, 1972, that Italian talc 1615 contained about 2% tremolite and 0.5% chrysotile as determined with XRD and detailed microscopic exam. In a July 31, 1973, review of Dr. Lewin's testing of 195 talc samples, the FDA found "good semi-quantitative agreement" for tremolite on selected samples re-analyzed using optical microscope analysis by FDA and XRD by Pfizer. Agreement was not as good for chrysotile, but the review did warn that optical microscopy could "completely miss the presence of chrysotile if the fibers are submicroscopic, which may well be the case in finely-milled talc." In 1972, ES Laboratories reported that "1615" talc contained I % chrysotile and that "4615" talc contained 3% chrysotile and 3% anthophyllite. An August 23, 1973, report by Johns-Manville on TEM analysis of commercial talcs reported that nine of fourteen samples contained chrysotile. Only five samples did not have detectable levels of chrysotile. Pages from the laboratory notebook of Colgate-Palmolive Co. scientist Paul Briscese from March 7, 1976, show that Old Regal (North Carolina) talc tested positive for tremolite, New Montana talc tested positive for anthophyllite and tremolite, and Italian talc tested positive for tremolite.

36. A December 10, 1973, report of the CTFA's Talc Subcommittee disclosed that optical microscope analyses of talcs from the Italian, Montana I & 11, Alabama, Vermont, and North Carolina mines had failed the proposed FDA's method because of elevated chrysotile concentrations. This December I0, 1973, CTFA report also showed that several laboratories had reported chrysotile in many of the talc samples sent by the CTFA for evaluation of analytical methods as well as the several identifications of asbestos in talc mentioned.

37. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. CTFA, an exclusive lobbying and advocacy group

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

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

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

40. Regarding the FDA's proposed 1972 rule-making, the FDA Director of Product Development and Cosmetics, Dr. Schaffner, invited representatives of the talc industry to a meeting in August of 1972 to discuss the results of Dr. Lewin's study and inform them that the

FDA was preparing to release a "Proposed Statement of Policy On Asbestos in Cosmetics Containing Talc." Schaffner explained that he was duty-bound and must publicize the brand names of the talcum powders that contained asbestos. CTFA's president, Dr. Merritt, strongly objected to the FDA alerting the general public and publishing the brand names of the talcum powders, as it would cause the manufactures "economic hardship." Merritt also threatened to sue the FDA to prevent the disclosure of the brand names. As a result, the FDA, Defendants and CTFA never revealed or publicized the brand names of the talcum powders that contained asbestos, much to the detriment of the plaintiffs and the general public.

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

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

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

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

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

46. Defendants and CTFA responded to these developments by falsely claiming that the industry was doing "everything" it could to solve the problem; issuing press releases falsely

claiming that chrysotile had never been found in talcum powders; and intentionally suppressing data that showed tremolite was commonly found in talc and talcum powder.

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

48. Defendants, their talc suppliers, and third parties funded by Defendants collectively met with and corresponded with CTFA, as well as collectively met with the FDA and other government agencies, to individually and collectively advocate for the use of "voluntary" XRD testing of miniscule portions of the tons of talc to be used in consumer products. Defendants' "voluntary" method-that was developed collectively by Defendants and CTFA and advocated to the FDA in lieu of regulations requiring asbestos labeling or warnings on talcum powder products-was inadequate because levels of asbestos contamination in talc commonly fell below the detection limit of the testing methods. Defendants and CTFA also knew that asbestos contamination was not uniformly distributed, such that the miniscule amounts tested would not reveal the true level of contamination in talc products, such as The Talcum Products to which Plaintiff and the consuming public in this State were exposed.

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

50. CTFA "Method J4-I," published on October 7, 1976, states that TEM-SAED "offers greater sensitivity, but is not presented since it is unsuitable for normal quality control applications." The published method, rather, relies on XRD with "the level of detection of amphibole by this method [being] 0.5% and above." CTFA met with and corresponded with Defendants and third parties, to individually and collectively advocate to the FDA for the use of

inadequate XRD testing on miniscule portions of the tons of talc obtained from the mining sources to be used in the consumer products, followed by fewer "periodic" tests by TEM. This voluntary method was developed by CTFA and Defendants, and was advocated to the FDA by CTFA and Defendants in lieu of regulations requiring labeling and warnings on talcum powder products, even though CTFA and Defendants knew that the J4-l method would not reveal the true level of asbestos in the talc that reached consumers. In fact, the first "round robin" tests, which analyzed a "CTFA Tremolite-Spiked Talc," resulted in 6 of 7 participating laboratories failing to detect the tremolite. In other words, 84% of the industry's laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA's own J4-1 method. There is no evidence that CTFA or Defendants ever shared this remarkable failure with the FDA or the public.

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

greater concentrations than 0.5%, a concentration that could allow more than a billion asbestos fibers per gram of talc to be passed off as "asbestos-free ."

52. Defendants and CTFA made and published such representations, claiming that their testing method was adequate, that they were ensuring that talcum powder products were safe, and that the talc reaching consumers in the Talcum Products was "safe," despite having substantial knowledge and evidence to the contrary. Defendants intentionally and knowingly did so to avoid FDA, CalEPA, OEHHA and other governmental agency regulations that, like California's Proposition 65, would have required them to place warnings· regarding the asbestos and talc containing asbestiform fibers content of their talcum products, and thereby inform the public in this State, including Plaintiffs, that their Talcum Products contain asbestos and talc containing asbestiform fibers.

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

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

55. Between 1970 and the 1990s, tests conducted by and on behalf of Defendants and the talc industry continued to show that talc and talcum powder products contained asbestos.

None of these positive tests have ever been produced or made known to any regulatory agency, and knowledge of 'their existence is only because of civil litigation. Defendants intentionally and knowingly did so to avoid FDA and California's Proposition 65 regulations that may have required them to place warnings regarding the asbestos content of their products, including the Talcum Products, and thereby inform the public, including Plaintiffs, that the Talcum Products contained asbestos and talc containing asbestiform fibers.

56. Defendants and CTFA 's failure to disclose these positive results and the inadequacies of their testing protocols continued through the 1980s, 1990s and 2000s, even when various government agencies, including California's Environmental Protection Agency ("CalEPA") and Office of Environmental Health Hazard Assessment ("OEHHA") and others, raised concerns about the safety of talc, including the issue of asbestos content.

57. To this day, many talc-containing products presently on the market, including the talcum products contain asbestos and talc containing asbestiform fibers. Instead of publicizing this fact, Defendants and CTFA continue to deny all the above to protect their pecuniary interests, to the severe detriment of the public, including Plaintiffs and the members of the Class.

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

59. Defendants (and other entities in the talc industry and cosmetic industries, including the CTFA), individually and collectively, failed to report to the FDA, CalEPA, OEHHA and other regulatory agencies, tests performed both internally and by outside laboratories confirming the presence of asbestos and talc containing asbestiform fibers in both their

finished products, including the Talcum Products, as well as talc shipments from suppliers Defendants obtained talc from and other sources that were used to produce finished products.

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

61. After 1976, Defendants and CTFA continued to obtain and/or receive results of testing performed internally and externally indicating the presence of Asbestos and talc containing asbestiform fibers in the Talcum Products.

