

1 THE AMMONS LAW FIRM LLP
3700 Montrose Boulevard
2 Houston, TX 77006
Telephone: (713) 523-1606
3 Facsimile: (713) 523-4159
4 Adam Milasincic, SBN 337147
adam@ammonslaw.com
5 Luke Maddox, SBN 354447
luke@ammonslaw.com
6

Electronically FILED by
Superior Court of California,
County of Los Angeles
11/22/2024 5:21 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By C. Vega, Deputy Clerk

7 JOHNSTON & HUTCHINSON LLP
350 South Grand Ave., Suite 2220
8 Los Angeles, CA 90071
Telephone: (213) 542-1978
9 Facsimile: (213) 542-1977
10 Thomas J. Johnston, SBN 210506
tjj@johnstonhutchinson.com
11

12 LAW OFFICES OF ROLAND R. TIJERINA
2000 E. 4th St., Ste. 120
13 Santa Ana, CA 92705-3907
Telephone: (714) 667-8234
14 Facsimile: (714) 477-6865
15 Roland Tijerina, SBN 128019
roland@tijerinalaw.com
16

17 *Attorneys for Plaintiffs*

18 **SUPERIOR COURT OF CALIFORNIA**
19 **COUNTY OF LOS ANGELES**
20

21 RAUL RUIZ GUTIERREZ and SUSANA
MARTINEZ SOTO

22 Plaintiffs,
23

24 vs.

25 ARTISAN TILE & STONEWORK,
CAESARSTONE USA, INC., LYONS MARBLE,
26 INC., M S INTERNATIONAL, LLC, PACIFIC
SHORE STONES, LLC, PACIFIC STONE
27 DESIGN CENTER, INC., PACIFIC STONE
28 DESIGN, INC, PACIFICA TILE & STONE, INC.,

CASE NO. **24STCV30963**

**COMPLAINT FOR TOXIC
INJURIES ASSERTING CAUSES
OF ACTION FOR:**

1. NEGLIGENCE;
2. PRODUCTS LIABILITY
– FAILURE TO WARN;
3. PRODUCTS LIABILITY
– DESIGN DEFECT
4. FRAUDULENT
CONCEALMENT,

1 ROYAL TILE AND STONE LLC, UNIVERSAL
2 GRANITE & MARBLE, INC., and DOES 1 through
3 100, inclusive,
4
5 Defendants.

5. BREACH OF IMPLIED
WARRANTIES
6. LOSS OF CONSORTIUM

JURY TRIAL DEMANDED

6 **TABLE OF CONTENTS**

7 THE PARTIES.....3
8 PLAINTIFFS.....3
9 DEFENDANTS.....3
10 DOE DEFENDANTS.....4
11 AGENCY.....5
12 STONE SLAB PRODUCTS.....5
13 IDENTIFICATION OF TOXIC PRODUCTS.....6
14 GENERAL ALLEGATIONS.....10
15 TOLLING OF STATUTE OF LIMITATIONS.....11
16 HISTORY OF SILICOSIS.....12
17 ARTIFICIAL STONE.....13
18 FIRST CAUSE OF ACTION [NEGLIGENCE].....15
19 SECOND CAUSE OF ACTION [PRODUCT LIABILITY FAILURE TO WARN].....24
20 THIRD CAUSE OF ACTION [PRODUCT LIABILITY DESIGN DEFECT].....27
21 FOURTH CAUSE OF ACTION [FRAUDULENT CONCEALMENT].....30
22 FIFTH CAUSE OF ACTION [BREACH OF IMPLIED WARRANTIES].....39
23 SIXTH CAUSE OF ACTION [LOSS OF CONSORTIUM].....41
24 PRAYER FOR RELIEF.....41
25 DEMAND FOR JURY TRIAL.....42

26 ///
27 ///
28 ///

COMES NOW Plaintiffs Raul Ruiz Gutierrez and Susana Martinez Soto complaining of Defendants Artisan Tile & Stonework, Caesarstone USA, Inc., Lyons Marble, Inc., M S International, LLC, Pacific Shore Stones, LLC, Pacific Stone Design Center, Inc., Pacific Stone Design, Inc., Pacifica Tile & Stone, Inc., Royal Tile and Stone LLC, Universal Granite & Marble, Inc., and DOES 1 through 100, inclusive (collectively “Defendants”), and for a cause of action alleges as follows:

THE PARTIES

Plaintiffs

1. Plaintiffs are and at all material times were residents of the State of California.

Defendants

2. Plaintiffs are informed and believe and thereon allege that Defendant, Artisan Tile & Stonework, is a sole proprietorship, which at all material times hereto was doing business at 5843 Fairhaven Avenue, Woodland Hills, CA 91367 and which at all material times hereto was doing business in the County of Los Angeles, State of California.

3. Plaintiffs are informed and believe and thereon allege that Defendant, Caesarstone USA, Inc., is a California corporation, which at all material times hereto, has had its principal place of business at 1401 West Morehead Street, Suite 100, Charlotte, NC 28208 and has was doing business in the County of Los Angeles, CA at 11312 Penrose St., Sun Valley, CA 91352, and which at all material times hereto was doing business in the County of Los Angeles, State of California.

4. Plaintiffs are informed and believe and thereon allege that Defendant, Lyons Marble, Inc., is a California corporation, which at all material times hereto, has had its principal place of business in California at 128 Encinal St. Santa Cruz, CA 95060 and was doing business in the County of Los Angeles, State of California.

5. Plaintiffs are informed and believe and thereon allege that Defendant, M S International, LLC is a California limited liability company, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

6. Plaintiffs are informed and believe and thereon allege that Defendant, Pacific Shore Stones, LLC, is a California limited liability company, which at all material times hereto, was doing

1 business at 13148 Raymer Street, North Hollywood, CA 91605, and which at all material times
2 hereto was doing business in the County of Los Angeles, State of California.

3 7. Plaintiffs are informed and believe and thereon allege that Defendant, Pacific Stone
4 Design Center, Inc., is a California corporation, which at all material times hereto, was doing
5 business at 1559 West Embassy Street, Anaheim, CA 92802, and which at all material times hereto
6 was doing business in the County of Los Angeles, State of California.

7 8. Plaintiffs are informed and believe and thereon allege that Defendant, Pacific Stone
8 Design, Inc., is a California corporation, which at all material times hereto, was doing business at
9 1201 E Wakeham Ave Santa Ana, California 92705, and which at all material times hereto was doing
10 business in the County of Los Angeles, State of California.

11 9. Plaintiffs are informed and believe and thereon allege that Defendant, Pacifica Tile &
12 Stone, Inc., is a California corporation, which at all material times hereto, was doing business at
13 157128 York Dr. Highland, California 92346, and which at all material times hereto was doing
14 business in the County of Los Angeles, State of California.

15 10. Plaintiffs are informed and believe and thereon allege that Defendant, Royal Tile and
16 Stone LLC, is a California limited liability company, which at all material times hereto, has had its
17 principal place of business at 23888 Connecticut St., Ste 12, Hayward, California 94545, and was
18 doing business in the County of Los Angeles, State of California.

19 11. Plaintiffs are informed and believe and thereon allege that Defendant, Universal
20 Granite & Marble, Inc., is a California corporation, which at all material times hereto, has had its
21 principal place of business at 12300 Branford Street Sun Valley, CA 91352, and was doing business
22 in the County of Los Angeles, State of California.

Doe Defendants

23 12. The true names and capacities of Defendants Does 1 through 100 are unknown to
24 plaintiff, who therefore sues said defendants by such fictitious names. Plaintiffs will amend this
25 complaint to state the true names and capacities of said fictitious defendants when they have been
26 ascertained. Plaintiffs are informed and believe and thereon allege that Defendants Does 1 through
27 100 are in some manner responsible, negligently or in some other actionable manner, for the
28

1 occurrences herein alleged, and that Plaintiff's injury and damages as herein alleged were
2 proximately caused by their conduct.

3 **Agency**

4 13. Plaintiffs are informed and believe and based thereon alleges that, at all times material
5 hereto, each of the Defendants, including the fictitiously named Defendants, was acting in an
6 individual, corporate, partnership, associate, conspiratorial or other capacity or as the agent,
7 employee, co-conspirator, and/or alter ego of its co-defendants, and in doing the acts herein alleged,
8 was acting within the course and scope of its authority as such partner, associate, agent, employee,
9 co-conspirator, or alter ego, and with the permission, consent, knowledge, authorization, ratification
10 and direction of its co-defendants, including all fictitiously named defendants.

11 **STONE SLAB PRODUCTS**

12 14. Defendants named herein were and/or are the manufacturers, suppliers, distributors,
13 importers, brokers, and/or contractors of industrial stone products, which are hereinafter called
14 "stone products," "stone slabs," "stone blocks," "artificial stone," "natural stone," "silica-containing
15 stone," and "treated natural stone." In accordance with *Bockrath v. Aldrich Chemical Co.* (1999) 21
16 Cal.4th 71, the industrial stone products, including all definitions and synonyms thereof as set forth
17 above, are all products that caused the pulmonary and other injuries of the exposed worker and
18 injured Plaintiff Raul Ruiz Gutierrez.

19 15. Stone slabs are mineral products made from natural or artificial stone. Stone products
20 (in slabs or blocks) are made from natural stone, including granite, limestone, marble, onyx,
21 porcelain, quartzite, sandstone, serpentine, and travertine.

22 16. Stone products are also made from artificial stone, which is also called engineered
23 stone, manufactured stone, quartz, reconstituted stone, and synthetic stone.

24 17. All stone products contain crystalline silica in varying concentrations, from the lowest
25 concentration of about 3-5% in marble to about 93-95% in traditional artificial stone.

