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Attorneys for Plaintiff
ERDIS LEE POWELL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

CGC-25-624802

ERDIS LEE POWELL,

Plaintiff,

vs.

C & C NORTH AMERICA, INC.; COSENTINO GLOBAL SOCIEDAD LIMITADA; COSENTINO INDUSTRIAL SA; COSENTINO SA,

Defendants.

No.

COMPLAINT ASSERTING CAUSES OF ACTION FOR:

(1) NEGLIGENCE;
(2) PRODUCTS LIABILITY - FAILURE TO WARN;
(3) PRODUCTS LIABILITY - DESIGN DEFECT
(4) FRAUDULENT CONCEALMENT;
(5) BREACH OF IMPLIED WARRANTIES;

DEMAND FOR JURY TRIAL [MADE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE §§ 600 ET SEQ. AND PURSUANT TO RULE 38 OF THE FEDERAL RULES OF CIVIL PROCEDURE SHOULD THIS CASE EVER BE REMOVED TO FEDERAL COURT]

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Plaintiff, ERDIS LEE POWELL, hereby alleges:

THE PARTIES

Plaintiff

1. At all material times hereto, Plaintiff, ERDIS LEE POWELL, has resided in the County of San Francisco, State of California.

Defendants

2. Plaintiff is informed and believes and thereon alleges that Defendant, C & C NORTH AMERICA, INC., is a Delaware corporation, which its principal place of business located at 355 Alhambra Cir., Ste 1000, Coral Gables, Fl 33134-5006, which at all material times hereto, was doing business in the County of Orange, California, at times as SMDS WEST COAST included but not limited to located at 611 E Cerritos Ave., Anaheim, CA 92805, and which at all material times hereto was doing business in the County of San Francisco, State of California.

3. Plaintiff is informed and believes and thereon alleges that Defendant, COSENTINO GLOBAL SOCIEDAD LIMITADA, is a Spanish company which at all material times hereto, was doing business in the County of San Francisco, State of California.

4. Plaintiff is informed and believes and thereon alleges that Defendant, COSENTINO INDUSTRIAL SA, is a Spanish company which at all material times hereto, was doing business in the County of San Francisco, State of California.

5. Plaintiff is informed and believes and thereon alleges that Defendant, COSENTINO SA (formerly known as COSENTINO GROUP, SA) ("COSENTINO GROUP"), is a Spanish corporation, whose headquarters for the Americas is located in Coral Gables, Florida, and which was doing business at 12822 Rangoon Street, Arleta, California, 91331-4321, and which at all material times hereto was doing business in the County of San Francisco, State of California.

Agency

6. Plaintiff is informed and believes and based thereon alleges that, at all times material hereto, each of the Defendants, was acting in an individual, corporate, partnership, associate, conspiratorial or other capacity or as the agent, employee, co-conspirator, and/or alter ego of its co-defendants, and in doing the acts herein alleged, was acting within the course and scope of its

authority as such partner, associate, agent, employee, co-conspirator, or alter ego, and with the permission, consent, knowledge, authorization, ratification and direction of its co-defendants.

STONE SLAB AND COUNTERTOP CHAIN OF DISTRIBUTION

7. A useful description of the stone countertop supply chain appeared in an October 10, 2022 article titled "Who Sells Countertops? A Quick Guide to the Countertop Supply Chain" which can be downloaded from the CountertopSmart.com website at https://www.countertopsmart.com/blog/who_sells_countertops-_a_quick_guide_to_the_countertop_supply_chain.

8. This article identifies the following types of businesses in the stone slab/countertop supply chain: manufacturers, distributors, and retailers, including big box stores and kitchen and bath showrooms, countertop fabricators, and "agents," mostly interior designers, general contractors, and remodelers:

9. "*Manufacturers.* At the top of the supply chain, manufacturers produce the surfacing materials that are used in the creation of countertops— namely natural stone and man-made stone slabs. Manufacturers of natural stones like granite, marble, and quartzite quarry giant blocks of stone from the earth and refine them down into giant stone slabs. Manufacturers of man-made stones like quartz, sintered stone, and porcelain create solid stone slabs from scratch using stone aggregates and resin. Both types of manufacturers sell their respective slab goods in bulk to distributors." *Id.*

10. *"Distributors.* Distributors in the countertop industry warehouse stone slabs and sell them to retailers (who then turn them into your countertops). . . . Unlike in other industries, distributors in the countertop industry also play a customer-facing role. Distributors act as showrooms where customers can view stone slabs and select them for use in their countertop projects. . . . Stone slabs are very large, heavy, and fragile, and most retailers don't have the floor space or the specialty equipment to handle and showcase the thousands of stone slab options available on the market. Instead, retailers can send their customers directly to a distributor to view stone slabs and make selections. . . . [T]hough you the customer can view stone slabs directly at a distributor's warehouse, they will not sell you the stone slabs directly, nor will they provide you pricing. After all, distributors sell slabs to retailers. The retailers sell you, the customer, the installed countertops." *Id.*

11. *"Retailers:* "Countertop retailers sell countertops. But this is a broad category. Countertop retailers include big-box stores, Kitchen & Bath Showrooms (usually independently owned stores that sell flooring, cabinets, tile, and other interior finishes), and Countertop Fabrication Shops (the folks that actually cut and install countertops)." *Id.*

12. *"Agents:* Agents encompass a broad swath of construction professionals who purchase countertops on behalf of homeowners. Agents mostly include Interior Designers, General Contractors, and Remodelers." *Id.*

13. In addition to interior designers, general contractors, and kitchen and bath remodelers, architects may also be in the chain of distribution of stone slabs and countertops.

14. According to the Natural Stone Institute, more than 90% of countertop materials are imported into the United States from foreign countries. Natural Stone Institute and International Surface Fabricators Association, "Preventing Silicosis: Fabricator & Industry Perspective," May 16, 2024 [Powerpoint of presentation given at the University of California at Los Angeles]

15. According to the Natural Stone Institute, approximately 3,000 fabricators in California and a total of approximately 12,000 to 20,000 fabricators in the United States fabricate stone slabs to become countertops. Natural Stone Institute and International Surface Fabricators Association, "Preventing Silicosis: Fabricator & Industry Perspective," May 16, 2024 [Powerpoint from presentation given at the University of California at Los Angeles]

STONE SLAB PRODUCTS AND THEIR TOXIC CONSTITUENTS

16. The defendants named herein were and/or are the manufacturers, suppliers, distributors, importers, brokers, and/or contractors of industrial stone products, which are hereinafter called "stone products," "stone slabs," "stone blocks," "artificial stone," "natural stone," "silica-containing stone," and "treated natural stone."