62. Defendants failed to place any warning on their Talcum Products despite CalEPA and OEHHA regulations otherwise, or ever disclose the fact that these products contain asbestos or talc containing asbestiform fibers, at any point, up to and including the present, despite the clear hazard and direct information that their Talcum Products did and continue to contain asbestos or talc containing asbestiform fibers.

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

64. Defendants and CTFA, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder products, including the Talcum Products, to which Plaintiffs and the consuming public in this State have been exposed .

65. Defendants and CTFA, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data and embarked upon a plan of

deception intended to deprive the public at large in this State and elsewhere, including Plaintiffs, of alarming medical and scientific findings, many of which remained in their exclusive possession and under their exclusive control.

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

a. to withhold from users of their products including Plaintiffs, the Class, and the general consuming public of this State-and from persons who they knew and should have known would be exposed thereto--information regarding the health risks of inhaling and/or ingesting and/or perineal (genital) application of the Talcum Products;

b. to eliminate, suppress or prevent investigation into the health hazards of exposure to asbestos and other carcinogens in talc and talcum powder products;

c. to ensure that asbestos-containing talc and talcum powder products became widely used in commerce, irrespective of the potential and actual risk of harm to the users and consumers from the asbestos and other carcinogens therein; and

d. to falsely represent that talc and talcum powder products, including those of Defendants, were safe and healthful for use by consumers such as Plaintiffs, the Class Members, and the general consuming public of this State.

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

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

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

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

70. CTFA and Defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, marketing, distribution and use of asbestos-containing talcum powder products, and controlled the level of knowledge and information available to the public in this State regarding the hazards of exposure to asbestos and talc with asbestiform fibers and other carcinogens from talc and talc-containing products, including the Talcum Products.

71. CTFA and Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including Plaintiffs, the Class, and the general consuming public in this State, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion and/or perineal (genital) application of asbestos and talc containing asbestiform fibers from their Talcum Products.

72. CTFA and Defendants, through agreement and consciously parallel behavior, knowingly and intentionally released , published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder, and specifically talc and talcum powder used in the production of the Talcum Products to which Plaintiffs, the Class, and the general consuming public in this State were exposed.

73. CTFA and Defendants, through agreement and consciously parallel behavior, suppressed, altered, changed, destroyed and/or revised reports, data, tests, studies and other documents regarding the potential presence of asbestos and other carcinogens in talc and talc-containing products, including Defendants' the Talcum Products to which Plaintiffs, the Class, and the consuming public in this State were exposed.

74. As recently as 2016, Defendants made material misrepresentations to the FDA regarding asbestos and talc containing asbestiform fibers in their talcum powder products.

75. However, as a matter of law, Defendants were required to inform the public that their products contained, or possibly contained carcinogens such as asbestos and talc containing asbestiform fibers. Health & Safety Code §25249.6 provides:

> No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. ..

76. "Knowingly" refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. "No knowledge that the discharge, release or exposure is unlawful is required (27 Cal. Code Regs, title 27, §25102(n)).

77. Proposition 65 also provides that any person "violating or threatening to violate" the statute may be enjoined in a court of competent jurisdiction. (Health & Saf. Code §25249.7) The phrase "threatening to violate" is defined to mean creating "a condition in which there is substantial likelihood that a violation will occur." (Health & Saf. Code §25249.1 1(e)). Violaters are liable for civil penalties of up to $2,500 per day for each violation of the Act. (Health & Saf. Code §25249.7).

78. Asbestos is listed by the State of California as a chemical known to cause cancer. Asbestos is therefore subject to the "clear and reasonable" warning requirements of

79. Due to the high toxicity of asbestos in causing cancer, the No Significant Risk Level ("NSRL") or ("Safe Harbor") for inhalation of asbestos is 100 fibers/day (inhalation) (27 Cal. Code Regs, Title 27, CR 25709(b)). Defendants manufacture, distribute, market and/or sell in California the Talcum Products containing asbestos in levels exceeding the NSRL for inhalation through normal and intended use of the products.

80. There is no Safe Harbor established for perineal (genital) exposure to asbestos.

81. Talc Containing Asbestiform Fibers is also listed by the State of California as a chemical known to cause cancer. Talc Containing Asbestiform Fibers is therefore subject to the "clear and reasonable" warning requirements of Proposition 65 for cancer.

82. There are no Safe Harbors established for exposure to Talc Containing Asbestiform Fibers.

83. Since there is no established Safe Harbor for perineal (genital) exposure to Asbestos, or for inhalation or perineal (genital) exposure to Talc Containing Asbestiform Fibers, the named Defendants must demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. See, 27 Cal. Code of Regs, Title 27, §25801 et. seq. Clearly, at 1,000 times the asbestos and talc containing asbestiform fibers levels in question, the named Defendants are unable to show "no observable effect."

84. At all times relevant to this action, Defendants have knowingly exposed California consumers to asbestos and talc containing asbestiform fibers in the offending the Talcum Products talcum powder products without clear and reasonable warning to such individuals.

85. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers, disclosing the cancer-causing effects, on the Talcum Products.

86. At all times relevant to this action, Defendants' representatives have failed to warn California consumers that their Talcum Products contain cancer-causing asbestos and talc containing asbestiform fibers.

87. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers on their marketing materials.

88. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers on store shelves.

89. At all times relevant to this action, Defendants have failed to place a clear and reasonable Proposition 65 warning for asbestos and talc containing asbestiform fibers on their 16 websites. To the contrary, Defendants continue to represent on their websites that the Talcum Products are "asbestos free."

90. Further, by failing to place a clear and reasonable Proposition 65 label on for their websites, products, or advertising, Defendants both actively and passively asserted to Plaintiffs, the Class, and the general consuming public, that the Talcum Products were safe and legal to use for all purposes, when, as alleged above, they were not. Plaintiffs and the Class had a reasonable presumption that the sale of the Talcum Products, all of which were placed on retail store shelves, and which were openly available for sale without any warning labels at all, was safe, and in compliance with California law. *Steroid Hormone Product Cases* (2010) 181 Cal. App. 4th 145, 156-57.

CLASS ACTION ALLEGATIONS

91. Plaintiffs bring this action on behalf of themselves, the general public, and all others similarly situated. Plaintiffs seek to represent the following class:

> Plaintiffs and all persons who purchased the Talcum Products within the state of California at any time from four years prior to the filing of this complaint and ongoing until date of judgment and/or preliminary approval of class action settlement.

All Class members are hereinafter referred to as the "Class." Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the proposed Class are Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by Defendants, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or any of them; the judicial officer or judicial officers assigned to this action, any member of the judicial officers' immediate family. Also excluded from the Class are any persons who, as of the date the Complaint is filed, have an action pending against one or more of the Defendants resulting from the sale of, or injuries related to the use of, any of the Talcum Products.

92. This action has been brought and may be properly maintained as a class action, pursuant to the provisions of the California Code of Civil Procedure Section 382 and California Civil Code Section 1781.

93. Numerosity – Code Civ. Proc. § 382; Civ. Code § 1781(b)(1): Members of the Class are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believes, and on that basis allege, that the proposed class contains thousands of members. The precise number of Class members is unknown to Plaintiffs. Class members are likely to be known by Defendants, or Defendants' customers, however, and thus, may be notified of the pendency of this action by mail, supplemented (if deemed necessary and appropriate by the Court) by published notice.