26 18. Stone slabs or blocks are commercial products that require fabrication before
27 installation for a consumer.

28 19. Cutting, grinding, drilling, chipping, edging, and/or polishing (collectively
"fabricating") certain stone products produces large amounts of respirable crystalline silica dust,

1 which stone fabrication workers inhale, typically causing chronic silicosis as well as lung cancer and
2 various other silica-related diseases.

3 20. Fabrication workers who cut, grind, drill, chip, edge, and/or polish artificial stone
4 products are not only exposed to high concentrations of respirable crystalline silica but are also
5 exposed to other toxic substances in artificial stone, including metals used as pigments and polymeric
6 resins as binders.

7 21. In addition to crystalline silica, pulmonary fibrosis (scarring of the lung tissue) is
8 caused by many metals that are constituents of artificial stone, including aluminum, antimony,
9 arsenic, chromium, cobalt, copper, iron, manganese, nickel, titanium, tungsten, and vanadium. Some
10 of these metals also cause an immunologic lung disease called hypersensitivity pneumonitis, which
11 is characterized by granulomas in lung tissue that also causes pulmonary fibrosis.

12 22. Fabricating artificial stone products also produces volatile organic compounds
13 (VOCs), the predominant species being styrene but also including phthalic anhydride, benzene,
14 ethylbenzene, and toluene. Styrene and phthalic anhydride are respiratory irritants that cause various
15 pulmonary effects, including asthma, bronchiolitis obliterans, decreased lung function, sclerosis, and
16 fibrosis.

17 23. Workers fabricating artificial stone products often develop progressive massive
18 fibrosis due to high concentrations of crystalline silica and other toxic constituents of artificial stone.

19 **IDENTIFICATION OF TOXIC PRODUCTS**

20 24. Under *Bockrath v. Aldrich Chemical Company* (1999) 21 Cal.4th 71, “[i]n conformity
21 with the rule that a complaint in a personal injury case is a statement of the facts constituting the
22 cause of action in ordinary and concise language, plaintiffs may, and should, allege the ... facts
23 succinctly, and may do so in a conclusory fashion if their knowledge of the precise cause of injury
24 is limited.” *Id.* at 80.

25 25. The *Bockrath* court held that “[i]f the plaintiff does not believe the requisite evidence
26 exists, but does actually believe that it is likely to be discovered later, ‘after a reasonable opportunity
27 for further investigation or discovery’ (Code Civ. Proc., § 128.7, subd. (b)(3)), the complaint must
28 so state.” *Id.* at 82. Plaintiff Raul Ruiz Gutierrez therefore identifies those stone slab products of
which he is presently aware that he fabricated that caused his medical conditions and injuries and

1 provides notice that Plaintiff Raul Ruiz Gutierrez will identify additional stone slab products that
2 caused his medical conditions and injuries in the course of discovery.

3 26. The products identified below do not include all of the products containing crystalline
4 silica, metals and other fibrogenic substances that caused and/or contributed to Plaintiff's medical
5 conditions and injuries, the identities of which products are presently unknown to Plaintiffs given
6 the large quantity of stone slabs the Plaintiff Raul Ruiz Gutierrez worked with throughout his career.
7 Additional information can likely be discovered during the discovery process.

8 27. Plaintiffs identify the following products which Plaintiff Raul Ruiz Gutierrez
9 fabricated and to which he was injuriously exposed in his work as a stone cutter, which caused his
10 injuries:

11 **Artisan Tile & Stonework**

12 Engineered Stone

13 Granite

14 Limestone

15 Marble

16 Natural Stone

17 Onyx

18 Quartz

19 Quartzite

20 Sandstone

21 Soapstone

22 Serpentine

23 Travertine

24 **Caesarstone USA, Inc.**

25 Caesarstone Clasico

26 Caesarstone Concetto

27 Caesarstone Motivo

28 Caesarstone Supernatural

Caesarstone Metropolitan

1 **Lyons Marble, Inc.**

2 Granite

3 Limestone

4 Marble

5 Onyx

6 Porcelain

7 Quartz

8 Quartzite

9 Sandstone

10 **M S International, LLC**

11 Granite

12 Limestone

13 Marble

14 Onyx

15 Porcelain

16 Quartz

17 Quartzite

18 Sandstone

19 Soapstone

20 Serpentine

21 Travertine

22 **Pacific Shore Stones, LLC**

23 Engineered Stone

24 Granite

25 Limestone

26 Marble

27 Onyx

28 Porcelain

Quartz

1 Quartzite

2 Sandstone

3 Soapstone

4 Serpentine

5 Travertine

6 **Pacifica Tile & Stone, Inc.**

7 Engineered Stone

8 Granite

9 Limestone

10 Marble

11 Metroquartz

12 Onyx

13 Porcelain

14 Quartz

15 Quartzite

16 Sandstone

17 Soapstone

18 Serpentine

19 Travertine

20 Vicostone (Pentalquartz)

21 **Royal Tile and Stone LLC**

22 Engineered Stone

23 Granite

24 Limestone

25 Marble

26 Onyx

27 Porcelain

28 Quartz

Quartzite

1 Sandstone

2 **Universal Granite & Marble, Inc.**

3 Engineered Stone

4 Granite

5 Limestone

6 Marble

7 Onyx

8 Porcelain

9 Quartz

10 Quartzite

11 Sandstone

12 **GENERAL ALLEGATIONS**

13 28. Plaintiff Raul Ruiz Gutierrez worked as a fabricator and installer of stone, including
14 the Defendants' stone products, from 1990 to 2024 in Huntington Beach, Anaheim, and Santa Ana,
15 California.

16 29. During his fabrication work, from approximately 1990 through 2024, Plaintiff Raul
17 Ruiz Gutierrez cut, ground, drilled, edged, polished, fabricated, and installed Defendants' stone
18 products to become countertops in kitchens and bathrooms. Plaintiffs are informed and believe and
19 thereon allege that the injuries from which Plaintiff Raul Ruiz Gutierrez suffers that are the subject
20 of this action were sustained in the course of his work in California, cutting, fabricating, and/or
installing stone products.

21 30. While working as a fabricator, Plaintiff Raul Ruiz Gutierrez worked with inherently
22 hazardous stone products manufactured, imported, supplied, distributed, contracted, and/or brokered
23 by the named Defendants and Does 1-100. Plaintiff Raul Ruiz Gutierrez was thereby exposed to and
24 inhaled stone dust containing silica and other toxins and carcinogens, as well as artificial stone dust
25 containing respirable crystalline silica (including quartz and cristobalite).

26 31. As a direct and proximate result of his exposure to silica, metals, and other toxins
27 within said stone products manufactured, distributed, supplied, contracted, and/or brokered by
28 Defendants, Plaintiff Raul Ruiz Gutierrez developed lung disease characterized by silicosis and other

1 forms of lung damage, and therefore has a significantly increased risk of developing other silica-
2 related diseases such as lung cancer, chronic kidney disease, and autoimmune disorders such as
3 rheumatoid arthritis, systemic lupus erythematosus, and systemic sclerosis (scleroderma).

4 32. As a direct and proximate result of his exposure to silica, metals, and other toxins
5 within said stone products manufactured, distributed, supplied, contracted, and/or brokered by
6 Defendants, Plaintiff Raul Ruiz Gutierrez has had to receive substantial medical treatment and will
7 likely require lung transplantation.

8 33. Each of the stone products manufactured, imported, distributed, contracted, brokered,
9 and/or supplied by the named defendants and Does 1-100 were used by Plaintiff Raul Ruiz Gutierrez
10 as intended by Defendants in the course of his work as a fabricator of stone countertops. The
11 foregoing intended use of said products by Plaintiff Raul Ruiz Gutierrez resulted in the generation
12 and release of toxic airborne dust and particulates to which Plaintiff Raul Ruiz Gutierrez was exposed
13 during his work.

14 34. As a result of his use of and exposure to, the stone products of Defendants and Does
15 1-100 throughout his work in Los Angeles and other locations in California, Plaintiff Raul Ruiz
16 Gutierrez inhaled silica, metal dust, and other toxins from said products that were generated and
17 released during the intended use of said toxic mineral products manufactured, distributed, contracted,
18 brokered and/or supplied by the named Defendants and Does 100.

19 TOLLING OF STATUTE OF LIMITATIONS

20 35. Plaintiff Raul Ruiz Gutierrez was first diagnosed with Silicosis on or about November
21 2024. Before his diagnosis, Plaintiff Raul Ruiz Gutierrez did not discover and could not have
22 reasonably discovered that he had been injured, was suffering from Silicosis, the toxic nature of his
23 injuries, or that the Defendants caused the injuries. It was not until November 2024 that Plaintiff
24 Raul Ruiz Gutierrez became aware of any appreciable injury.

25 36. Before his diagnosis in November 2024, Plaintiff Raul Ruiz Gutierrez, no doctor had
26 ever told Plaintiff Raul Ruiz Gutierrez that the Defendants caused his lung disease, that he had
27 Silicosis, what was the cause of the lung disease, or that there was a specific cause.

28 37. The first time that Plaintiff Raul Ruiz Gutierrez suspected that his Silicosis was related
to his work as a fabricator was on or about November 2024, when he was diagnosed with Silicosis.

1 38. At no time did Plaintiff Raul Ruiz Gutierrez personally ascertain any ingredients or
2 contaminants of the stone products to which he was exposed in the course of his work that caused
3 his lung disease; Plaintiff Raul Ruiz Gutierrez personally remains ignorant of the identity of those
4 hazardous substances to which he was exposed at work that caused his lung disease.