17. Stone slabs are mineral products that are made from natural stone or artificial stone. In general, these stone products appear as shown in the following photographs:

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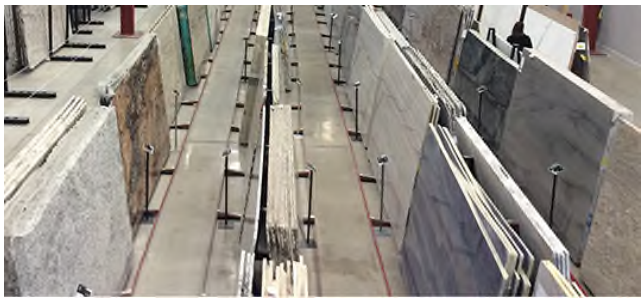

18. Stone products (in slabs or block) are made from natural stone include basalt, dolomite, granite, limestone, marble, onyx, porcelain, quartzite, sandstone, serpentine and travertine.

19. Stone products (in slabs or block) are also made from artificial stone, which is also called agglomerate, agglomerated stone, conglomerate, engineered stone, manufactured stone, quartz, reconstituted stone, and synthetic stone.

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

21. Stone slabs or blocks are commercial products that require fabrication prior to installation for a consumer.

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22. Cutting, grinding, drilling, chipping, edging, and/or polishing(collectively "fabricating") stone products produces large amounts of respirable crystalline silica dust which stone fabrication workers inhale.

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

24. Workers fabricating artificial stone products can develop progressive massive fibrosis due to their exposures to high concentrations of crystalline silica and other toxic constituents of artificial stone.

IDENTIFICATION OF DEFENDANTS' PRODUCTS

25. The defendants named herein were and/or are the manufacturers, distributors, suppliers, sellers, importers, brokers, and/or contractors of industrial stone products. As stated above, these industrial stone products include "stone products," "stone slabs," "stone block," "artificial stone," "natural stone," "silica-containing stone," "treated natural stone," which, after being fabricated and installed in consumers' homes and businesses would become "kitchen countertops," "bathroom countertops," and/or "stone countertops," at which time and only then would they become consumer products.

26. The Plaintiff worked with and was exposed to dust from the following Defendants' stone products:

C & C NORTH AMERICA, INC.

Cosentino, Dekton, Engineered Stone, Quartz, Sensa, Silestone

COSENTINO GLOBAL SOCIEDAD LIMITADA, COSENTINO INDUSTRIAL SA, and COSENTINO SA (formerly known as COSENTINO GROUP, SA)

Cosentino, Dekton, Engineered Stone, Quartz, Sensa, Silestone

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GENERAL ALLEGATIONS

27. From approximately 2015 to 2023, Plaintiff, ERDIS LEE POWELL, worked as a cutter, fabricator and/or installer of Defendants' stone products at The Tile Masters, 1118 Cronin Drive, Vallejo, CA 94589, working at various residential jobsites in the East Bay.

28. From about 2015 to 2023, Plaintiff, ERDIS LEE POWELL, cut, ground, drilled, edged, polished, fabricated and/or installed Defendants' artificial stone and natural stone products to become countertops in kitchens and bathrooms. Plaintiff is informed and believes he was exposed to dust as a result of his work with Defendants stone products.

DISEASE AT ISSUE

29. As a direct and proximate result of his exposure to silica, metals and other toxins within stone products manufactured, distributed, supplied, contracted, and/or brokered by Defendants, Plaintiff, ERDIS LEE POWELL, was exposed to artificial stone dust. Plaintiff has not yet developed a silica related or caused disease.

30. Stone products manufactured, imported, distributed, contracted, brokered and/or supplied by Defendants were used by Plaintiff, ERDIS LEE POWELL, as intended by Defendants in the course of his work as a cutter, fabricator and/or installer of stone countertops. The foregoing intended use of said products by Plaintiff, ERDIS LEE POWELL, and his co-workers, resulted in the generation and release of toxic airborne dusts and particulates to which Plaintiff, ERDIS LEE POWELL was exposed in the course of his work.

Fraudulent Concealment of Toxic Hazards by Defendants

31. At all material times hereto, Defendants fraudulently concealed from Plaintiff, ERDIS LEE POWELL, material facts concerning the nature of the stone products to which Plaintiff, ERDIS LEE POWELL, was exposed.

32. At all material times hereto, Defendants fraudulently concealed the toxic hazards of their stone products from Plaintiff, ERDIS LEE POWELL, the hazards of the conditions under which Plaintiff, ERDIS LEE POWELL, was exposed to their products; that Plaintiff, ERDIS LEE POWELL, was inhaling toxic invisible particles from Defendants' products during the course of his work.

33. At all material times hereto, Defendants fraudulently concealed from Plaintiff, ERDIS LEE POWELL, that their stone products were toxic and that they contained silica, metals and other toxins.

34. At all material times hereto, Defendants failed to disclose to Plaintiff, ERDIS LEE POWELL, toxic hazards of their stone products, which Defendants were required to disclose to Plaintiff, ERDIS LEE POWELL, pursuant to California common law.

35. Defendants' concealment was sufficiently complete that Plaintiff, ERDIS LEE POWELL, did not know, nor could he have known, that defendant's products were hazardous.

A BRIEF HISTORY OF SILICA EXPOSURE

36. Silicon is the second most abundant element on Earth, after oxygen.

37. The health risks associated with exposure to crystalline silica dust have been known to the stone industry for centuries, indeed for millennia.

38. Evidence of occupational silicosis dates all the way back to ancient Egypt and Greece. Stonecutters, builders, and masons all exhibited signs of silicosis, as they were the workers who built these ancient cities.

39. In 1556, Agricola wrote a treatise on mining in which he described a lung disease afflicting stonecutters and miners.

40. In 1700, Dr. Bernardino Ramazzini, who is considered the “father of occupational medicine,” identified evidence of silicosis in stone cutters. He did this by performing autopsies of the stone workers, noticing a “sand-like” substance in their lungs.

41. In the early 1900s, Dr. Alice Hamilton, a physician whose work resulted in significant safety and health reforms, documented silica related illnesses among granite workers in Vermont.

42. In 1917 the United States Public Health Service called attention to the prevalence of silicosis in foundry workers. Watkins, J., U.S. Bureau of Mines, Bulletin No. 1, Air Hygiene Foundation of America (1917).

43. In 1918, the U.S. government published a study reporting that the industry with the greatest hazard of silica dust inhalation and disease was the abrasive industry. Winslow, C.E. et al,

"The Dust Hazard in the Abrasive Industry," U.S. Public Health Reports, 34:1171-1187 (1918).

44. By the early 1930s, industrial journals and periodicals were replete with articles discussing hazards of silica especially as it related to sandblasting. See e.g., Sayers & Lanza, "Pneumoconiosis," American Public Health Association Yearbook (1932); Bloomfield, J.J. et al., "Sand and Metallic Abrasive Blasting as an Industrial Health Hazard," *J. Industr. Hyg.* 184 (1933) [air pressured abrasive blasting caused extremely lethal exposure to airborne silica]; Merewether, E.R. 7, Tubercle 385 (1936) [silicosis identified as a disease with a higher mortality rate in sand and shot blasters than other jobs in foundries].