94. Existence and Predominance of Commons Questions of Fact and Law – Code of Civ. Proc. § 382; Civ. Code § 1781(b)(2): Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class members. These common legal and factual questions include:

i. Whether the Talcum Products contain asbestos or asbestiform fibers;

ii. Whether Defendants knew or should have known that the Talcum Products contained asbestos or asbestiform fibers;

iii. Whether Defendants failure to label the Talcum Products as possibly containing known carcinogens violates Health & Safety Code § 259249.5;

iv. Whether Defendants violated Health & Safety Code § 111792 by failing to notify the California Division of Environmental and Occupational Disease Control that the Talcum Products contain asbestos and/or asbestiform fibers;

v. Whether Defendants could lawfully sell the Talcum Products in the State of California without complying with Health & Safety Code §§ 11792 and 259249.2;

vi. Whether the sale of the Talcum Products in California at retail establishments constituted an affirmative statement by Defendants to Plaintiffs and the Class Members that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2;

vii. Whether the affirmative statement by Defendants through the sale the Talcum Products in California at retail establishments that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2 was a misrepresentation as to the Talcum Product's source, sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2);

viii. Whether the affirmative statement by Defendants through the sale the Talcum Products in California at retail establishments that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792 and 259249.2 constituted a representation, whether express or implied, that the Talcum Products have sponsorship, approval, characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code § 1770(a)(5);

ix. Whether the affirmative statement by Defendants through the sale the Talcum Products in California at retail establishments that the Talcum Products were safe to use, and that Defendants had complied with all laws, including Health & Safety Code §§ 11792

and 259249.2 constituted a representation that the Talcum Products are of a particular standard, quality, or grade, or of a particular style or model, when they are of another in violation of Civil Code § 1770(a)(7);

x. Whether the affirmative statements by Defendants that the Talcum Products were "asbestos-free" constituted a misrepresentation as to the Talcum Products source, sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2);

xi. Whether the affirmative statements by Defendants that the Talcum Products were "asbestos-free" constituted a representation, whether express or implied, that the Talcum Products have sponsorship, approval, characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code § 1770(a)(5);

xii. Whether the affirmative statements by Defendants that the Talcum Products were "asbestos-free" constituted a representation that the Talcum Products are of a particular standard, quality, or grade, or of a particular style or model, when they are of another in violation of Civil Code § 1770(a)(7);

xiv. Whether the affirmative statements by Defendants that the Talcum Products are and were "asbestos-free" constitutes false advertising under Business & Professions Code § 17500, et seq.;

xv. Whether the sale of the Talcum Products constituted an unlawful business practice in violation of Business & Professions Code § 17200, et seq.;

xvi. Whether the sale of the Talcum Products constituted a deceptive business practice in violation of Business & Professions Code § 17200, et seq.;

xvii. Whether the sale of the Talcum Products constituted an unfair business practice in violation of Business & Professions Code § 17200, et seq.;

xviii. Whether Defendants have been unjustly enriched by their sale of the Talcum Products to Plaintiffs and the members of the Class; and,

xix. The appropriate amount of restitutionary disgorgement owed to Plaintiffs and the Class.

95. Typicality – Code Civ. Proc. § 382; Civ. Code § 1781(b)(3): Plaintiffs' claims are typical of the claims of the Class since Plaintiffs purchased the Talcum Products from Defendants as did members of the Class. Furthermore, Plaintiffs and all members of the Class sustained injury in fact by losing money as a result of Defendants' wrongful conduct.

96. Adequacy – Code Civ. Proc. § 382; Civ. Code § 1781(b)(4): Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and she intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

97. Superiority – Code Civ. Proc. § 382: The class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and members of the Class. Although the monetary injury suffered by each individual Class member may total several hundred dollars, injury of such magnitude is nonetheless relatively small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Violation of the Consumers Legal Remedies Act
[Civil Code § 1750 *et seq.*]
(On behalf of Plaintiffs and the Class Against All Defendants)

98. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

99. The Talcum Products are "goods" within the meaning of the Consumer Legal

Remedies Act, Civil Code sections 1761(a) and 1770 (the "CLRA").

100. Each Defendant is a "person" within the meaning of the CLRA, Civil Code sections 1761(c) and 1770.

100. Purchasers of the Talcum Products, including Plaintiffs Gutierrez and Luna, and the Class, are "consumers" within the meaning of the CLRA, Civil Code sections 1761(d) and 1770.

102. Plaintiffs and each and every Class Member's purchases of the Talcum Products constitute "transactions" within the meaning of the CLRA, Civil Code sections 1761(e) and 1770.

103. Defendants' unfair or deceptive acts or practices as described herein, were undertaken by Defendants in transactions intended to result or which resulted in the sale of goods to consumers, and were intended to induce, and did in fact induce, Plaintiffs and the Class to purchase for personal use such products, which they would not have otherwise purchased. Indeed, as one official with the U.S. Food and Drug Administration was quoted in 1971 as saying with regard to the possible presence of asbestos and/or talc containing asbestiform fibers in baby powder, "No mother was going to powder her baby with 1% of a known carcinogen irregardless [sic] of the large safety factor."[3]

104. Defendants' practices, acts and course of conduct with respect to their distribution and sale of the Talcum Products violate the CLRA in that Defendants' representation that its talcum powder products are safe and free from asbestos or asbestiform fibers constitutes: (1) a misrepresentation as to the Talcum Products source, sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2); (2) a representation, whether express or implied, that the Talcum Products have sponsorship, approval, characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code § 1770(a)(5); and (3) a representation that the Talcum Products are of a particular standard, quality, or grade, or of a particular style or model, when they are of another in violation of Civil Code § 1770(a)(7). Here, despite decades of evidence that the Talcum Products contain, or could contain asbestos or asbestiform fibers, Defendants continue to advertise that their products are safe.

105. Defendants' practices, acts and course of conduct in connection with its sale of the

[3] See Exhibit 3.

Talcum Products are likely to mislead a reasonable consumer acting reasonably under the circumstances to his or her detriment. Further, the misrepresentation of the safety of the Talcum Products are clearly material to the determination to purchase the Talcum Products, as the potential harm to the consumer or the consumer's family is significantly greater than the value conferred by the purchase of the Talcum Products ("No mother was going to powder her baby with 1% of a known carcinogen irregardless [sic] of the large safety factor."), there are equivalent products that confer a similar benefit to the consumer that the Talcum Products provided, and, as a result, no reasonable consumer, including Plaintiffs and the Class Members, would purchase the Talcum Products had they known that the Talcum Products were not, in fact, safe as Defendants, advertised, but that these products contained, or possibly contained, asbestos or asbestiform fibers, which are known carcinogens.

106. As a direct and proximate result of Defendants' violations of law, Plaintiffs and the Class have suffered damages by not receiving what was promised to them in exchange for the purchase of the Talcum Products, which Defendants contended were safe, and did not contain asbestos or asbestiform fibers.

107. By filing this Complaint, Plaintiffs seek an order enjoining Defendants from the continued sale of Talcum Products; an Order enjoining Defendants from collecting money from the Class from the sale of such products; and an Order requiring Defendants to notify the class of its violations of the CLRA and the remedy it will provide to them. Plaintiff and the Class are entitled to equitable relief in the form of restitutionary disgorgement of all earnings, profits, compensation and benefits obtained by Defendants as a result of its violations of the CLRA, along with other appropriate relief including reasonable attorneys' fees and expenses.