5 39. Additionally, Defendants fraudulently concealed from Plaintiff Raul Ruiz Gutierrez
6 the toxic hazards of their stone products, the hazards Plaintiff Raul Ruiz Gutierrez was being exposed
7 to, and the fact that Plaintiff Raul Ruiz Gutierrez was inhaling toxic particles, including Silica, that
8 cause lung disease.

9 40. Defendants were required to disclose these material facts to Plaintiff.

10 41. Defendants' concealment was sufficiently complete that Plaintiff Raul Ruiz Gutierrez
11 did not know and could not have known about the Defendants' culpability or his injuries before
12 November 2024.

13 **HISTORY OF SILICOSIS**

14 42. The stone industry, including all Defendants, has known about the health risks of
15 crystalline silica dust for decades.

16 43. In 1937, the United States Department of Labor hosted a National Silicosis
17 Conference, at which several occupations were identified as being at high risk of exposure to silica
18 and resulting lung disease. National Silicosis Conference, Report on Medical Control, U.S.
19 Department of Labor, Bulletin 21, Part 2B (1938).

20 44. Then, in 1996, the Secretary of Labor began a new campaign to raise awareness and
21 encourage safer work practices called "It's Not Just Dust," and initiated a Special Emphasis Program
22 (SEP) on Silicosis to provide guidance to "reduce and eliminate the workplace incidence of silicosis
23 from exposure to crystalline silica." In addition, OSHA, NIOSH, and the American Lung Association
24 held a conference, "The Campaign to End Silicosis."

25 45. In 2007, OSHA estimated that more than two million employees are exposed to silica
26 in general industry, construction, and maritime industries. NIOSH acknowledges that an unknown
27 number of the 3.7 million workers in 2002 engaged in agriculture had exposure to silica from dust-
28 generating activities.

1 46. OSHA has created regulations to protect workers in several industries from the known
2 risks of silica exposure.

3 47. Given the long history of silica dangers, the stone products industry and all the named
4 Defendants were aware of the toxic and fibrogenic hazards of their stone products. Given this
5 awareness, they were legally required to warn workers of the hazards and provide instructions on
6 using the products to reduce the risk of silicosis and lung disease.

7 **ARTIFICIAL STONE**

8 48. Artificial stone is manufactured and contains a significantly higher level of silica,
9 making it even more toxic than traditional stone.

10 49. Artificial stone is also called engineered stone, quartz, or synthetic stone.

11 50. Artificial stone is sold in slabs that must be cut into the correct size for installation as
12 bathroom and kitchen countertops.

13 51. Workers fabricate these stone slabs before installation. The jobs include cutting the
14 stone with a saw to make it the right size for the job, making holes in the slab for facets and sinks,
15 grinding the edge of the slab to get a smooth surface, and polishing the stone.

16 52. Studies have found that respirable crystalline silica levels associated with artificial
17 stone fabrication are many times higher than California's permissible exposure limit (PEL).

18 53. Plaintiff Raul Ruiz Gutierrez was responsible for this work and installing the slabs in
19 kitchens and bathrooms around California.

20 54. Since the early 2010s, countries including the United States, Israel, Australia, China,
21 and Spain have linked silicosis diagnoses to individuals who have worked as fabricators with
22 artificial stone.

23 55. In 2023, researchers from California published a study describing clinical,
24 socioeconomic, and occupational characteristics of patients diagnosed with silicosis associated with
25 engineered stone in California. This case series included reported cases of silicosis associated with
26 the fabrication of engineered stone countertops, as identified by statewide surveillance by the
27 California Department of Public Health (2019-2022). Data analysis was performed from October
28 2022 to March 2023. Patient interviews and medical record abstractions were used to assess
occupational exposure to respirable crystalline silica, including duration of work tenure and

preventive measures undertaken. Demographics, clinical characteristics, health care utilization, and clinical outcomes were obtained, including vital status, hypoxia, and lung transplant. This case series identified 52 male patients meeting inclusion criteria; the median (IQR) age was 45 (40-49) years, and 51 were Latino immigrants. Ten (19%) were uninsured, and 20 (39%) had restricted-scope Medi-Cal; 25 (48%) presented initially to an emergency department. A delay in diagnosis occurred in 30 (58%) patients, most commonly due to alternative initial diagnoses of bacterial pneumonia (9 [30%]) or tuberculosis (8 [27%]). At diagnosis, 20 (38%) patients had advanced disease (progressive massive fibrosis) with severely or very severely reduced forced expiratory volume in 1 second in 8 (18%) and 5 (11%), respectively. Of the cases, 10 (19%) were fatal; the median age at death was 46 years, and 6 patients (12%) were alive with chronic resting hypoxia. Eleven were referred for lung transplant: 3 underwent transplant with 1 fatality; 7 were declined transplant with 6 fatalities; and 1 died prior to listing. Median work tenure was 15 years; 23 (45%) reported use of water suppression for dust mitigation, and 25 (48%) continued to fabricate stone after being diagnosed with silicosis. The researchers concluded silicosis associated with occupational exposure to dust from engineered stone primarily occurred among young Latino immigrant men; many patients presented with severe disease, and some cases were fatal. Fazio JC, et al., "Silicosis Among Immigrant Engineered Stone (Quartz) Countertop Fabrication Workers in California," *JAMA Intern. Med.* 2023; 183(9):991-998.

56. Given the reported illnesses and deaths resulting from exposure to silica in artificial stone, Australia has banned the import and use of artificial stone.

57. California has also created safety regulations to help address the dangers of silica exposure from artificial stone. In December 2023, California's Occupational Safety and Health Standards Board issued an emergency temporary standard to address workers in the stone fabrication industry being exposed to toxic, respirable crystalline silica.

FIRST CAUSE OF ACTION

(Negligence by Plaintiff Raul Ruiz Gutierrez Against All Defendants and Does 1 through 100)

58. Plaintiff Raul Ruiz Gutierrez incorporates by reference all of the foregoing paragraphs of this Complaint.

59. As manufacturers, importers, distributors, suppliers, brokers, and/or contractors of stone slab and block products, Defendants owed Plaintiff Raul Ruiz Gutierrez a legal duty to exercise

1 due care in manufacturing, importing, producing, supplying, brokering, contracting, and/or
2 distributing stone products to which Plaintiff Raul Ruiz Gutierrez was exposed in his work as a
3 countertop fabricator and installer.

4 60. Defendants negligently and carelessly manufactured, imported, produced, sold, tested,
5 failed to test, supplied, contracted, brokered and/or distributed the foregoing stone slab and block
6 products to which Plaintiff Raul Ruiz Gutierrez was exposed in his work as a countertop fabricator
7 and installer.

8 61. Defendants failed to adequately warn Plaintiff Raul Ruiz Gutierrez of the toxic hazards
9 of their stone slab and block products. They failed to provide adequate instructions to Plaintiff Raul
10 Ruiz Gutierrez regarding how to safely use their products to prevent him from developing and
11 suffering from silicosis.

12 62. California law requires that everyone use ordinary care in their activities to prevent
13 injuries from their conduct and omissions.

14 63. At all times herein mentioned, defendants, singularly and jointly, failed to use ordinary
15 care to prevent harm to themselves or to others, negligently acted or failed to act, negligently did
16 something that a reasonably careful person would not do in the same situation, negligently failed to
17 do something that a reasonably careful person would do in the same situation, negligently and
18 carelessly researched or failed to research, manufactured, fabricated, designed, modified, tested or
19 failed to test, warned or failed to warn of the health hazards, labeled or failed to label, assembled,
20 distributed, bought, offered for sale, supplied, sold, inspected or failed to inspect, marketed,
21 warranted, rebranded, manufactured for others, packaged and advertised, and/or failed to recall the
22 stone products, in that said product proximately caused personal injuries to users, bystanders, family
23 members, and others, including Plaintiffs herein (hereinafter collectively called “exposed persons”),
24 while being used in a manner that was reasonably foreseeable, thereby rendering said substance
unsafe and dangerous for use by “exposed persons.”

25 64. Defendants had a duty to exercise due care in the pursuance of the activities mentioned
26 above, and Defendants breached said duty of due care.

1 65. Defendants' negligence includes failing to undertake appropriate system failure
2 analysis and/or root cause analysis when information about adverse events involving the products
3 became available to the public and/or known to Defendants.

4 66. Defendants' negligence includes choosing to ignore and/or failing to properly
5 investigate past complaints and/or notices of safety issues and/or defects concerning this category of
6 products.

7 67. Defendants were also negligent in disregarding and ignoring generally accepted
8 principles of hazard control ("design, guard and warn").

9 68. Consistent with the duty of due care that those who manufacture and supply highly
10 toxic chemical products must exercise, Defendants owed Plaintiff and others duties of due care
11 consistent with industrial standards of care of responsible chemical manufacturers and suppliers.

12 69. By the mid-1990s, the industrial standard of care among manufacturers and suppliers
13 of highly toxic chemical products, including solid chemical products that emitted toxic, fibrogenic,
14 and carcinogenic dust when fabricated, required such companies to monitor the use of their toxic
15 chemical products by their customers, to assure that their customers were using their products safely
16 and in a manner that would not endanger the health and safety of their employees and other persons
17 exposed to their toxic chemical products, to counsel customers who were observed not to be using
18 their products safely, and to cease selling their products to customers who persisted in using their
19 products unsafely, endangering the health and safety of their employees and others.

20 70. Defendants breached these industrial standards of care by failing to monitor the use of
21 their toxic stone products by customers, by failing to assure that customers were using their products
22 safely, by failing to counsel customers who were not using their products safely, and by failing to
23 cease selling their products to customers who persisted in using their products unsafely, thereby
24 endangering the health and safety of their employees and others exposed to their products.