45. By the mid-1930s it was well known to industry that silicosis (earlier variously called miner's asthma, potter's rot, or phthisis) is an occupational disease caused by the inhalation of tiny particles of quartz dust in the lungs. "Village of the Living Dead," 121 Literary Digest 6 (1936).

46. In 1937, the United States Department of Labor, hosted a National Silicosis Conference, at which a number of occupations were identified as being at high risk of exposure to silica and resulting lung disease. National Silicosis Conference, Report on Medical Control, U.S. Department of Labor, Bulletin 21, Part 2B (1938). At the conference, a powerful observation was made about the necessary protections needed for sandblasters:

> Protection of workmen by means of respirators is also indicated whenever the room air cannot be kept moderately free from dust, and, of course doubly indicated in operations that are unusually dusty. In all kinds of sandblasting, workmen should be individually protected, without fail. When possible, the form of respirator which provides for the workman and ample supply of pure, fresh air under direct pressure is certainly the best, provided every precaution is taken to see that the air is free of oily vapor and dust.
>
> For those companies selling products to sandblasting operations, they need to look no further than the front page of the newspaper or government conferences to learn of the danger of sand. Yet these companies chose to sell their products to businesses, representing that such products could be used for sandblasting--contrary to widely publicized reports about necessary safety measures. Likewise, sand companies sold sand to business without ever revealing the dangers of silica-abrasives. While these companies successfully profited in the 40s, 50s and 60s, the price would be devastating for thousands of American Workers.

47. The Hawk's Nest disaster is an excellent example of just how deadly respiratory exposure to silica dust can be. During the great depression, in the early 1930s, a three-mile-long

diversion tunnel was being dug through Gauley Mountain to reach the New River, to construct a hydroelectric power dam. The only dust control used was a two-hour period to let the dust settle after blasting through the rock. Of the 1200 men who worked underground for only two months, 760 men died within five years, with 2000 men eventually dying as a result of lung disease from silica. This disaster prompted a Congressional call to action.

48. The federal government responded and in 1938 the Secretary of Labor, Francis Perkins, held a National Silicosis Conference and initiated a campaign to "Stop Silicosis," stating: "Our job is one of applying techniques and principles to every known silica dust hazard in American industry. We know the methods of control – let us put them in practice."

49. Despite these efforts, silica exposure continued to be a serious health hazard for workers in the construction industry. As new products, tools, and work practices have been introduced, new means of exposure were created. An article in a leading construction trade magazine summed up the situation: "With the advent and increased use of dry cutting, drilling and grinding of concrete and masonry material in construction, we often see workers operating in a cloud of dust with no respiratory protection or safety measures to prevent airborne dust. Exposure levels in settings like construction sites are highly variable for airborne silica dust, which poses a significant risk to workers."

50. By the 1950s, the hazard of inhaling dust in various industries was well known to American industry. See, e.g., Forbes, J., Davenport, S., Review of Literature on Dusts, U.S. Department of Interior, Bureau of Mines, Bulletin 478 (1950).

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

52. In 2007, OSHA estimated that more than two million employees are exposed to silica in general industry, construction, and maritime industry. NIOSH acknowledges that an unknown number of the 3.7 million workers in 2002 engaged in agriculture had exposure to silica from

dust-generating activities. According to the U.S. Bureau of Mines, silica is present in nearly all of mining operations. Glenn DD, "Current issues surrounding silica," *Prof. Safety* 5392):37-46 (2008).

53. It was not until 2011 that OSHA's proposed guidelines made it to the Office of Management and Budget (OMB), under Executive Order 12866.

54. It was not until 2013, after a group of congressmen sent a letter urging the OMB to "take prompt action" regarding their rule-making process on respirable crystalline silica, that it was listed on OSHA's regulatory agenda.

55. On March 24, 2016, after even more public hearings, debates, and reviews, OSHA announced its final rule to protect workers from respiratory exposure to crystalline silica dust.

56. On September 23, 2017, OSHA's new silica regulations finally became effective, but only for the construction industry.

57. On June 23, 2018, OSHA extended its silica regulations to maritime industries.

58. Three years later, on June 23, 2021, OSHA's regulations regarding occupational exposure to silica dust will become effective as to the oil and gas industry to address the hazard of silica exposure from hydraulic fracturing.

59. Since the fibrogenic hazards of stone products have been known to the stone industry for centuries, indeed millenia, and since those hazards have been well known to the American stone industry since at least the early years of the 20th century, Defendants all were aware of toxic and fibrogenic hazards of their stone products and were legally obligated to warn workers of those hazards and especially to provide them use instructions adequate to prevent lung disease.

ARTIFICIAL STONE

60. Artificial stone is a composite material made of crushed stone that is bound together by an adhesive to create a solid surface. Artificial stone is also called Agglomerate, Agglomerated Stone, Conglomerate, Engineered Stone, Manufactured Stone, quartz, and/or Synthetic Stone.

61. Artificial stone was invented in the 1970s by Marcello Toncelli, who founded Breton SpA, an Italian company, at Castello di Godego in the province of Treviso, Italy. Breton obtained patents for vibro-compression under vacuum and a mixture of fragmented stone or silica dust with a polyester resin binder made of styrene monomer and anhydrides.

62. The basic raw material and major constituent of most artificial stone products is quartz, i.e., crystalline silica.

63. Artificial stone is usually sold as slabs, but is sometimes sold as blocks.

64. Artificial stone is primarily used to fabricate kitchen and bathroom countertops.

65. Artificial stone is manufactured in large factories, most of which have been located outside the United States, until quite recently.

66. In 1987 Caesarstone began manufacturing artificial stone at Kibbutz Sdot Yam near Haifa in Israel on the shore of the Mediterranean Sea.

67. In 1990 Cosentino began manufacturing artificial stone in Almeria, Spain, in Andalusia in southeastern Iberia on the Mediterranean Sea.

68. Today artificial stone today is manufactured about 30 companies throughout the world: Aro Granite Industries (India), Baba Quartz (India), Breton (Italy), Caesarstone (Israel), Cambria (US), Cimstone (Turkey), Compac (Spain), Cosentino (Spain), Diresco (Belgium), Dupont (Canada), Guidoni Group (Brazil), Hanwha (South Korea), Hirsch Glass Corp (US), LX Hausys (South Korea), Lotte Chemical (South Korea), Mohawk Industries (US), MS International (India), Pokarna (India), Quarella (Spain), Quartzform (Germany), RMC (Portugal), Santa Margherita (Spain), Stone Italiana (Italy), Strasser Steine (Austria), Technistone (Czech Republic), Totem Quartz (Iran), USA Quartz (US), Vicostone (Vietnam), Wilsonart (S. Korea).