SECOND CAUSE OF ACTION
Violation of the False Advertising Law
[Business And Professions Code Section 17500, Et Seq.]
(On Behalf of Plaintiffs and the Class Against all Defendants)

108. Plaintiffs hereby incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

109. Plaintiffs bring this cause of action pursuant to California Business & Professions Code § 17500. California Business & Profession s Code § 17500 provides that it is unlawful for any person, firm, corporation or association to dispose of property or perform services, or to induce the public to enter into any obligation relating thereto, through the use of untrue or misleading statements.

110. Plaintiffs and the Class Members purchased the Talcum Products and have suffered injury in fact and have lost money or property as a result of the unlawful, unfair, or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.

111. At all times herein alleged, Defendants have committed acts of disseminating untrue and misleading statements as defined by California Business & Professions Code § 17500 by engaging in the following acts and practices with intent to induce members of the public to purchase and use the Talcum Products:(a) Representing that the Talcum Products are safe for their intended and foreseeable use and "free of asbestos," knowing that said representations were false, and concealing that the Talcum Products, or at least some of them, contain asbestos and talc containing asbestiform fibers and have a serious propensity to cause injuries to users; (b) Issuing promotional literature and commercials deceiving potential users of the Talcum Products by relaying positive information and concealing material relevant information regarding the safety and efficacy of the Talcum Products; and other unfair, unlawful and fraudulent conduct.

112. The foregoing practices constitute false and misleading advertising within the meaning of California Business & Professions Code § 17500.

113. The acts of untrue and misleading statements by Defendants described here in above present a continuing threat to members of the public in that the acts alleged herein are continuous and ongoing, and the public will continue to suffer the harm alleged herein .

114. As a result of their conduct described above, Defendants have been and will be unjustly enriched. Specifically, Defendants have been unjustly enriched by receipt of hundreds of millions of dollars in ill-gotten gains from Plaintiffs and the Class Members from the sale of the Talcum Products in California, sold in large part as a result of the acts and omissions described herein.

115. Pursuant to California Business & Professions Code § 17535, Plaintiffs seeks an order of this Court compelling the Defendants to provide restitution and injunctive relief calling for Defendants, and each of them, to cease unfair business practices in the future.

116. Plaintiffs seek restitutionary disgorgment of the monies collected from Plaintiffs and the Class, by Defendants, and each of them, and other injunctive relief to cease such false and misleading advertising in the future.

117. Defendants' actions described above were performed willfully, intentionally, and with reckless disregard of the life and safety of the Plaintiffs, the Class, and the general public.

THIRD CAUSE OF ACTION
Violation of the Unfair Competition Law
[Business and Professions Code Section 17200, et seq.]
(on Behalf of Plaintiffs and the Class Against all Defendants)

118. Plaintiffs hereby incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows.

119. California Business & Professions Code § 17200 provides that unfair competition shall mean and include "all unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising."

120. Plaintiffs and the Class purchased the Talcum Products and have suffered injury in fact and have lost money or property as a result of the unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.

121. The acts and practices described above violate California Health and Safety Code §25249.5, et seq. (Proposition 65) and therefore satisfy and violate the "unlawful" prong of § 17200.

122. The acts and practices described above also violate the California Safe Cosmetic Act of 2005 (Cal. Health & Safety Code §§ 111791 et seq.) for failing to notify the California Safe Cosmetics Program that the Talcum Products contain asbestos and talc containing asbestiform fibers -- ingredients known to cause cancer. The California Safe Cosmetics Act is a California State law that was enacted in 2005 and is implemented by the California Safe Cosmetics Program in the California Department of Public Health. The Act requires companies to report cosmetics products sold within the state that contain ingredients known or suspected to cause cancer, birth

defects, or other reproductive harm. The violations of Cal. Health & Safety Code §§ 11191 et seq. also satisfy and violate the "unlawful" prong of § 17200.

123. The acts and practices described above also violate the Consumer Legal Remedies Act, and the False Advertising Law, as described above, in that Defendants have represented to Plaintiffs, the Class and the general public, that their products are safe and "asbestos-free." Thus, the statements made by Defendants that the Talcum Products were safe and "asbestos-free" are constitute unlawful acts within the meaning of California Business & Professions Code § 17200.

124. Further, by selling the Talcum Products openly in retail establishments throughout the State of California, Defendants violated and violate the Consumer Legal Remedies Act, by passively intimating that the Talcum Products complied with all of California's laws, and were safe to use, when, in fact, they were not. This conduct, prohibited by the CLRA, also constitutes unlawful acts within the meaning of California Business & Professions Code § 17200.

125. The acts and practices described above were and are also likely to mislead the general public and therefore constitute unfair business practices within the meaning of California Business & Professions Code § 17200, including unfair, unlawful, and/or fraudulent practices.

126. The acts of untrue and misleading advertising set forth in presiding paragraphs are incorporated by reference and are, by definition, violations of California Business & Professions Code § 17200. This conduct is set forth fully herein, and includes, but is not limited to: (a) Representing that the Talcum Products are safe for their intended and foreseeable use and "free of asbestos," knowing that said representations were false, and concealing that the Talcum Products contain Asbestos and Talc Containing Asbestiform Fibers and had a serious propensity to cause injuries to users; (b) Issuing promotional literature and commercials deceiving potential users of the Talcum Products by relaying positive information and concealing material relevant information regarding the safety and efficacy of the Talcum Products; (c) Selling the Talcum Products freely and openly without any indication of the associated health risks; and other unfair, unlawful and fraudulent conduct.

127. These practices constitute unlawful, unfair and/or fraudulent business acts or practices, within the meaning of California Business & Professions Code § 17200. The fraudulent

conduct includes representing that the Talcum Products were safe for their intended use and failing to warn Plaintiff and the Class Members of the risks associated with the Talcum Products.

128. The unlawful, unfair and fraudulent business practices of Defendants described above present a continuing threat to members of the public in that Defendants continue to engage in the conduct described therein.

129. As a result of their conduct described above, Defendants have been and will be unjustly enriched. Specifically, Defendants have been unjustly enriched by receipt of millions of dollars in ill-gotten gains from the sale of the Talcum Products in California to Plaintiffs and the Class, sold in large part as a result of the acts and omissions described herein.

130. Plaintiffs, on behalf of themselves, and on behalf of the Class, pursuant to California Business & Professions Code § 17203, seeks an order of this court compelling the Defendants to provide restitutionary disgorgement and injunctive relief calling for Defendants, and each of them, to cease unfair business practices in the future.

DEMAND FOR JURY TRIAL

131. Plaintiffs hereby demand trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class and the general public, pray for judgment against Defendants as follows:

1. For an order certifying that this action may be maintained as a class action against Defendants, appointing Plaintiffs and their counsel to represent the Class, as alleged herein, and directing that reasonable notice of this action be given by Defendants to the members of the Class;
2. For an order awarding reimbursement, restitution and disgorgement from Defendants of the benefits unjustly conferred by Plaintiffs and the Class;
3. For an order awarding injunctive and other equitable relief;
4. For an order awarding declaratory relief;
5. For an order awarding pre- and post-judgment interest to the Class, at the highest rate

allowed by law;

6. For an order awarding costs, including experts' fees, and attorneys' fees and expenses, and the costs of prosecuting this action; and

7. For an order awarding granting such other and further relief as is just and proper.

Dated: May 29, 2019

POTTER HANDY LLP

By: _____

Mark Potter, Esq.
James M. Treglio, Esq.