25 71. Defendants knew, or should have known, and intended that the products, when used
26 as intended and/or foreseeably misused, resulted in the indiscriminate release of toxic and
27 carcinogenic dust and exposure to "exposed persons," including Plaintiff Raul Ruiz Gutierrez.

28 72. Plaintiff Raul Ruiz Gutierrez used or has been otherwise exposed to stone products
referred to herein in a reasonably foreseeable manner consistent with the intended use of the product.

1 73. Labor Code § 6390.5 is a health and safety statute enacted to protect, among others,
2 employees in the position of Plaintiff Raul Ruiz Gutierrez. It imposes on manufacturers and
3 distributors of any hazardous substance the duty to label each container of a hazardous substance
4 consistent with the Hazard Communication Standard. (8 C.C.R. § 5194).

5 74. The Hazard Communication Standard (8 C.C.R. § 5194) is a health and safety
6 regulation promulgated to protect, among others, employees in the position of Plaintiff Raul Ruiz
7 Gutierrez. It imposes on manufacturers, suppliers, brokers, and distributors of chemical products the
8 duty to, among other things:

9 (a) evaluate their products to determine if they are hazardous [8 C.C.R. § 5194(d)(1)];

10 (b) identify and consider the available scientific evidence concerning such hazards [8
11 C.C.R. § 5194(d)(2) et seq.];

12 (c) consider a product containing at least one percent of a component as presenting the
13 same health hazard as that component [8 C.C.R. § 5194(d)(5)(B)];

14 (d) consider as carcinogenic a product containing at least 0.1% of a component which
15 has been determined under 8 C.C.R. § 5194(d)(4) to be a carcinogen [8 C.C.R. §
16 5194(d)(5)(B)];

17 (e) consider as hazardous a product which contains a component in a concentration of
18 less than one percent which could be released in concentrations which would exceed the
19 established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could
20 present a health hazard to employees in those concentrations [8 C.C.R. § 5194(d)(5)(D)];

21 (f) consider as carcinogenic a product which contains a component which has been
22 determined under 8 C.C.R. § 5194(d)(4) to be carcinogenic in a concentration of less than .1%
23 which could be released in concentrations which would exceed the established OSHA
24 permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard
25 to employees in those concentrations [8 C.C.R. § 5194(d)(5)(D)];

26 (g) ensure that each container of hazardous chemicals leaving their facilities is labeled,
27 tagged or marked with the (i) identity of the hazardous chemical(s); (ii) appropriate hazard
28 warnings; and (iii) the name and address of the chemical manufacturer or other responsible
party [8 C.C.R. § 5194(f)(1)];

1 (h) obtain or develop a material safety data sheet for each hazardous substance they
2 produced [8 C.C.R. § 5194(g)(1)];

3 (i) include on the material safety data sheet the chemical and common names of each
4 hazardous substance [8 C.C.R. § 5194(g)(2)(A)];

5 (j) include on the material safety data sheet the health hazards of the hazardous
6 substance, including signs and symptoms of exposure, and any medical conditions which are
7 generally recognized as being aggravated by exposure to the substance [8 C.C.R. §
8 5194(g)(2)(D)];

9 (k) include on the material safety data sheet the primary routes of entry [8 C.C.R. §
10 5194(g)(2)(E)];

11 (l) include on the material safety data sheet the OSHA permissible exposure limit,
12 ACGIH Threshold Limit Value, and any other exposure limit used or recommended by
13 defendants [8 C.C.R. § 5194(g)(2)(F)];

14 (m) include on the material safety data sheet whether the hazardous chemical is listed
15 in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or
16 has been found to be a potential carcinogen in the International Agency for Research on
17 Cancer (IARC) Monographs (latest editions), or by OSHA [8 C.C.R. § 5194(g)(2)(G)];

18 (n) include on the material safety data sheet generally applicable precautions for safe
19 handling and use known to defendants, including appropriate hygienic practices, protective
20 measures during repair and maintenance of contaminated equipment, and procedures for
21 clean-up of spills and leaks [8 C.C.R. § 5194(g)(2)(H)];

22 (o) include on the material safety data sheet generally applicable control measures
23 known to defendants, such as appropriate engineering controls, work practices, or personal
24 protective equipment [8 C.C.R. § 5194(g)(2)(I)];

25 (p) include on the material safety data sheet a description in lay terms, if not otherwise
26 provided, of the specific potential health risks posed by the hazardous substance intended to
27 alert the person reading the information [8 C.C.R. § 5194(g)(2)(M)];
28

1 (q) ensure that the information contained on material safety data sheets accurately
2 reflects the scientific evidence used in making the hazard determination [8 C.C.R. §
3 5194(g)(5)];

4 (r) update material safety data sheets with newly-discovered significant information
5 regarding the hazards of products and/or their components within three months [8 C.C.R. §
6 5194(g)(5)]; and,

7 (s) ensure that material safety data sheets complying with the Hazard Communication
8 Standard are provided to employers, directly or via a distributor [8 C.C.R. § 5194(g)(6) & (7).

9 75. Defendants are manufacturers, suppliers, importers, producers, brokers, contractors,
10 and/or distributors of stone products to which Plaintiff Raul Ruiz Gutierrez was exposed in the course
11 of employment and/or work, and were obligated to comply with California Labor Code § 6390.5 and
12 the Hazard Communication Standard (8 C.C.R. § 5194).

13 76. Defendants violated California Labor Code § 6390.5 and the Hazard Communication
14 Standard (8 C.C.R. § 5194) in the manufacture, importation, supply, brokering, contracting,
15 production, and distribution of their toxic stone products to which Plaintiff Raul Ruiz Gutierrez was
16 so exposed by:

17 (a) failing and refusing to evaluate their products to determine if toxic chemicals
18 contained in their products presented a health hazard of causing silicosis and lung disease to
19 employees using or exposed to their products [8 C.C.R. § 5194(d)(1)];

20 (b) failing and refusing to identify and consider the available scientific evidence to
21 determine if the toxic chemicals contained in their products presented a health hazard of
22 causing silicosis to employees using or exposed to their products [8 C.C.R. § 5194(d)(2) et
23 seq.];

24 (c) failing and refusing to identify their products as presenting a health hazard of
25 causing silicosis even though the toxic chemicals contained in their products presented a
26 health hazard of causing silicosis to employees using or exposed to their products [8 C.C.R.
27 § 5194(d)(5)];

28 (d) failing and refusing to ensure that each container of their products was labeled,
tagged or marked to (i) identity the toxic chemicals contained in their products and (ii)

1 appropriately warn that the toxic chemicals contained in their products presented a health
2 hazard of causing silicosis to employees using or exposed to their products [8 C.C.R. §
3 5194(f)(1)];

4 (e) failing and refusing to obtain or develop a material safety data sheet for the toxic
5 chemicals contained in their products [8 C.C.R. § 5194(g)(1)];

6 (f) failing and refusing to include on the material safety data sheet the chemical and
7 common names for the toxic chemicals contained in their products [8 C.C.R. §
8 5194(g)(2)(A)];

9 (g) failing and refusing to include on the material safety data sheet that the toxic
10 chemicals contained in their products presented a health hazard of causing silicosis to
11 employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(D)];

12 (h) failing and refusing to include on the material safety data sheet the primary routes
13 of entry for the toxic chemicals contained in their products in respect of the health hazard of
14 causing silicosis to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(E)];

15 (i) failing and refusing to include on the material safety data sheet the OSHA
16 permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used
17 or recommended by defendants for the toxic chemicals contained in their products in respect
18 of the health hazard of causing interstitial lung disease to employees using or exposed to their
19 products [8 C.C.R. § 5194(g)(2)(F)];

20 (j) failing and refusing to include on the material safety data sheet whether the toxic
21 chemicals contained in their products is listed in the National Toxicology Program (NTP)
22 Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen
23 in the International Agency for Research on Cancer (IARC) Monographs (latest editions), or
24 by OSHA [8 C.C.R. § 5194(g)(2)(G)];

25 (k) failing and refusing to include on the material safety data sheet generally applicable
26 precautions for safe handling and use known to Defendants for the toxic chemicals contained
27 in their products in respect of preventing the health hazard of causing silicosis to employees
28 using or exposed to their products [8 C.C.R. § 5194(g)(2)(H)];

1 (l) failing and refusing to include on the material safety data sheet generally applicable
2 control measures known to Defendants for the toxic chemicals contained in their products in
3 respect of preventing the health hazard of causing silicosis to employees using or exposed to
4 their products [8 C.C.R. § 5194(g)(2)(I)];

5 (m) failing and refusing to include on the material safety data sheet or otherwise the
6 specific potential health risks posed by the toxic chemicals contained in their products in
7 respect of causing silicosis to employees using or exposed to their products [8 C.C.R. §
8 5194(g)(2)(M)];

9 (n) failing and refusing to ensure that the information contained on material safety data
10 sheets accurately reflects the scientific evidence of the health risks posed by the toxic
11 chemicals contained in their products in respect of causing silicosis to employees using or
12 exposed to their products [8 C.C.R. § 5194(g)(5)];

13 (o) failing and refusing to update material safety data sheets with newly-discovered
14 significant information regarding the hazards of the toxic chemicals contained in their
15 products in respect of causing silicosis to employees using or exposed to their products [8
16 C.C.R. § 5194(g)(5)];

17 (p) failing and refusing to ensure that material safety data sheets complying with the
18 Hazard Communication Standard (including specifying the potential health risks posed by the
19 toxic chemicals contained in their products in respect of causing silicosis to employees using
20 or exposed to their products) were provided to Plaintiff Raul Ruiz Gutierrez's employers,
21 directly or via a distributor. [8 C.C.R. § 5194(g)(6) & (7)]

22 77. Plaintiff Raul Ruiz Gutierrez was exposed to each of Defendants' products, including
23 those products manufactured, distributed, contracted, brokered, and supplied by Doe Defendants as
24 alleged above, and to silica, metals, and other toxins contained therein and released therefrom as
alleged above.