69. There are a few steps involved in the manufacture of artificial stone. First, raw quartz is mined at a quartz mine. Next, raw quartz is crushed and sorted in a factory. Then acids, alcohols, styrene, and peroxide are mixed in a chemical plant to initiate a series of chemical reactions that produce polyester resin. Pigments are also produced in a chemical plant.

70. Crushed quartz, polyester resin, and pigments are transported to an artificial stone manufacturing plant where they are combined, placed into molds, compacted, heated, and cured.

71. Artificial stone is shipped from those countries that manufacture it throughout the world. The artificial stone or slab product is a commercial product that requires fabrication before it can be installed for a consumer. Local workers, mostly immigrants, typically working in small shops, fabricate the artificial stone slabs into countertops that are then installed in customers'

kitchens and bathrooms.

72. The workers who do this work have a few different job titles: cutter, fabricator, polisher, and/or installer. Using a large, powered circular saw, the "cutter" cuts artificial stone slab to the overall size needed for the job. Using a smaller powered saw, the "fabricator" cuts holes for the sink, faucet, water return, and detergent dispenser. Using a powered tool, the fabricator also grinds the edge of the countertop. Using a powered device, the "polisher" then polishes the surface of the countertop. In small shops the fabricator also does this task. Lastly, using powered saws, grinding tools, drills, polishing machines, and chemicals, the "installer" installs the countertop in the customer's kitchen or bathroom and does finishing work, including assembling and gluing artificial stone pieces together, cutting holes for electrical outlets, edging, polishing, and sealing countertops.

THE NEW ARTIFICIAL STONE EPIDEMIC

73. The first case of artificial stone-induced silicosis was seen in 1997 by physicians at the National Lung Transplantation Center in Israel. This worker was exposed to Caesarstone, developed silicosis, and underwent lung transplantation. Kramer MR, et al., "Artificial Stone Silicosis: Disease Resurgence Among Artificial Stone Workers," *Chest* 2012; 142(2):419-424.

74. Over the next 14 years, researchers at the National Lung Transplant Center in Israel diagnosed silicosis in 25 patients exposed to artificial stone; all of the cases were diagnosed based on detailed occupational history. Histologic confirmation was obtained in all but 2 of the cases. Of these, 15 (60%) were determined to be lung transplant candidates. All of these patients worked with the same commercial brand of synthetic stone material, cutting it for kitchen and other countertops. The material was CaesarStone; it contained at least 85% crystalline silica. All 25 patients reported that more than 90% of their typical work duties involved handling Caesarstone. Less than 10% included exposure to other potential sources of silica, primarily natural granite. Kramer MR, et al., "Artificial Stone Silicosis: Disease Resurgence Among Artificial Stone Workers," *Chest* 2012; 142(2):419-424.

75. The first cases of silicosis in Spanish artificial stone workers were published in 2010 by researchers at the National Institute of Silicosis at the University Hospital in Asturias, Spain. They reported 3 cases in workers who had been employed for 17 years by a small ornamental stone

company that fabricated and installed in homes and buildings. The workers were all young: 32, 34, and 37 years old. Chest x-rays of all 3 workers showed nodular opacities with diffuse bilateral distribution and more profuse localization in the upper lobes, with a slight increase in mediastinal and/or hilar nodes. In case 1, a cluster of nodules was observed with progressive massive fibrosis; this worker was diagnosed with complicated silicosis. Martínez C, et al., "Silicosis, a Disease With an Active Present," *Arch. Bronconeumol.* 2010; 46(2):97-100 [in Spanish with English abstract].

76. The next series of cases were reported in 2012 by Italian researchers who identified 7 silicosis cases in a group of 29 fabrication workers. Bartoli D, et al., "Silicosis in employees in the processing of kitchen, bar and shop countertops made from quartz resin composite. Provisional results of the environmental and health survey conducted within the territory of USL 11 of Empoli in Tuscany among employees in the processing of quartz resin composite materials and review of the literature," *Ital. J. Occup. Environ. Hyg.* 2012; 3(3):138-143.

77. "In May 2014, the Texas Department of State Health Services was notified of a case of silicosis with progressive massive fibrosis in a Hispanic male aged 37 years who worked for an engineered stone countertop company as a polisher, laminator, and fabricator. He was exposed to dust for 10 years from working with conglomerate or quartz surfacing materials containing 70% - 90% crystalline silica. This is the first reported case of silicosis associated with exposure to quartz surfacing materials in North America." Friedman GK, et al., "Silicosis in a Countertop Fabricator – Texas, 2014," *Morbidity and Mortality Weekly Report*, Feb. 13, 2015; 64(5):129-130.

78. "In January 2019, the California Department of Public Health identified, through review of hospital discharge data for silicosis diagnoses (*International Classification of Diseases, Tenth Revision* [ICD-10] code J62.8), a Hispanic man aged 37 years who was hospitalized in 2017 (CA-1) (Table). He worked at a stone countertop fabrication company during 2004–2013, mainly with engineered stone. His work tasks included polishing slabs and dry-cutting and grinding stone edges. Workplace measurements during a California Division of Occupational Safety and Health inspection in 2009 showed respirable crystalline silica levels up to 22 times higher than the permissible exposure limit (PEL) of 0.1 mg/m_3 in effect in California at that time. After developing respiratory symptoms in 2012, he had a chest CT scan, which revealed findings of silicosis.

Pulmonary function testing showed restrictive defects with reduced diffusion capacity; surgical lung biopsy showed mixed dust pneumoconiosis with polarizable particles consistent with silica. He concurrently received a diagnosis of scleroderma, with positive anti-Scl-70 and antinuclear antibodies. He died from silicosis in 2018 at age 38 years. Further investigation of patient CA-1's place of employment, in collaboration with the California Division of Occupational Safety and Health, identified two additional silicosis cases among stone fabricators." Rose C, et al., "Severe Silicosis in Engineered Stone Fabrication Workers – California, Colorado, Texas, and Washington, 2017-2019," *Morbidity and Mortality Weekly Report*, Sept. 27, 2019; 68(38):813-818.

79. "This report describes 18 cases of silicosis, including the first two fatalities reported in the United States, among workers in the stone fabrication industry in California, Colorado, Texas, and Washington. Several patients had severe progressive disease, and some had associated autoimmune diseases and latent tuberculosis infection. Cases were identified through independent investigations in each state and confirmed based on computed tomography (CT) scan of the chest or lung biopsy findings. Silica dust exposure reduction and effective regulatory enforcement, along with enhanced workplace medical and public health surveillance, are urgently needed to address the emerging public health threat of silicosis in the stone fabrication industry." Rose C, et al., "Severe Silicosis in Engineered Stone Fabrication Workers – California, Colorado, Texas, and Washington, 2017-2019," *Morbidity and Mortality Weekly Report*, Sept. 27, 2019; 68(38):813-818.