Attorneys for Plaintiffs and the Class

EXHIBIT 1

Johnson & Johnson

New Brunswick, N. J.

Nov. 1, 1967

Subject:

Metropolitan Talc
Lot G 716
Preliminary Evaluation

The talc used for this evaluation was produced in the Plainfield plant and was delivered to us by Mr. Don Perry about Oct. 1, 1967.

Perfume Retention and Aroma

The Metro talc shows greater retention for perfume than does our Vermont talc and the indications are that the rate of escape is very close to that developed with Italian talc. We ran a gravimetric rate loss test on talcs containing 1% P-5 in open dishes and find the rate loss very close to Italian talc at both 70 and 100F for the Metro and significantly faster for the Vermont. (Graphs 1 & 2)

The Metro talc does not show the chalky note under circumstances which create that aroma in Vermont talcs. Since the original problem in perfumery developed at a low dose of P-5 we elected to set up a storage test with the three talcs (Italian, Vermont, Metro) and P-5 at 0.1% incubated at 120F for three weeks. The Vermont article develops a chalky tone whereas the other two did not.

The above tests lead us to believe that the commercial dose of either P or P-5 would provide a satisfactory aroma life with Metro type talc. Our tests were limited in that we did not include the neutralizer at this point.

Chemical and Physical Properties

Except for fineness the Metro talc fits the physical characteristics which we find adequate. (Table I) The shipment on hand is slightly on the coarse side; a slightly increased grind should bring it into range.

Mineralogically the talc is predominantly platy although a large percentage of the plates are broken and lath shaped. The lath shape of some of the particles appears to have resulted from the grinding method since the cleavage of the crystals from a sample of the

Plaintiff's Exhibit J&J 124

J&J-0076514

rock is normal. Optically, by count, the product is at least 93% talc plus 3-5% Dolomite and 1% or less of Tremolite. The associate minerals are liberated from the talc crystals.

The talc has high slip, good flow character and is remarkably white. It is probably the whitest commercially available talc which we have observed at the 200 mesh grind level.

The carbonate Dolomite is actually calcium magnesium carbonate. This assays about 5% using the strong acid method and close to 4% using the titration method. This carbonate level requires up to 1% of sesquicitrate to maintain our historic pH limits in the finished product. A 1% neutralizer content is prohibitively high. Sesquicitrate in the 0.2% area brings the initial pH of the product close to neutral and there might be some merit in considering such a product but of course the effect would be to drift up to the higher alkaline ranges over the 18 hr control test we now use. (Graph 111)

Talc Source and Processing

The talc ore processed in Plainfield comes from the deposit in Madoc Ontario which we explored at depth some years ago.

The Madoc deposit has a lot in common with Italian talc from the geological and mineralogical points of view. The associate minerals in the district are very similar and the crystal habit of the talcs are also very similar to the Italian situation. Thus there would be every reason to expect the two talcs to perform about the same when their processing conditions were reasonably close.

The Madoc deposit is a relatively large source of talc but it contains several grades of ore which are given different names. The highest grade up there is the Henderson section and it is that section which is presently being worked to supply the crudes for the Plainfield plant. As far as we know the reserves at Madoc were of the 150,000 ton order for the Henderson type at the 600 foot levels.

The process used to upgrade the talc is based on electrostatic separation. This is a dry process so there would be no effects resulting from wetting or flotation reagentry.

Next Steps

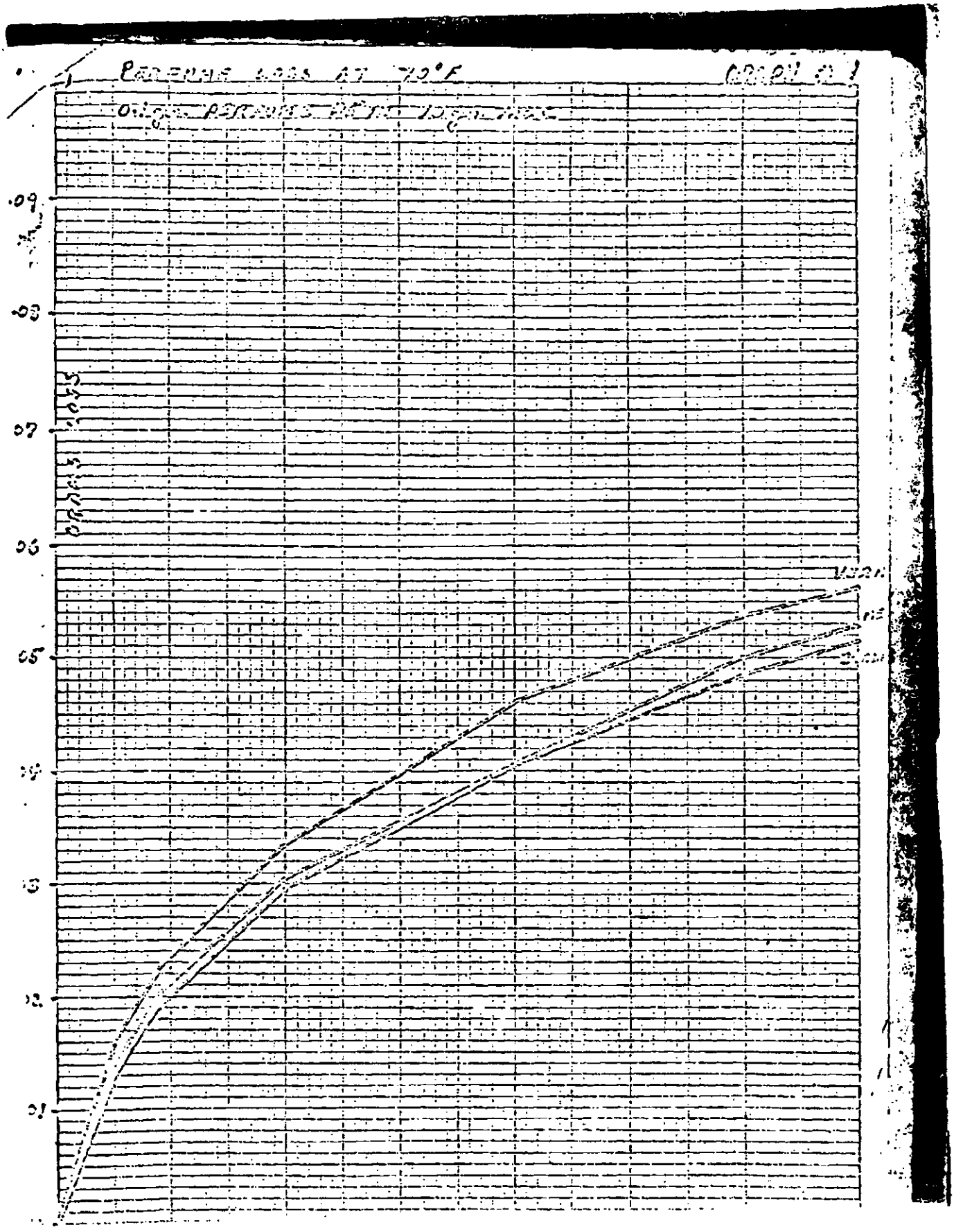
Mr. Russell and I shall be visiting Mr. Perry at the Plainfield plant in the next few days. We will get an idea of the capabilities and determine what is

involved in reducing the carbonate level and making arrangements for a couple tons of it for a large scale run.