25 78. Plaintiff Raul Ruiz Gutierrez is a member of the class of persons designed to be
26 protected by Labor Code § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

27 79. As a result of Plaintiff Raul Ruiz Gutierrez's exposure to each of Defendants' stone
28 products, silica, metals and other toxins entered Plaintiff's body and caused Plaintiff Raul Ruiz

1 Gutierrez to suffer from specific illnesses, to wit, silicosis and related medical conditions, as outlined
2 herein.

3 80. Each of the Defendants' stone products contained silica and toxic metals that entered
4 Plaintiff's body and were a substantial factor in causing, prolonging, and aggravating his silicosis
5 and his related and consequential injuries.

6 81. As a direct and proximate result of Defendants' negligence as alleged herein, Plaintiff
7 Raul Ruiz Gutierrez suffers from silicosis and related injuries as outlined herein.

8 82. As a direct and proximate result of the conduct or omissions of the defendants, as
9 aforesaid, Plaintiff's exposure caused severe and permanent injury, damage, loss, or harm to the
10 Plaintiff, all to his general damage in a sum over the jurisdictional limits of a limited civil case. This
11 action is an Unlimited Civil Case as defined in Code of Civil Procedure § 88.

12 83. As a direct and proximate result of said negligent acts and omissions of Defendants,
13 Plaintiff Raul Ruiz Gutierrez has been required to spend money and/or incur obligations for medical
14 and related expenses and will incur in the future, in an amount that is more than the jurisdictional
15 minimum of the Court, and he has been unable to attend to his usual work and activities.

16 84. As a direct and proximate result of the defective warnings and use instructions of
17 Defendants' stone products, the need for future medical monitoring is reasonably certain. Plaintiff
18 will suffer loss for the cost of future medical monitoring in a sum to be established according to
19 proof.

20 85. As a further direct and proximate result of the negligent acts and omissions of
21 defendants resulting in his severe toxic injuries, Plaintiff Raul Ruiz Gutierrez has suffered lost
22 income, wages, profits, commissions, diminishment of earning potential, loss of earning capacity,
23 loss of the ability to provide household services, and other pecuniary losses, and will continue to
24 suffer such future losses, all to Plaintiff's damage in a sum to be established according to proof.

25 86. As a further direct and proximate result of the negligent acts and omissions of
26 Defendants, Plaintiff Raul Ruiz Gutierrez has suffered past and will likely continue to suffer future
27 physical pain, mental suffering, diminished quality of life, loss of enjoyment of life, disfigurement,
28 physical impairment, inconvenience, grief, anxiety, humiliation, emotional distress, fear of
developing cancer or other serious illness, fear of death, and other damages.

87. In their negligent conduct in exposing Plaintiff Raul Ruiz Gutierrez to their toxic and fibrogenic products, Defendants consciously disregarded Plaintiff's safety despite knowledge of the probable dangerous consequences of their products, and willfully and deliberately failed to avoid said dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably indifferent to, unnecessary risks of injury to Plaintiff Raul Ruiz Gutierrez and failed and refused to take steps to eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants concealed known toxic hazards of their stone products from Plaintiff, specifically by failing to warn Plaintiff Raul Ruiz Gutierrez of adverse toxic effects of their stone products, and such hazards were known by and such concealment was ratified by the corporate officers and managers of each of the defendants. Defendants consciously decided to market their stone products with knowledge of their harmful effects and without remedying the toxic effects of their stone products, and such marketing, despite knowledge of the foregoing toxic hazards of Defendants' products, was ratified by the corporate officers and managers of each of the defendants. Defendants also misrepresented the nature of their stone products by withholding information from Plaintiff Raul Ruiz Gutierrez regarding toxic and fibrogenic chemicals, including silica and metals, released from their products during their anticipated or reasonably foreseeable uses, and such misrepresentation and withholding of information was ratified by the corporate officers and managers of each of the Defendants.

88. Defendants' conduct in exposing Plaintiff Raul Ruiz Gutierrez to said toxic and fibrogenic stone products was despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety of Plaintiff, entitling Plaintiff Raul Ruiz Gutierrez to punitive and exemplary damages.

SECOND CAUSE OF ACTION

(Products Liability – Failure to Warn – by Plaintiff Raul Ruiz Gutierrez Against All Defendants and Does 1 through 100)

89. Plaintiff Raul Ruiz Gutierrez incorporates by reference all of the foregoing paragraphs of this Complaint.

90. At all times mentioned herein, Defendants were the manufacturers, importers, producers, suppliers, contractors, brokers, and/or distributors of inherently hazardous stone slab and

1 block products to which Plaintiff Raul Ruiz Gutierrez was exposed in fabricating and installing stone
2 countertops.

3 91. The stone products which Defendants manufactured, imported, produced, contracted,
4 supplied, brokered and distributed, and to which Plaintiff Raul Ruiz Gutierrez was exposed, were
5 defective, because they lacked warnings adequate to apprise Plaintiff of their toxic hazards and their
6 serious effects upon the human body, and they lacked instructions for handling and use adequate to
7 prevent exposure to Plaintiff causing serious injury and disease, to wit, silicosis and other disease as
8 set forth herein.

9 92. Plaintiff Raul Ruiz Gutierrez was occupationally exposed to all of Defendants' toxic
10 stone products.

11 93. Each toxic stone product to which Plaintiff was exposed was manufactured,
12 distributed, contracted, brokered and/or supplied by Defendants, including the Doe Defendants.

13 94. From his use of the foregoing toxic stone products, Plaintiff was exposed to
14 Defendants' toxic stone products, including artificial stone products, as well as natural stone
15 products, including granite, marble, and other natural stone products.

16 95. Each toxic stone product to which Plaintiff was exposed was manufactured, contracted,
17 brokered, and/or supplied by Defendants.

18 96. As a result of Plaintiff's exposure to the foregoing toxic stone products, silica, metals,
19 and other toxins within said stone products entered Plaintiff's body.

20 97. Plaintiff suffers from a specific illnesses, to wit, silicosis as well as other related and
21 consequential injuries as set forth herein.

22 98. Each of the foregoing toxic stone products caused Plaintiff's silicosis and his related
23 and consequential injuries as set forth herein.

24 99. Each toxin, including silica and metals, that entered Plaintiff's body was a substantial
25 factor in bringing about, prolonging, and aggravating Plaintiff's silicosis and his related and
26 consequential injuries.

27 100. As a direct and proximate result of the defective warnings and use instructions of
28 Defendants' stone products, Plaintiff suffers from silicosis and other related and consequential
medical conditions.

1 101. As a direct and proximate result of the defective warnings and use instructions of
2 Defendants' stone products, Plaintiff has been and will be required to expend money and incur
3 obligations for medical and related expenses in an amount not yet determined but which is well more
4 than the jurisdictional minimum of the Court, and Plaintiff has been unable to attend to his usual
5 work and activities.

6 102. As a direct and proximate result of the defective warnings and use instructions of
7 Defendants' stone products, the need for future medical monitoring is reasonably certain. Plaintiff
8 will suffer loss for the cost of future medical monitoring in a sum to be established according to
9 proof.

10 103. As a further direct and proximate result of the defective warnings and use instructions
11 of Defendants' stone products, Plaintiff has suffered lost income and will continue to suffer loss of
12 future income, loss of the ability to provide household services, support and maintenance, and lost
13 earning capacity, all to Plaintiffs damage in a sum to be established according to proof.

14 104. As a further direct and proximate result of defective warnings and use instructions of
15 Defendants' chemical products, Plaintiff has suffered past and will likely continue to suffer future
16 physical pain, mental suffering, diminished quality of life, loss of enjoyment of life, disfigurement,
17 physical impairment, inconvenience, grief, anxiety, humiliation, emotional distress, fear of
18 developing cancer or other serious illness, fear of death, and other damages.

19 105. As a further direct and proximate result of defective warnings and use instructions of
20 Defendants' chemical products, Plaintiff has suffered and will continue to suffer general damages,
21 according to proof at trial.

22 106. In exposing Plaintiff Raul Ruiz Gutierrez to said toxic and fibrogenic stone products,
23 Defendants failed to warn Plaintiff of known dangers, consciously disregarded Plaintiff's safety
24 despite knowledge of the probable dangerous consequences of their products, and willfully and
25 deliberately failed to avoid said dangerous consequences befalling Plaintiff. Defendants were either
26 aware of, or culpably indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to
27 take steps to eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff.
28 Defendants concealed known hazards of their stone products from Plaintiff, specifically by failing

1 to warn Plaintiff of adverse toxic effects of their stone products, and such hazards were known by
2 and such concealment was ratified by the corporate officers and managers of each of the defendants.

3 107. Defendants consciously decided to market their stone products with knowledge of their
4 harmful effects, without remedying the toxic effects of their stone products, and without providing
5 use instructions adequate to prevent silicosis, despite knowledge of the foregoing toxic hazards of
6 Defendants' products was ratified by the corporate officers and managers of each of the defendants.
7 Defendants also misrepresented the nature of their stone products, by withholding information from
8 Plaintiff regarding toxic and fibrogenic chemicals released from their products during their
9 anticipated or reasonably foreseeable uses, and such misrepresentation and withholding of
10 information was ratified by the corporate officers and managers of each of the defendants.