80. By 2020 the epidemic was international in scope, with more than 300 cases (including 22 lung transplant cases) in Israel, more than 300 cases in Spain, more than 100 cases in China, 98 cases in Australia, 34 cases in Italy, and 18 cases in the United States.

81. In 2022 researchers from Australia published an article in which they identified 579 cases of silicosis among workers in the stone benchtop industry in Australia - 238 cases in Queensland, 175 cases in Victoria, 121 cases in New South Wales, 24 cases in Western Australia, 18 cases in South Australia and 3 cases in Tasmania. Hoy RF, et al., "Correspondence on 'Demographic, exposure and clinical characteristics in a multinational registry of engineered stone workers with silicosis,' by Hua et al.," *Occup. Environ. Med.* 2022; 79(9):647-648.

82. By the end of 2022 the Social Security agency in Spain had registered 4,906 reports

of silicosis due to an occupational disease. Inma Muro, "Silicosis: After the 1st prison sentence, Cosentino sits on the bench again," *Crónica Libre*, July 5, 2023.

83. In 2022 researchers from Curtin University in Australia published a study in which they modeled the future course of the artificial stone silicosis epidemic. One of the investigators of this study, Dr. Renee Carey, concluded: "Our modelling predicts more than 10,000 Australians will develop lung cancer and up to 103,000 workers will be diagnosed with silicosis as the result of their current exposure to silica dust at work." Curtin University Press Release: "10,000 Aussie workers set to develop lung cancer from silica dust: study," *News at Curtin,* July 12, 2022.

84. In 2023, researchers from California published a study in which they described clinical, socioeconomic, and occupational characteristics of patients diagnosed with silicosis associated with engineered stone in California. This case series included reported cases of silicosis associated with fabrication of engineered stone countertops, as identified by statewide surveillance by the California Department of Public Health (2019-2022). Data analysis was performed from October 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; 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; 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.

85. In a news report published May 29, 2024 in the *Los Angeles Times*, Emily Alpert Reyes wrote that Cal/OSHA recently estimated that out of nearly 5,000 such workers statewide, as many as 200 could die of the disease [silicosis]." Emily Alpert Reyes, "California could require licenses for stonecutting shops amid deaths of young workers," *Los Angeles Times* (May 29, 2024).

86. In a news report by Lolita Lopez published July 9, 2024, according to the California Department of Public Health, there have been 154 confirmed cases of silicosis related to engineered stone, including at least 13 deaths, as of June 10, 2024, with Los Angeles County reporting 92 cases. Lolita Lopez, "Emerging health concern." Potentially deadly lung disease linked to engineered countertops," NBC4 I-Team and Telemundo 52 Investiga (July 9, 2024).

87. As will be shown, recent studies estimating the prevalence of artificial stone-induced silicosis in various countries have shown prevalence rates as high as 50%, yielding estimates of hundreds of thousands of new cases throughout the world.

PREVALENCE STUDIES

88. In 2011, researchers at Galdakao Hospital in Bizkaia, Spain published a study of 11 workers who were exposed to different types of quartz surfaces for between 7 and 14 years. Four of the subjects worked in the cutting workshop; the rest of the workers worked in assembly (i.e. fabrication), without any specific respiratory protection apparatus. They diagnosed 6 of the 11 workers with silicosis, which equated to a disease prevalence in this work environment of 54.5%. Of the 6 workers affected, 5 (83.3%) were assembles (fabricators). The investigators attributed silicosis in these workers to quartz conglomerates (artificial stone). Pascual S, et al., "Prevalence of silicosis in a marble factory after exposure to quartz conglomerates," *Arch. Bronconeumol.* 2011; 47(1):50-51 [in Spanish with English abstract].

89. In 2019, Israeli researchers published a study of 68 workers with up to 20 years of artificial stone dust exposure at small enterprises throughout Israel. ST scans of the workers were

evaluated for features indicative of silicosis in three zones of each lung. Thirty-four patients had CT scores between 0 and 42; 29 of them were diagnosed with silicosis, yielding a prevalence of 42.6%. Ophir N, et al., "Functional, inflammatory and interstitial impairment due to artificial stone dust ultrafine particles exposure," *Occup. Envrion. Med.* 2019; 76:875-879.

90. In 2021, researchers from the California Department of Public Health published a study in which they sought to determine the prevalence of silicosis among current employees of an engineered stone countertop fabrication company. All 43 currently employed fabrication workers were screened for silicosis by chest x-rays. Five employees whose average duration of exposure was 14.9 years, had silicosis, yielding a prevalence rate of 11.6%. Heinzerling A., et al., "Radiographic Screening Reveals High Burden of Silicosis among Workers at an Engineered Stone Countertop Fabrication Facility in California," *Am. J. Respir. Crit. Care Med.* 2021; 203(6):764-766.

91. In 2021, Australian researchers screened all current and former workers from the stone benchtop industry in the State of Victoria. Primary evaluations included a standardised questionnaire, physical examination, spirometry and gas transfer assessment and International Labour Organisation-categorised chest X-ray. Secondary evaluations include high-resolution CT chest, blood tests, and a respiratory physician evaluation. At the end of the first 12 months, 86 of 239 workers who had completed secondary evaluation were diagnosed with silicosis (65 simple silicosis and 21 complicated silicosis), yielding a prevalence rate of 36.0%. The duration of exposure was less than 10 years in 22 of the workers and greater than 10 years in 64 of the workers. Hoy RF, et al., "Identification of early-stage silicosis through health screening of stone benchtop industry workers in Victoria, Australia," *Occup. Environ. Med.* 2021; 78:296-302.

92. In 2022, American researchers described an outbreak of work-related asthma and silicosis at a facility that manufactures and fabricates chemical resistant countertops comprised of sand, epoxy resin, and phthalic anhydride, a known respiratory sensitizer. Clinical and epidemiologic investigations identified 16 workers with confirmed or suspected work-related asthma. Two years later, after OSHA began to enforce its new silica standards, 12 workers received medical surveillance for silicosis. Of these 12 workers, four were diagnosed with silicosis based on abnormal chest computed tomography examinations, yielding a prevalence rate of 33.3%. In this study the duration

of exposure was not stated. Tustin AW, et al., "An outbreak of work-related asthma and silicosis at a US countertop manufacturing and fabrication facility," *Am. J. Ind. Med.* 2022; 65:12-19.