Meanwhile we have 200 lbs of the above described Metro talc on hand here which I plan to make available to whomever would like to run some tests with it. Although I am personally impressed with the laboratory scale work Russell and I have done, a larger confirmation on a pilot plant batch could prove useful. For example this should be made up with whatever perfume levels are used in the plant today and might evaluate the holding power for the perfume in the powder puff unit also.

Mr. Russell prepared and arranged the attached data.

W.Ashton



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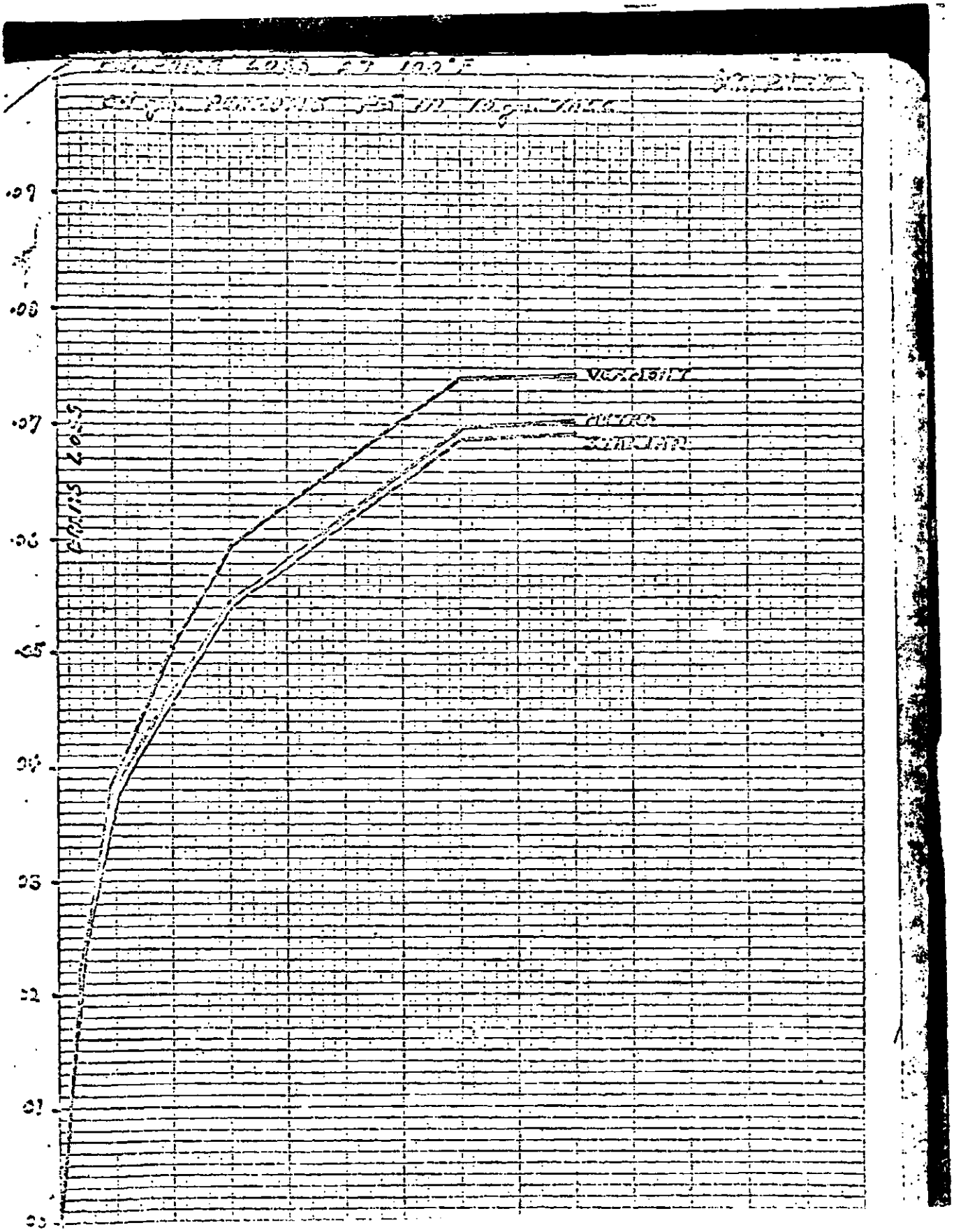

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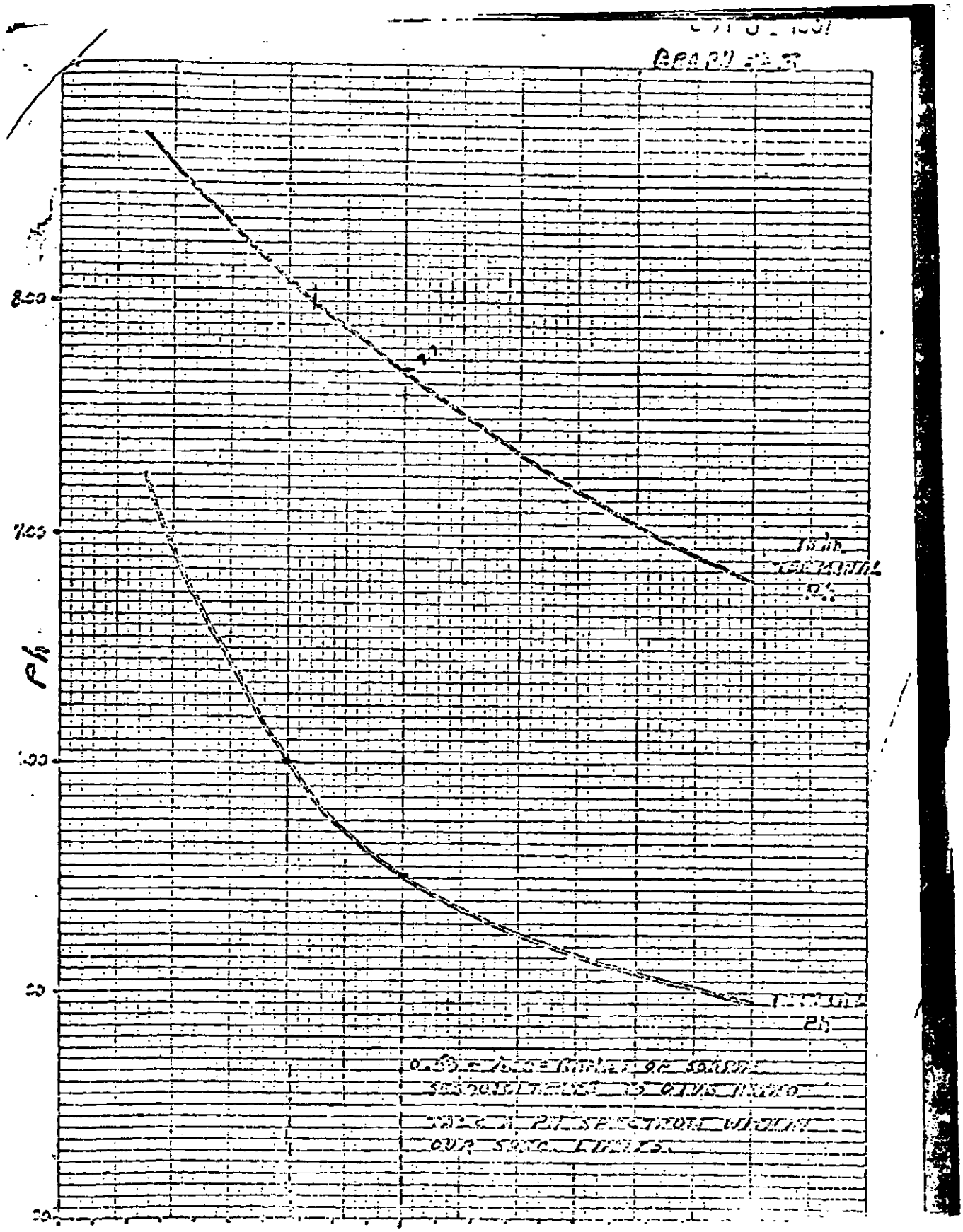
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OCT 31 1967