11 108. Defendants' conduct in exposing Plaintiff to said toxic and fibrogenic stone products
12 without adequate warnings of their toxic hazards and without adequate instructions for safe handling
13 and use of their toxic and lethal products was despicable, malicious, oppressive, and perpetrated in
14 conscious disregard of the rights and safety of Plaintiff, entitling Plaintiff to punitive and exemplary
15 damages.

16 **THIRD CAUSE OF ACTION**
17 **(Products Liability – Design Defect – by Plaintiff Raul Ruiz Gutierrez Against All Defendants**
18 **and**
19 **Does 1 through 100)**

20 109. Plaintiff Raul Ruiz Gutierrez incorporates by reference all of the foregoing paragraphs
21 of this Complaint.

22 110. At all times mentioned herein, Defendants were the manufacturers, importers,
23 suppliers, producers, brokers, contractors, and/or distributors of stone slab and block products to
24 which Plaintiff Raul Ruiz Gutierrez was exposed in the course of his work as a countertop fabricator
25 and/or installer. Defendants defectively designed stone slab and block product and failed to
26 adequately warn of potential safety hazards of such products.

27 111. Defendants' stone products were defective in their design because they did not perform
28 as safely as an ordinary consumer and/or worker would expect when used or misused in an intended
or reasonably foreseeable way.

1 112. Defendants' stone products were defective in their design because they failed to
2 perform as safely as an ordinary user would expect when used in an intended or reasonably
3 foreseeable manner. The risks inherent in said design outweighed the benefits.

4 113. Defendants knew and intended that their products would be used without inspection
5 for defects and without knowledge of the hazards involved in such use. Said products were defective
6 and unsafe for their intended purpose because exposure to stone dust causes serious disease and
7 death.

8 114. Said design defects existed in Defendants' stone products when said stone products
9 left Defendants' possession.

10 115. Said products did, in fact, cause personal injuries, including to Plaintiff as set forth
11 herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective,
12 unsafe and dangerous for use. Moreover, said products failed to be designed, as required by
13 California law, to account for foreseeable risks, even if they arise from the conduct of others. (*Collins*
14 *v. Navistar, Inc.* (2013) 214 Cal.App.4th 1486, 1511.) "Exposed persons" did not know of the
15 substantial danger of using said products. Said dangers were not readily recognizable by "exposed
16 persons."

17 116. As a direct and proximate result of said design defects, while using Defendants' stone
18 products in a manner that was reasonably foreseeable and intended by Defendants, Plaintiff was
19 exposed to said stone products in the course of his work and has suffered serious injuries and disease,
20 including silicosis and other related and consequential medical conditions as set forth herein.

21 117. Each toxic stone product to which Plaintiff was exposed was manufactured, contracted,
22 brokered, and/or supplied by Defendants, including the Doe Defendants.

23 118. As a result of Plaintiff's exposure to Defendants' stone products, silica, metals, and
24 other toxins within said stone products entered Plaintiff's body.

25 119. Plaintiff suffers from specific illnesses, including silicosis and other related and
26 consequential medical conditions as set forth herein.

27 120. Each of Defendants' stone products caused Plaintiff's silicosis and other related and
28 consequential injuries.

1 121. Each toxin, including silica and metals, that entered Plaintiff's body was a substantial
2 factor in bringing about, prolonging, and aggravating Plaintiff's silicosis and related and
3 consequential injuries.

4 122. As a direct and proximate result of the defective design of Defendants' stone products,
5 Plaintiff suffers from silicosis and other related and consequential medical conditions as set forth
6 herein.

7 123. As a direct and proximate result of the defective design of Defendants' stone products,
8 as aforesaid, Plaintiff's exposure caused severe and permanent injury, damage, loss, or harm to the
9 Plaintiff, all to his general damage in a sum over the jurisdictional limits of a limited civil case. This
10 action is an Unlimited Civil Case as defined in Code of Civil Procedure § 88.

11 124. As a direct and proximate result of the defective design of Defendants' stone products,
12 Plaintiff has been required to spend money and/or incur obligations for medical and related expenses,
13 and will incur in the future, in an amount which is more than the jurisdictional minimum of the Court,
14 and he has been unable to attend to his usual work and activities.

15 125. As a direct and proximate result of the defective warnings and use instructions of
16 Defendants' stone products, the need for future medical monitoring is reasonably certain. Plaintiff
17 will suffer loss for the cost of future medical monitoring in a sum to be established according to
18 proof.

19 126. As a direct and proximate result of the defective design of Defendants' stone products,
20 resulting in his severe toxic injuries, Plaintiff has suffered lost income, wages, profits, commissions,
21 diminishment of earning potential, loss of earning capacity, loss of the ability to provide household
22 services, and other pecuniary losses, and will continue to suffer such future losses, all to Plaintiffs
23 damage in a sum to be established according to proof.

24 127. As a direct and proximate result of the defective design of Defendants' stone products,
25 Plaintiff has suffered past and will likely continue to suffer future physical pain, mental suffering,
26 diminished quality of life, loss of enjoyment of life, disfigurement, physical impairment,
27 inconvenience, grief, anxiety, humiliation, emotional distress, fear of developing cancer or other
28 serious illness, fear of death, and other damages.

1 128. In exposing Plaintiff to their toxic and fibrogenic stone products, Defendants failed to
2 warn Plaintiff of known dangers, consciously disregarded Plaintiff's safety despite knowledge of the
3 probable dangerous consequences of their products, and willfully and deliberately failed to avoid
4 said dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably
5 indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to eliminate
6 or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants concealed
7 known toxic hazards of their stone products from Plaintiff, specifically by failing to warn Plaintiff
8 of adverse toxic effects of their stone products, and such hazards were known by and such
9 concealment was ratified by the corporate officers and managers of each of the defendants.

10 129. Defendants consciously decided to market their stone products with knowledge of their
11 harmful effects and without remedying the toxic effects of their stone products, and such marketing,
12 despite knowledge of the foregoing toxic hazards of Defendants' products, was ratified by the
13 corporate officers and managers of each of the defendants.

14 130. Defendants also misrepresented the nature of their stone products by withholding
15 information from Plaintiff regarding toxic and fibrogenic chemicals, including silica and metals,
16 released from their products during their anticipated or reasonably foreseeable uses, and each of the
17 Defendants' corporate officers and managers ratified such misrepresentation and withholding of
18 information.

19 131. Defendants' conduct in exposing Plaintiff to said toxic and fibrogenic stone products
20 without adequate warnings of their toxic hazards and without adequate instructions for safe handling
21 and use to prevent disabling lung disease was despicable, malicious, oppressive, and perpetrated in
22 conscious disregard of the rights and safety of Plaintiff, entitling Plaintiff to punitive damages.

FOURTH CAUSE OF ACTION

(Fraudulent Concealment – by Plaintiff Raul Ruiz Gutierrez Against All Defendants and Does 1 through 100)

25 132. Plaintiff Raul Ruiz Gutierrez incorporates by reference all of the foregoing paragraphs
26 of this Complaint.

27 133. Per *Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245
28 Cal.App.4th 821, 838:

1 Less specificity is required of a complaint when it appears from the nature of the
2 allegations that the defendant must necessarily possess full information concerning the
3 facts of the controversy; even under the strict rules of common law pleading, one of
4 the canons was that less particularity is required when the facts lie more in the
5 knowledge of the opposite party.

6 134. Per *Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, the Second Appellate
7 district held that allegations of fraudulent concealment far less than what are stated herein are
8 sufficient to state a cause of action for fraudulent concealment.

9 135. The question of which corporate officer was responsible for the alleged concealment,
10 or ought to have been responsible for disclosure, is a fact which “lie[s] more in the knowledge” of
11 Defendants, and thus need not be pleaded with specificity. *Id.* As the *Jones* court wrote, beginning
12 on pages 1198-1200 of the court’s decision (emphasis added):

13 Not every fraud arises from an affirmative misstatement of material fact. ‘The principle
14 is fundamental that “[deceit] may be negative as well as affirmative; it may consist of
15 suppression of that which it is one’s duty to declare as well as of the declaration of that
16 which is false.” [Citations.] Thus section 1709 of the Civil Code provides: “One who
17 wilfully deceives another with intent to induce him to alter his position to his injury or
18 risk, is liable for any damage which he thereby suffers.” Section 1710 of the Civil Code
19 in relevant part provides: “A deceit, within the meaning of the last section, is either: ...
20 3. The suppression of a fact, by one who is bound to disclose it, or who gives
21 information of other facts which are likely to mislead for want of communication of
22 that fact....”’” (*Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85,95, 111 Cal.Rptr.2d
23 711.) “[T]he elements of a cause of action for fraud based on concealment are:
24 ““(1) the defendant must have concealed or suppressed a material fact, (2) the
25 defendant must have been under a duty to disclose the fact to the plaintiff, (3) the
26 defendant must have intentionally concealed or suppressed the fact with the
27 intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact
28 and would not have acted as he did if he had known of the concealed or suppressed
fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff

1 **must have sustained damage.””** (*Kaldenbach v. Mutual of Omaha Life Ins. Co.*
2 (2009) 178 Cal.App.4th 830, 850, 100 Cal.Rptr.3d 637.).