93. In 2023, Spanish researchers published an observational study in which artificial stone silicosis patients were evaluated between January 2006 and June 2021. Once the diagnosis of the first patient (index case) was completed, the other workers who handled artificial stone from the same company were also evaluated. Diagnosis was based on occupational exposure to artificial stone, radiological findings, and the exclusion of other entities. The chest X-ray was assessed according to the International Labour Office criteria and high-resolution computed tomography (HRCT) as described by Kusaka et al. When the diagnosis was not considered certain, a compatible histological sample was required. Twenty-seven out of 61 workers who handled artificial stone were diagnosed with silicosis, yielding a prevalence rate of 44.3%. The mean duration of exposure of the workers diagnosed with silicosis was 112.2 years. Orriols R., et al., "Artificial Stone Silicosis. Progression and Laboral Impact After 3-years Follow-up, *Arch. Bronconeumol.* 2023; 59:267-269.

94. In 2023, Australian researchers published a study in which 544 stone benchtop industry workers, 95% of whom worked with artificial stone, underwent screening for silicosis. Workers undertook primary screening, including an International Labour Office (ILO) classified chest x-ray and, subject to prespecified criteria, also underwent secondary screening including high-resolution CT of the chest and respiratory physician assessment. 117 were diagnosed with silicosis, yielding a prevalence rate of 28.2%. In this study the mean duration of exposure was just 8 years, which may explain the lower prevalence rate than other prevalence screening studies. Hoy RF, et al., "Prevalence and risk factors for silicosis among a large cohort of stone benchtop industry workers," *Occup. Environ. Med.* 2023; 80(8):493-446.

95. It is now well-recognized that chest x-rays are inadequate to detect silicosis among artificial stone fabricators. See, Hoy RF, et al., "Chest x-ray has low sensitivity to detected silicosis in artificial stone benchtop industry workers," *Respirology* 2024; 29(9):785-794.

96. Considering only those screening studies utilizing high resolution CT scans (HRCT), the prevalence rates of silicosis in the studies ranged from 28.2% to 44.3%, yielding an overall prevalence rate of about 34%, a very high silicosis prevalence among stone countertop fabricators.

97. Overall, the prevalence studies show that artificial stone countertop fabricators have an unacceptably high risk of developing a lung disease.

AUSTRALIA BANS THE SALE AND USE OF ARTIFICIAL STONE

98. Since at least as early as 2019, Australian silicosis victims, their families, workers, unions, physicians, regulators, and public health officials and others have called for a ban on the importation, sale, and use of artificial stone due to its extreme dangers to worker health and safety.

99. In 2019 Laura Kewley of ABC (Australian Broadcasting Corporation) News reported that "a man who developed silicosis after working with engineered stone products has called for the products to be banned to prevent more people developing the disease." She reported: "Renee and Braden Barnes' life has changed dramatically since Braden was diagnosed with silicosis." He said: "There's no way you can produce a kitchen purely, without having some sort of dust come off the manufacturing process. Even when it is used wet (and) turns to sludge, the sludge dries, gets on your boots and turns back to powder." She reported that "new figures . . . show a surge in new cases." At the time she reported that "[t]here are now 260 cases across Australia."

100. "When Cal/OSHA took a closer look at the industry in 2019 and 2020, it found that 72% of shops where it conducted air sampling were in violation of silica rules. It recently estimated that out of nearly 5,000 such workers statewide, as many as 200 could die of the disease [silicosis]."

101. In 2020, Alison Reid, Associate Professor in Epidemiology and Biostatistics at the School of Public Health of Curtin University in Perth, Australia, called for a ban of artificial stone. She prepared a powerpoint presentation titled "Engineered Stone: Why a Ban Is The Only Answer." https://research.curtin.edu.au/businesslaw/wp-content/uploads/sites/5/2020/09/Curtin-Corner-Engineered-Stone-A-Reid-11-Sep-2020-.pdf

102. In her powerpoint presentation, Dr. Reid noted that artificial stone has a much higher silica content than natural stone (95% v 10-45% in granite, and that fabrication processes with power tools product high levels of silica dust -- more than 300 times the occupational standard. She noted that a study from the UK showed that 61% of respirable crystalline silica exposures where water suppression was present exceeded the respirable crystalline silica workplace exposure limit and that high levels of exposure were reported even when wet cutting. Alison Reid, "Engineered Stone: Why

a Ban Is The Only Answer," citing PEJ Baldein et al, "Exposure to RCS in the BG brick manufacturing and stone working industries," *Ann. Work Exp Health* 2019; 63)2):184-196; Office of Industrial Relations Workplace Health and Safety Queensland. Findings report: phase one audits of engineered stone benchtop fabricators in South East Queensland. (2019).

103. Dr. Reid compared the situation to the asbestos disease epidemic of the last century, when Australian regulators aimed to control exposure rather than eliminate it, resulting in high rates of unnecessary morbidity and mortality from asbestosis, lung cancer and mesothelioma. Dr. Reid noted that efforts to control asbestos exposure rather than ban it resulted in an estaimted 18,000 cases of mesothelioma, 108,000 cases of lung cancer, and a substantial, but unknown number of cases of asbestosis, and that Australia had one of the highest rates of asbestos-related diseases globally.

104. Dr. Reid argued that engineered stone should be banned because it is a known cause of a preventable disease, silicosis is an incurable disease with limited treatment options, artificial stone dust is difficult to control, and there are safer product alternatives. Pointedly, Dr. Reid wrote: "LET'S LEARN FROM OUR ASBESTOS EXPERIENCE RATHER THAN REPEAT IT!"

105. In 2022, Professor Lin Fritschi, a co-author of the 2021 Curtin University Study, said that banning engineered stone would prevent almost hundreds of lung cancers and thousands of silicosis cases. Brett Lackey and Peter Vincent, *Daily Mail Australia* (November 22, 2022).

106. The same day Mary Lloyd of ABC News quoted Zach Smith, incoming national secretary of the union saying: "This product is killing workers and the reality is Australian workers will keep dying unless we ban engineered stone." Mary Lloyd further reported that Kate Cole, president of the Australian Institute of Occupational Hygienists, likened the risk of exposure to silica to that of asbestos and said that high-silica stone products should be banned as soon as possible."

107. The next day, November 23, 2022, Claire Siracuse and Najma Sambul of The Sydney Morning Herald reported that the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) sought to "stop this killer stone" by banning artificial stone, and that the union "has announced it will ban the use of engineered stone if the federal government fails to do so by 2024."

108. By February of 2023, medical and health organizations Lung Foundation Australia, the Thoracic Society of Australia, the Australian and New Zealand Society of Occupational

Medicine, the Australian Institute of Health & Safety, Public Health Association Australia, and the Australian Institute of Occupational Hygienists had all called for a ban of engineered stone. https://www.aumanufacturing.com.au/medical-bodies-call-for-ban-on-engineered-stone.