TABLE I

Physical & Chemical Data

t	Metro #1	Vermont S4-23	Ital. 42771E
sture %	0.09	0.07	0.01
. in Acid %	5.08	1.60	3.00
ration %	4.08	0.80	1.50
: Dens. lb/ft^3	24.7	25.4	23.4
or	White	Off White Grey-Green cast	White with creamy cast
ness % -60	100%	100%	100%
than -100	99.98%	99.90%	100%
-200	96.85%	99.0%	99.7%
y Metals ppm	less than 10	less than 10	less than 10
nic ppm	0.3	less than 2 ppm	0.7
Soluble Iron	passes	passes	passes
ction (2 oz) max.	130 cc	125 cc	137 cc
nco TAPPED) min.	72 cc	73 cc	72 cc

PC C... 0/

OCT 31 1967

TABLE II

Microscopic Mineralogical Assay

	Metro #1	Vermont Talc S4-23	Vermont Talc Batch 994*	Italian Talc
Total Talc	93%	99%	94%	93 - 99%
Platy	90%	96%	86%	88 - 90%
Nonplaty	3%	3%	8%	5 - 9%
Carbonates	5	1	1-2	1-3
Tremolite	1	trace	trace	1-2
Serpentine	trace	trace	4	none
Opaques	< 1	trace	trace	trace

*Produced August 21,1967 at West Windsor

R.S. Russell

Johnson & Johnson

New Brunswick, N. J.
April 9, 1969

Subject: Alternate Domestic Talc Sources
File No. 101

Dr. G. Hildick-Smith

Pete, we have to firm up the position the Company should have on the presence of the mineral Tremolite in talc. Your staff will have to do this for us since the objections to that mineral have been mainly medical or clinical as opposed to chemical or physical.

The reason we have to firm up our position is that we have moved into high gear on some alternate talc sources and it is normal to find different levels of Tremolite in many U.S. talcs. We are looking at some of those.

Historically, in our Company, Tremolite has been bad because it has needle type crystals. Our position has been that these can stand on end, penetrate the skin, and cause irritation; consequently, talcs exceeding trace contents have never been approved. Over the past year or two, the medical literature has made reference to potential hazards of talcs containing Tremolite and I have seen some articles under the umbra of environmental health agencies from here and abroad which pinpoint severe objections to that mineral in talcum powders.

Unfortunately, Tremolite has different varieties and can be easily confused with other members of the mineral class into which it falls. Chemically, it is mainly a calcium silicate with varying amounts of magnesium silicate and sometimes it carries iron with it in minor amounts. Some varieties of it match asbestos, and I gather there has been a lot of attention given to the hazards of inhaling minerals of that type lately.

Plaintiff's
Exhibit
J&J 202

There is nothing we can do about the confused state of affairs on Tremolite from the mineralogical and chemical points of view as far as historic literature is concerned.

The question is...How bad is Tremolite medically, and how much of it can safely be in a talc base we might develop?

W. H. Ashton

pm
cc: Dr. R. A. Fuller
Dr. E. R. L. Gaughran
Mr. R. J. Mortimer
Dr. T. H. Shelley
Dr. R. L. Sundberg

EXHIBIT 2

cc

Johnson & Johnson

New Brunswick, N. J.

April 15, 1969

Subject: ALTERNATE DOMESTIC TALC SOURCES

Project Code #101

Mr. W. H. Ashton:

Your inquiry of April 9th, 1969 addressed to Dr. G. Hildick-Smith has been referred to my attention for reply.

Over the years, I have reviewed the literature on the hazards relating to the inhalation of talc particles on several different occasions. In your memorandum, you indicate that Tremolite does have needle-type crystals and that our position has been that these could penetrate the skin and cause irritation. Actually, to the best of my knowledge, we have no factual information on this subject. It would seem logical that it could occur, although whether or not it would be of clinical significance would be conjectural.

We have been concerned to a much greater extent with regard to possible dangers relative to the inhalation of the talc with a spicule or needle-like crystalline structure as compared with the flat, platelet-type of crystalline structure. There are reports in the literature concerning talcosis which, as you know, is a form of pneumoconiosis attributed to the inhalation of talc. Reported studies have suggested that this does not occur in connection with the flat, platelet-type of talc, but does occur in connection with the spicule-type of crystalline structure characteristic of Tremolite. The reported instances have been extremely few but have, without exception, involved inhalations of high concentrations on an occupational basis of many years duration. Furthermore, we have occasionally received inquiries from various individuals, including General Johnson and several pediatricians, expressing concern over the possibility of the adverse effects on the lungs of babies or mothers who might inhale any substantial amounts of our talc formulations. In the past, we have replied to the effect that since our talc is essentially all of the platelet-type of crystalline structure, and is of a size which would not be likely to enter the pulmonary alveoli, we would not regard the usage of our powders as presenting any hazard. Obviously, if we do include Tremolite in more than unavoidable trace amounts, this sort of negation of such inquiries could no longer pertain.

Plaintiff's Exhibit J&J 195

Mr. W. H. Ashton April 15th, 1969

Upon various occasions we have discussed the possibility of carrying out studies on animals which might provide factual information with regard to whether or not variable exposures to talc suspended in the environmental atmosphere might be productive of fibrotic and/or inflammatory reactions in lungs. For a variety of reasons, these have never been carried out here.

Since pulmonary diseases, including inflammatory, fibroplastic, and neoplastic types, appear to be on the increase, it would seem to be prudent to limit any possible content of Tremolite in our powder formulations to an absolute minimum. To the best of my knowledge, we have never been faced with any litigation involving either skin or lung penetration by our talc formulations. Some years ago, we were faced with a more or less serious problem resulting from what we consider to have been an unjust accusation of danger due to the presence of a small amount of boric acid in our talc. This created such a furor that we were more or less compelled to remove boric acid from the formulation. It is conceivable that a similar situation might eventually arise if it became known that our talc formulations contained any significant amount of Tremolite. Since the usage of these products is so widespread, and the existence of pulmonary disease is increasing, it is not inconceivable that we could become involved in litigation in which pulmonary fibrosis or other changes might be rightfully or wrongfully attributed to inhalation of our powder formulations. It might be that someone in the Law Department should be consulted with regard to the defensibility of our position in the event that such a situation could ever arise.