3 The Joneses respond that, “[g]enerally speaking, manufacturers have a duty to warn
4 consumers about the hazards inherent in their products. [Citation.] The requirement’s
5 purpose is to inform consumers about a product’s hazards and faults of which they are
6 unaware, so that they can refrain from using the product altogether or evade the danger
7 by careful use.” (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64-65, 74
8 Cal.Rptr.3d 108, 179 P.3d 905, citing *Anderson v. Owens-Corning Fiberglas Corp.*
9 (1991) 53 Cal.3d 987, 1003, 281 Cal.Rptr. 528, 810 P.2d 549; accord, *Pannu v. Land*
10 *Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1316, 120 Cal.Rptr.3d 605.)
11 Thus, the Joneses argue, defendants owed a duty to share information about the toxicity
12 of their products with those who could be expected to use those products, namely
13 employees like Carlos, and they as plaintiffs should be permitted to explore the extent
14 of defendants’ knowledge of these hazards in discovery without first identifying
15 specific acts by defendants, precisely because defendants alone know when they
16 became aware of the particular hazards associated with their products. Requiring
17 specificity at this juncture, they assert, is neither realistic nor mandated by case law.
18 As one court has aptly observed, “it is harder to apply [the requirement of specificity]
19 to a case of simple nondisclosure. ‘How does one show “how” and “by what means”
20 something didn’t happen, or “when” it never happened, or “where” it never
21 happened?”’ (*Alfaro v. Community Housing Improvement System & Planning Assn.,*
22 *Inc.* (2009) 171 Cal.App.4th 1356, 1384, 124 Cal.Rptr.3d 271 (Alfaro); see also
23 *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d
24 197,217, 197 Cal.Rptr. 783, 673 P.2d 660 [“ ‘[e]ven under the strict rules of common
25 law pleading, one of the canons was that less particularity is required when the facts
26 lie more in the knowledge of the opposite party ...”].)

26 These principles are equally pertinent to the scope of defendants’ duty to disclose.
27 Although, typically, a duty to disclose arises when a defendant owes a fiduciary duty
28 to a plaintiff (see, e.g., *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 346-347, 134

1 Cal.Rptr. 375, 556 P.2d 737), a duty to disclose may also arise when a defendant
2 possesses or exerts control over material facts not readily available to the plaintiff.
3 (See, e.g., *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471,482, 55
4 Cal.Rptr.2d 225 [“[t]he duty to disclose may arise without any confidential
5 relationship where the defendant alone has knowledge of material facts which are not
6 accessible to the plaintiff”].) In *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 60
7 Cal.Rptr.2d 539, a decision relied upon by defendants, each of the circumstances cited
8 by the court in which a duty to disclose may exist absent the presence of a fiduciary
9 relationship concerns the defendant’s exertion of control over material facts that were
10 not disclosed to the plaintiff, that is, “when the defendant ha[s] exclusive knowledge
11 of material facts not known to the plaintiff”; “when the defendant actively conceals a
12 material fact from the plaintiff”; or “when the defendant makes partial representations
13 but also suppresses some material facts.” (*Id.* at p. 336, 60 Cal.Rptr.2d 539.)

14 Here, the amended complaint alleges defendants were “aware of the toxic nature of
15 their products” and “owed a duty to disclose the toxic properties of their products to
16 [Carlos] because [they] alone had knowledge of material facts, to wit the toxic
17 properties of their products, which were not available to [Carlos].” It also alleges
18 defendants owed a duty to disclose because they “made representations regarding their
19 products, but failed to disclose additional facts which materially qualify the facts
20 disclosed, and/or which rendered the disclosures made likely to mislead [Carlos].”

21 These conclusory allegations are supplemented with respect to the single compound,
22 DMF. The Joneses cite studies published as early as 1969 attesting to DMF’s toxicity,
23 several years before Carlos began working at Goodyear where he was exposed to the
24 Dow product containing DMF.

25 At a minimum, the amended complaint states a viable claim for fraudulent concealment
26 against Dow Chemical, the manufacturer of the product Polymide 2080-D/DHV,
27 which allegedly contained DMF. The Joneses have alleged DMF was known to be
28 hazardous as early as 1969, and Dow Chemical concealed the toxic properties of their
product, which Carlos would not have used had he been fully advised of its toxicity....

On balance, we conclude the amended complaint does provide adequate notice to the remaining defendants of the material facts they allegedly concealed from Carlos. Based upon the existing allegations, each defendant has received notice of the particular product it made that was used at the Goodyear and Upjohn plants at which Carlos worked. The pleading further alleges these products “contained significant concentrations of organic solvents ... and other toxic chemicals” and “[t]he toxicity of various organic solvents to the liver and kidney has long been recognized.” Each defendant is therefore on notice that it allegedly concealed or failed to disclose the toxic properties of the product it sold to Goodyear and Upjohn during the course of Carlos’s employment. Although sparse, nothing more is required at this early stage of the litigation.

136. At all times mentioned herein, Defendants were the manufacturers, suppliers, contractors, brokers, importers, producers and/or distributors of stone products which Plaintiff used and to which he was exposed in his work as a countertop cutter, fabricator and/or installer.

137. Defendants’ stone products are toxic and fibrogenic to the human lungs.

138. Before Plaintiff’s exposure to Defendants’ stone products, Defendants were aware of the toxic and fibrogenic nature of their stone products and that exposure to them causes silicosis.

139. Under the Hazard Communication Standard, Defendants were under a legal duty to disclose by labels to Plaintiff and by Safety Data Sheets to his employers both the toxic and fibrogenic properties of their products and use instructions that were adequate to prevent silicosis.

140. Under California common law, Defendants were legally obliged to fully disclose their products’ toxic and fibrogenic properties directly to Plaintiff.

141. Defendants also owed a duty to disclose the toxic hazards of their stone products to Plaintiff because Defendants alone knew material facts, to wit the toxic properties of their products, which were not accessible to Plaintiff.

142. Defendants also owed a duty to disclose the toxic hazards of their stone products to Plaintiff because Defendants made representations regarding their products but failed to disclose additional facts that materially qualify the facts disclosed and/or which rendered the disclosures made likely to mislead Plaintiff.

1 143. Defendants also owed a duty to disclose the toxic hazards of their stone products to
2 Plaintiff because a transactional relationship existed between Plaintiff and Defendants inasmuch as
3 Plaintiff purchased and/or received toxic stone products from Defendants.

4 144. Notwithstanding their knowledge of the toxic and fibrogenic hazards of their stone
5 products, at all material times hereto, Defendants concealed said toxic hazards from Plaintiff so that
6 he would use Defendants' stone products in his work.

7 145. Before Plaintiff's exposure to Defendants' stone slab and block products, Defendants
8 were aware that their artificial stone products contained extremely high concentrations of crystalline
9 silica (approximately 95%), which produced extremely high levels of respirable crystalline silica in
10 their ordinary and expected use, when fabricators and/or installers fabricate, cut, grind, drill, edge,
11 and/or polish the products, so their products presented extreme hazards and risks to the health of
12 exposed workers, in comparison with natural stone products such as granite (which contains about
13 35% crystalline silica) and marble (which only contains about 5% crystalline silica).

14 146. Before Plaintiff's exposure to Defendants' stone products, Defendants were aware that
15 commonly used and recommended protective measures (e.g., wet processing methods and air
16 purifying respirators) were inadequate to prevent fabricators and installers from getting silicosis.

17 147. Before Plaintiff's exposure to Defendants' stone products, Defendants were aware that
18 Plaintiff's employer lacked knowledge of the extreme toxic hazards of Defendants' stone products
19 and that Plaintiff's employers were unaware of the extreme protective measures that are necessary
20 to prevent fabricators and installers from getting silicosis from exposure to Defendants' stone
21 products.

22 148. At all times before Plaintiff's exposure to Defendants' stone products, Defendants
23 nevertheless concealed from Plaintiff and his employers the extreme protective measures necessary
24 to prevent fabricators and installers from getting silicosis from exposure to Defendants' stone
25 products.

26 149. At all times before Plaintiff's exposure to Defendants' stone products, Defendants
27 failed to check and monitor the use of Defendants' stone products to determine whether Plaintiff's
28 employers were using the products in such a manner so as not to endanger the health and safety of
their employees, or whether Plaintiff's employers were endangering the health and safety of their

1 employees by using Defendants' products in such a manner as would cause silicosis, other diseases,
2 and death.

3 150. At all times before Plaintiff's exposure to Defendants' stone products, Defendants
4 failed to cease selling their toxic and lethal stone products to Plaintiff's employers who, even with
5 best efforts and intentions, were incapable of using Defendants' stone products safely, were
6 incapable of protecting fabricators and installers from the respiratory and lethal hazards of
7 Defendants' stone products, and, although they attempted to use Defendants' stone products as
8 directed and intended, were nevertheless endangering the health and safety of their employees by
9 exposing them to the toxic and lethal hazards of Defendants' stone products.

10 151. Notwithstanding their knowledge of the carcinogenic, toxic, and fibrogenic hazards of
11 their stone products, at all material times hereto, Defendants concealed said hazards from Plaintiff
12 so he would use Defendants' stone products in his work.

13 152. Plaintiff was unaware of the toxic and fibrogenic of Defendants' products and would
14 not have acted as he did had he known of said hazards.

15 153. Defendants had a duty to disclose the toxic hazards of their products to Plaintiff's
16 employers; Defendants concealed significant health hazards from Plaintiff; Defendants intended that
17 Plaintiff use their products; and therefore intended and had reason to expect that their concealment
18 of toxic hazards and health risks would be acted upon by Plaintiff who otherwise would not have
19 used Defendants' stone products. In using Defendants' stone products, Plaintiff acted in justifiable
20 reliance that Defendants had not concealed material facts of the toxic hazards of their stone products.