109. On February 22, 2023, Adele Ferguson and Angus Thompson of WAtoday, reported that even Cosentino, "one of the world's largest stone benchtop companies . . . called for a ban on products blamed for a deadly silicosis epidemic." They reported: "Manufacturer Cosentino produces more than one in every five domestic kitchen benchtops sold in Australia and is facing international scrutiny over its safety record. It is not pushing for a national coordinated approach to reduce risks associated with products containing high levels of silica, ahead of a meeting of workplace safety ministers next week." They quoted a Cosentino spokesperson as saying: "We have an immediate solution without disrupting the construction and building market, and prices won't increase. The immediate solution is everyone buys products that are less than 40 per cent silica."

110. On February 28, 2023, Paul Karp of *The Guardian* reported that federal workplace relations minister, tony Burke, revealed that the work, health and safety ministers of all Australian states and territories had unanimously agreed to ask Safe Work Australia to prepare a plan to ban artificial stone products. https://www.theguardian.com/australia-news/2023/feb/28/australia-moves-to-ban-silica-engineered-stone-benchtops-silicosis-fatal-lung-disease.

111. In August 2023, Safe Work Australia presented its report to federal, state and territory Work Health and Safety ministers with recommendations on options to ban engineered stone.

112. On September 24, 2023, Emily Alpert Reyes and Cindy Carcamo of the *Los Angeles Times* reported that the Los Angeles County Department of Public Health was preparing a report that had been requested by Los Angeles County Board Supervisors on options for a potential ban of the importation and use of artificial stone in Los Angeles County.

113. On October 27, 2023 Safe Work Australia released its report recommending a ban on the importation and use of all artificial stone in Australia, which concluded: "A complete prohibition on the use of engineered stone is recommended." It reached this conclusion upon finding that "[t]he risks posed by working with engineered stone are serious and the possible consequences of being exposed to RCS [respirable crystalline silica] generated by engineered stone are severe and

sometimes fatal. To date, we – PCBUs [persons conducting a business or undertaking], workers, regulators and policy agencies – have failed to ensure the health and safety of all workers working with engineered stone." Safe Work Australia, *Decision Regulation Impact Statement: Prohibition on the use of engineered stone*, https://www.safeworkaustralia.gov.au/sites/default/files/2023-10/decision_ris_-_prohibition_on_the_use_of_engineered_stone_-_27_october_2023.pdf.

114. Safe Work Australia rejected proposals to allow the use of engineered stone containing lower crystalline silica concentrations because upon finding that "[a] lower silica content engineered stone is not expected to result in improvements in compliance," because "[t]he features of the sector that have contributed to the current levels of non-compliance remain" and "permitting work with lower silica engineered stone may encourage even greater non-compliance with WHS [worker health and safety] laws as there may be an incorrect perception that these products are 'safer'."

115. Safe Work Australia found "[t]here is also no evidence that lower silica engineered stone poses less risk to worker health and safety. Manufacturers have not yet established (through independent scientific evidence) that these products are without risks to the health and safety of workers and others in the workplace. There is no toxicological evidence of a 'safe' threshold of crystalline silica content, or that the other components of lower silica engineered stone products (e.g. amorphous silica including recycled glass, feldspar) do not pose additional risks to worker health." The agency concluded: "The only way to ensure that another generation of Australian workers do not contract silicosis from such work is to prohibit its use, regardless of its silica content. The cost to industry, while real and relevant, cannot outweigh the significant costs to Australian workers, their families and the broader community that result from exposure to RCS from engineered stone."

116. On December 13, 2023, ABC News reported Australian ministers met that day and voted unanimously to ban the importation and use of engineered stone in all states and territories throughout Australia - the first nationwide ban of artificial stone in the world. The report stated that the ban would start on July 1, 2024 in most Australian states and territories, with people being advised not to order any artificial stone after January 1, 2024. Michael Atkin, "Australia makes world-first decision to ban engineered stone following surge in silicosis cases," *ABC News* (Dec. 13, 2023). https://www.msn.com/en-au/health/other/australia-makes-world-first-decision-to-ban-

engineered-stone-following-surge-in-silicosis-cases/ar-AA1lqbWZ.

CAL-OSHA ISSUES EMERGENCY TEMPORARY STANDARD

117. On December 14, 2023, the California Occupational Safety and Health Standards Board issued a report, *Finding of Emergency, Government Code Section 11346.1, Occupational Safety and Health Standards Board, Proposed Emergency Regulation, Title 8, California Code of Regulations, General Industry Safety Orders, Chapter 4, Subchapter 7, Revised Section 5204:* ***Occupational Exposures to Respirable Crystalline Silica.*** This report identified 15 "Key Points":

- The Board is proposing an Emergency Temporary Standard (ETS) to protect workers in the stone fabrication industry from exposure to respirable crystalline silica (RCS).
- When inhaled, RCS can result in silicosis, an incurable, progressive lung disease that causes pulmonary fibrosis, respiratory failure, and in many cases, death.
- RCS exposure from working with artificial stone produces an aggressive form of silicosis, with rapid disease progression, accelerated decline in lung function, and high mortality, typically at a young age.
- There is a growing number of silicosis cases in the artificial stone fabrication industry that began in 2019 and has since been described by the California Department of Health (CDPH) Occupational Health Branch (OHB) as an epidemic.
- In July 2023, OHB investigators reported a total of 52 workers with silicosis who were exposed to RCS while fabricating countertops from artificial stone.
- The median age of these workers was 45 years at diagnosis; 51 (98%) were Latino men. Ten of these patients (19%) died by the time investigators reported their findings. The median age at death was 46 years, with a median work tenure of 15 years. Three individuals underwent lung transplantation, which has a five-year survival rate of 59%.
- In November 2023, OHB reported that the total number of silicosis cases in the artificial stone industry had increased 79%, from the 52 workers reported in July of 2023, to a total of 93. One worker with severe silicosis is 27 years of age, is on continual oxygen, and worked for a period of 10 years in the industry.

- About 4,040 workers are employed in California's stone fabrication shops. Based on a silicosis prevalence rate of 12% to 21% and a fatality rate of 19%, Cal/OSHA estimates that between 500 and 850 cases of silicosis will occur among these workers, and between 90 and 160 will likely die of silicosis.
- Cal/OSHA's existing silica standard, California Code of Regulations (CCR) title 8, section 5204, was promulgated based on the experience of silicosis in traditional industries such as mining, quarrying and sandblasting; it is not well calibrated to the small businesses and working conditions of the stone fabrication industry. In 2019, Cal/OSHA found that 72% of shops in this industry were out of compliance with section 5204.
- Section 5204 also contains three key loopholes that allow employers to easily exempt themselves from the requirements of the regulation and put workers in grave danger.
- In light of these factors, an ETS is needed that will require far safer conditions for workers who handle both artificial stone (containing >0.1% silica) and natural stone (containing >10% silica). An ETS is needed that will be clearer for employers to implement and more efficient for Cal/OSHA to enforce.
- The proposed ETS meets these objectives with new requirements pertaining to engineering controls, safe work practices, respiratory protection, signage, housekeeping, training and reporting.
- The proposed ETS also provides a means for Cal/OSHA to quickly identify RCS hazards and efficiently stop certain operations in a shop, or shut-down the shop itself, pending abatement of those hazards.
- With these immediate improvements, the proposed ETS is expected to substantially reduce the number of silicosis cases and deaths in California.
- Over 10 years, the expected costs of the proposed ETS to businesses are $66 million; benefits over the same period are estimated at $603 million, not including indirect costs associated with lost wages and benefits, lost lifetime productivity, and pain and suffering.