It is my personal feeling that until we have at least substantial evidence, based on animal work, to the effect that the presence of Tremolite in our talc does not produce adverse effects, we should not extend its usage beyond an absolute minimum previously mentioned.

T. M. Thompson, M.D.

TMT:JAG

cc: Dr. R. A. Fuller
Dr. Gavin Hildick-Smith
Mr. W. J. Ryan
Dr. G. H. Lord
Dr. J. E. Willson
Dr. J. Bothwell

EXHIBIT 3

Johnson & Johnson
BABY PRODUCTS COMPANY

February 13, 1975

SUBJECT: CTFA Talc Subcommittee Meeting
with Food and Drug Administration
Washington, D.C. February 7, 1975

To: Distribution

[illegible] the following is a summary of the major discussions.

This meeting was held in Dr. R.N. Schaffner's office on February 7, 1975 at 1:00 PM. Representing FDA were: Dr. R. Schaffner, Mr. H. Eiermann, Mr. H. Davis, Dr. W. Horowitz and Dr. Yates. The CTFA was represented by: Dr. N. Estrin, Mr. G. Sandland, Dr. M. Berdick, Dr. R. Rolle and G. Lee.

Dr. Estrin introduced Mr. Sandland as chairman of the CTFA Talc Subcommittee and indicated that the purpose of our meeting was to present the analytical methodology which had been developed by the CTFA Task Force as applicable to cosmetic talcs.

FDA indicated that there had been no eminent plans to publish new proposed methodology in this regard and did not give us the impression that this matter was being assigned any urgency. They reported no further work with the optical microscopy method. Dr. Horowitz was asked by Dr. Schaffner to elaborate on the only apparent area of analytical activity which is being directed towards Food Regulatory. This is being carried out under contract by the Franklin Institute, who are investigating an SEM method. They're attempting to develop methodology for detecting low levels of asbestos contamination and have experienced difficulty in presenting a uniform sample to the SEM. It's expected that this study may take one to two years. Any further steps to be taken with regards to Food Regulation will therefore have to wait on developments from the Franklin Institute.

When questioned as to FDA efforts and progress in the approach of "concentrating asbestos" to increase the level

Plaintiff's Exhibit J&J 60

of sensitivity, Dr. Yates replied in a tone of frustration that all attempts have met with failure; they had investigated heavy density liquid separation. Dr. Yates did not state that efforts would be continued in this direction, but we volunteered help in evaluating methodology should they develop something.

Dr. Rolle outlined the proposed CTFA methods and the expected limits of detection. It was emphasized to the FDA that these were methods evaluated and recommended for cosmetic talc and would be practical to apply for industrial [illegible] any natural-occurring carcinogen in talc for his methods [illegible] Dr. Rolle emphasized this by stating [illegible] has examined numerous talcs from around the world for cosmetics application and have not found chrysotile. The writer reiterated similar J&J experience with domestic and overseas talcs. Dr. Schaffner agreed that no one has purported to have seen chrysotile in cosmetic talc except Professor Lewin. At this point, Dr. Schaffner asked us what Professor Lewin was doing (if anything) in talc analysis. Dr. Rolle outlined a conversation he had had with Professor Lewin the day before and Dr. Schaffner directed Dr. Horowitz to interview Professor Lewin for his most current views regarding chrysotile in talc. Dr. Berdick made the point that if chrysotile is not expected to be found in talc, then the FDA should not propose regulations to cover chrysotile. After an exchange of philosophy, where Mr. Eiermann took a strong stand for chrysotile in talc regulation, Dr. Schaffner suggested that if the CTFA would submit supporting data attesting to the absence of chrysotile in talc the FDA would take the matter under consideration. Mr. Sandland indicated that the CTFA will be proposing self-regulatory action by amending its present CTFA Talc Standard to include the asbestiform tremolite proposal.

Mr. G. Sandland stated that a regulation of 1% asbestos in talc was not only achievable by throughly tested methods, but also gave a safety factor of 48,300 (Sivertson calculation). Mr. Eiermann bluntly said that the calculation was wrong since the standard of 2 fibers/cc. is not a time weighted average. Before we had a chance for rebuttal Dr. Schaffner said that the Sivertson calculation was foolish since no mother was going to powder her baby with 1% of a known carcinogen irregardless of the large safety factor. Because of Dr. Schaffner's strong stand we did not correct Mr. Eiermann's misunderstanding of the calculation.

Dr. Schaffner emphasized that there is an ultimate and more important need for talc clinical safety data in order to satisfy the consumerist advocates. The writer assured him that this would be forthcoming from J&J.

Copies of the DTA and X-Ray Diffraction Detection Procedures together with the Sivertson Report "An Estimate of a Safe Level of Asbestos in Baby Powder Talc" were distributed to the FDA representatives and the meeting was closed with Dr. Estrin thanking the FDA for the opportunity of exchange and discussion.

The general impression received by the writer was that the FDA was not anxious to publish further proposals relative to "asbestos-in-talc" pending outcome of the Franklin Institute Study, as long as the consumerist advocates remain quiescent. It is also evident that the FDA would depend on clinical data to defend the safety of talc.

In a post-meeting caucus of the CTFA attendees, it was agreed that the CTFA would proceed to compile information from consultants and manufacturers which attest to the fact that chrysotile has never been found in cosmetic talcs and submit this to the FDA.

G. Lee

paj

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
James M. Treglio (SBN 228077)
Potter Handy LLP
7385 Erma Road, Suite 300
San Diego, CA 92131
TELEPHONE NO.: (858) 375-7385 FAX NO.: (888) 422-5191
ATTORNEY FOR (Name): Plaintiffs Louisa Gutierrez and Debbie Luna

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/20/2019 at 10:53:21 AM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Hall of Justice

CASE NAME:
Louisa Gutierrez et al. v. Johnson & Johnson, et al.,

CIVIL CASE COVER SHEET
☑ **Unlimited** (Amount demanded exceeds $25,000)
☐ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation
☐ **Counter** ☐ **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2019-00025810-CU-NP-CTL

JUDGE:
DEPT: Judge Eddie C Sturgeon

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☑ Other non-PI/PD/WD tort (35)

Employment
☐ Wrongful termination (36)
☐ Other employment (15)

Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property
☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition *(not specified above)* (43)

2. This case ☑ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☑ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☑ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☑ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify)*: 3 - CLRA (Civil Code 1750), FAL (B&P 17500), UCL (B&P 17200)
5. This case ☑ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: May 15, 2019
James M. Treglio
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central TELEPHONE NUMBER: (619) 450-7067	
PLAINTIFF(S) / PETITIONER(S): Louisa Gutierrez et.al.	
DEFENDANT(S) / RESPONDENT(S): Johnson & Johnson et.al.	
GUTIERREZ VS JOHNSON & JOHNSON [IMAGED]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2019-00025810-CU-NP-CTL

CASE ASSIGNMENT

Judge: Eddie C Sturgeon Department: C-67

COMPLAINT/PETITION FILED: 05/20/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	02/21/2020	10:30 am	C-67	Eddie C Sturgeon

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars ($150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).