21 154. As a direct and proximate result of Defendants' fraudulent concealment of the toxic
22 and fibrogenic hazards of their stone products, Plaintiff was exposed to Defendants' stone products
23 in the course of his work as a countertop fabricator and installer, and he has sustained serious injuries
24 and disease, including silicosis, and other conditions.

25 155. Each toxic stone product to which Plaintiff was exposed was manufactured,
26 distributed, contracted, brokered and/or supplied by Defendants, including the Doe Defendants.

27 156. As a result of Plaintiff's exposure to Defendants' toxic stone products, toxins,
28 including silica, metals, and other toxic substances, within said stone products entered Plaintiff's
body.

1 157. Plaintiff suffers from specific illnesses, including silicosis and other related and
2 consequential medical conditions as set forth herein.

3 158. Each of the foregoing toxic stone products caused Plaintiff's silicosis as well as his
4 other related and consequential injuries as set forth herein.

5 159. Each toxin, including silica and every metal, that entered Plaintiff's body was a
6 substantial factor in bringing about, prolonging, and aggravating Plaintiff's silicosis, and related and
7 consequential injuries as set forth herein.

8 160. As a direct and proximate result of Defendants' fraudulent concealment of the toxic
9 hazards of their stone products, Plaintiff suffers from silicosis and other related and consequential
10 medical conditions as set forth herein.

11 161. As a direct and proximate result of Defendants' fraudulent concealment of the toxic
12 hazards of their stone products, Plaintiff has been and will in the future be required to expend money
13 and incur obligations for medical and related expenses in an amount not yet determined but which is
14 well more than the jurisdictional minimum of the Court, and Plaintiff has been unable to attend to
15 his usual work and activities.

16 162. As a direct and proximate result of the defective warnings and use instructions of
17 Defendants' stone products, the need for future medical monitoring is reasonably certain, and
18 Plaintiff will suffer loss for the cost of future medical monitoring in a sum to be established according
19 to proof.

20 163. As a further direct and proximate result of Defendants' fraudulent concealment of the
21 toxic hazards of their stone products, Plaintiff has suffered lost income and will continue to suffer
22 loss of future income, support, wages, and maintenance, lost earning capacity, loss of the ability to
23 provide household services, and other pecuniary losses, all to Plaintiff's damage in a sum to be
24 established according to proof.

25 164. As a further direct and proximate result of Defendants' fraudulent concealment of the
26 toxic hazards of their stone products, Plaintiff has suffered past and will likely continue to suffer
27 future physical pain, mental suffering, diminished quality of life, loss of enjoyment of life,
28 disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, emotional distress,
fear of developing cancer or other serious illness, fear of death, and other damages.

165. As a further direct and proximate result of Defendants' fraudulent concealment of the toxic hazards of their stone products, Plaintiff has suffered and will continue to suffer general damages, according to proof at trial.

166. In exposing Plaintiff to said toxic and fibrogenic stone products via their fraudulent concealment, Defendants consciously disregarded Plaintiff's safety despite knowledge of the probable dangerous consequences of their products and willfully and deliberately failed to avoid said dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants concealed known hazards of their stone products from Plaintiff, specifically by failing to warn Plaintiff of adverse toxic effects of their stone products, and such hazards were known by and such concealment was ratified by the corporate officers and managers of each of the defendants.

167. Defendants consciously decided to market their stone products with knowledge of their harmful effects and without remedying the toxic effects of their stone products, and such marketing, despite knowledge of the foregoing toxic hazards of Defendants' products, was ratified by the corporate officers and managers of each of the defendants. Defendants also misrepresented the nature of their stone products, by withholding information from Plaintiff regarding toxic and fibrogenic substances, including silica and metals, released from their products during their anticipated or reasonably foreseeable uses, and such misrepresentation and withholding of information was ratified by the corporate officers and managers of each of the Defendants.

168. Defendants' conduct in exposing Plaintiff to said toxic and fibrogenic stone products without adequate warnings of their toxic hazards and without adequate instructions for safe handling and use necessary to prevent disabling lung disease was despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety of Plaintiff.

FIFTH CAUSE OF ACTION
**(Breach of Implied Warranties – by Plaintiff Raul Ruiz Gutierrez Against All Defendants
and Does 1 through 100)**

169. Plaintiff Raul Ruiz Gutierrez incorporates by reference all of the foregoing paragraphs of this Complaint.

1 170. At all times mentioned herein, Defendants were the manufacturers, suppliers,
2 contractors, brokers, importers, producers, and distributors of inherently hazardous stone products
3 that were purchased by Plaintiff's employers and/or hirers and delivered to Plaintiffs employers
4 and/or hirers' facilities, where Plaintiff, was exposed to Defendants' toxic stone products.

5 171. Defendants' stone products to which Plaintiff was exposed are toxic and fibrogenic.

6 172. By placing their inherently hazardous stone products in the stream of commerce,
7 Defendants impliedly warranted that their stone products were reasonably fit for their intended uses,
8 that their stone products were of merchantable quality, that they were not defective, that they would
9 function as safely as ordinary users would expect when used in an intended or reasonably foreseeable
10 manner, and that they would not cause serious disease, harm, or death.

11 173. Defendants, and each of them, breached said implied warranties, because their
12 inherently hazardous stone products were not reasonably fit for their intended uses, were not of
13 merchantable quality, were defective, and failed to function as safely as an ordinary user would
14 expect when used in an intended or reasonably foreseeable manner, and caused serious injuries to
15 Plaintiff to wit, silicosis, other injuries and disease.

16 174. From his use of the inherently hazardous stone products mentioned above, Plaintiff
17 was exposed to toxins, including silica, metals, and other toxins in Defendants' stone products.

18 175. Each of the inherently toxic stone products to which Plaintiff was exposed was
19 manufactured, contracted, brokered, and/or supplied by Defendants, including the Doe Defendants.

20 176. As a result of Plaintiff's exposure to Defendants' stone products, toxins, including
21 silica, metals, and other toxic substances, within said stone products entered his body.

22 177. Plaintiff suffers from specific illnesses, including silicosis and other related and
23 consequential medical conditions as set forth herein.

24 178. Each of Defendants' inherently hazardous stone products caused Plaintiff's silicosis
25 and other injuries as set forth herein.

26 179. Each toxin, including silica and metals, that entered Plaintiff's body was a substantial
27 factor in bringing about, prolonging, and aggravating Plaintiff's silicosis and other related and
28 consequential injuries as set forth herein.

1 180. As a direct and proximate result of Defendants' breaches of implied warranties,
2 Plaintiff has suffered serious injuries and disease, including silicosis and other related and
3 consequential medical conditions as set forth herein.

4 181. As a direct and proximate result of Defendants' breaches of implied warranties,
5 Plaintiff has been required and will in the future be required to expend money and incur obligations
6 for medical and related expenses in an amount not yet determined but well over the jurisdictional
7 minimum of the Court, and Plaintiff has been unable to attend to his usual employment and activities.

8 182. As a direct and proximate result of the defective warnings and use instructions of
9 Defendants' stone products, the need for future medical monitoring is reasonably certain, and
10 Plaintiff will suffer loss for the cost of future medical monitoring in a sum to be established according
11 to proof.

12 183. As a further direct and proximate result of Defendants' breaches of implied warranties
13 resulting in his severe toxic injuries, Plaintiff has suffered lost income and will continue to suffer
14 loss of future income, support, wages, and maintenance, lost earning capacity, loss of the ability to
15 provide household services, and other pecuniary losses, all to Plaintiff's damage in a sum to be
16 established according to proof.

17 184. As a further direct and proximate result of Defendants' breaches of implied warranties,
18 Plaintiff has suffered past and will likely continue to suffer future physical pain, mental suffering,
19 diminished quality of life, loss of enjoyment of life, disfigurement, physical impairment,
20 inconvenience, grief, anxiety, humiliation, emotional distress, fear of developing cancer or other
21 serious illness, fear of death, and other damages.

SIXTH CAUSE OF ACTION

22 **(Loss of Consortium – by Plaintiff Susana Martinez Soto Against All Defendants and Does 1**
23 **through 100)**

24 185. Plaintiff Susana Martinez Soto incorporates by reference all of the foregoing
25 paragraphs of this Complaint.

26 186. Plaintiffs Raul Ruiz Gutierrez and Susana Martinez Soto have been living together as
27 husband and wife at all material times.
28

1 187. As a direct and proximate result of Defendants' above-described conduct and
2 Defendants' defective products, Plaintiff Susana Martinez Soto has lost and been deprived of the
3 services, love, companionship, comfort, care, assistance, protection, affection, society, moral
4 support, sexual relations, and solace of Plaintiff Raul Ruiz Gutierrez, all to the special and general
5 damage of Plaintiff Susana Martinez Soto. Plaintiff anticipates further loss of consortium in the
6 future.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs demand judgment against Defendants, and each of them, jointly
9 and severally, for the following:

- 10 1. For general damages in the sum according to proof;
11 2. For special damages in the sum according to the proof;
12 3. Sums incurred and to be incurred for services of hospitals, physicians, surgeons,
13 nurses and other medical supplies and services and monitoring;
14 4. For costs of suit herein incurred;
15 5. For punitive damages according to proof;
16 6. For past and future loss of consortium;
17 7. For pre-judgment interest and post-judgment interest according to law; and
18 8. For such other and further relief as the court may deem just and proper.

19 DATED: November 22, 2024

THE AMMONS LAW FIRM LLP

21 By: /s/ Adam Milasincic
22 ADAM MILASINCIC
23 Attorney for Plaintiffs

24 ///

25 ///

26 ///

27 ///

28 ///

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

DATED: November 22, 2024

By: /s/ Adam Milasincic
ADAM MILASINCIC
Attorney for Plaintiffs