118. The report explained the objective of the proposed emergency regulation as follows:

> The objective of the proposed emergency regulation is to reduce occupational RCS exposure and silicosis occupational disease cases by responding as efficiently as possible to an epidemic of silicosis that has emerged among workers in the artificial stone fabrication industry. To date, all of the affected workers have been exposed occupationally to RCS while fabricating countertops from artificial stone. Many of these workers have since died of their disease. Relative to the typical experience with silicosis, these workers' cases of silicosis have been particularly aggressive, characterized by rapid disease progression, accelerated decline in lung function, and high mortality, typically at a young age.
>
> The proposed emergency regulation will require employers in the artificial stone fabrication industry to implement safeguards that will prevent RCS exposures among their employees. The proposal will also apply to other industries where workers cut, grind or polish natural stone materials with a silica content of 10% or greater.

119. The report concluded that issuance of the proposed standard was necessary to address an occupational health emergency:

> The Occupational Safety and Health Standards Board (Board) finds that the adoption of this proposed emergency standard is necessary to address an emergency pursuant to GC section 11346.1(b)(1). The Board finds that immediate action must be taken to avoid serious harm to the public peace, health, safety or general welfare, for the reasons stated below.

120. The Board identified 15 facts as the basis for its finding of emergency:

1) Exposure to RCS can result in silicosis.

2) Silicosis is an incurable disease.

3) Silicosis primarily affects workers.

4) Artificial stone contains more than 93% crystalline silica.

5) Artificial stone now dominates the U.S. market for stone countertops.

6) There is an epidemic of silicosis occurring in California's artificial stone fabrication industry.

7) The silicosis cases occurring in this industry are particularly aggressive and deadly.

8) Similar cases of silicosis in this industry are occurring worldwide.

9) Workers in this industry are uniquely vulnerable.

10) The dust from artificial stone is uniquely hazardous, compared to natural stone.

11) There is evidence of widespread non-compliance with title 8 standards in the artificial stone fabrication industry.

12) Individual workers in this industry report high levels of employer non-compliance with title 8 requirements.

13) The existing silica standard is not well suited to the artificial stone fabrication industry.

14) On the current trajectory, many workers in this industry will develop silicosis and die.

15) An emergency regulation is necessary to protect workers in this industry.

Finding of Emergency, Government Code Section 11346.1, Occupational Safety and Health Standards Board, Proposed Emergency Regulation, Title 8, California Code of Regulations, General Industry Safety Orders, Chapter 4, Subchapter 7, Revised Section 5204: Occupational Exposures to Respirable Crystalline Silica. Available on the Cal. Department of Industrial Relations website: https://www.dir.ca.gov/OSHSB/documents/Respirable-Crystalline-Silica-Emergency-FOE.pdf.

121. The Emergency Temporary Standard requires employers to use the following engineering controls and work practices to reduce occupational exposure to artificial stone dust:

Engineering controls: "effective wet methods"

Housekeeping and Hygiene:

1. Prompt and proper cleanup of wastes, dusts, residues, debris, etc.
2. Wet methods or vacuum cleaners equipped with HEPA filters to collect all wastes, dusts, residues, debris, etc. from high-exposure tasks.
3. Respiratory protection for workers engaged in housekeeping tasks.
4. Washing Facilities.

122. The Emergency Temporary Standard prohibits the following practices for high-exposure tasks:

1. Any use of compressed air wherever silica dust may be present.
2. Any dry sweeping, shoveling, disturbing, or other dry clean-up of wastes ....
3. Use of employee rotation as a means of reducing employee exposure to RCS.
4. Walking or moving equipment on or through dry dust, debris, residue, etc.

123. The Emergency Temporary Standard also requires employers to establish and implement a written exposure control plan that includes description of tasks, engineering controls, and housekeeping measures and to review and evaluate the effectiveness of the plan at least annually.

124. In workplaces where high-exposure trigger tasks occur, the Emergency Temporary Standard also requires employers to include the following in their written exposure control plan:

1. Air monitoring records that demonstrate engineering controls are effective and continuously maintain exposure levels below the action level.
2. Procedures for the proper donning and doffing of personal protective equipment, including work clothing and respiratory protection to effectively prevent exposures to respirable crystalline silica and prevent take-home exposures;
3. Documentation of proper reporting to the Division; and
4. Procedures ensuring employees are properly trained to prevent RCS exposure

125. The Emergency Temporary Standard requires employers to ensure that employees properly use the following respiratory protection when employees perform high-exposure trigger tasks or work within a regulated area where high-risk exposure tasks occur:

1. A full face tight-fitting powered-air purifying respirator (PAPR) or a respirator providing equal or greater protection equipped with a HEPA, N100, R100, or P100 filter and organic vapor cartridge shall be used.

2. A full face, tight-fitting supplied-air respirator in pressure-demand or other positive pressure mode for any employees known to the employer to be diagnosed with confirmed silicosis, or who meet the definition of suspected silicosis, or whenever the PLHCP or specialist recommends use of a supplied-air respirator. The air source for the supplied-air respirator shall be located outside the regulated area and in an area that is free of respirable crystalline silica and other airborne contaminants.

126. The Emergency Temporary Standard also mandates that "the employer shall make medical surveillance available at no cost to the employee, and at a reasonable time and place, for each employee who will be occupationally exposed to respirable crystalline silica at or above the action level for 30 or more days per year."

127. The medical surveillance includes an initial examination consisting of

1. a medical and work history, with emphasis on he respiratory system;

2. a physical examination with special emphasis on the respiratory system;

3. a chest x-ray interpreted and classified according to the International Labour Office (ILO) International Classification of radiographs of Pneumoconioses by a NIOSH-certified B Reader;

4. A pulmonary function test to include forced vital capacity (FVC) and forced expiratory volume in one second (FEV_1) and FEV_1 / FVC ratio,

5. Testing for latent tuberculosis infection; and

128. The initial examination is to be followed with periodic examinations at least every three years, or more frequently if recommended by the PLHCP.

ARTIFICIAL STONE DEFENDANTS

129. The following defendants imported, manufactured, distributed, supplied and/or sold artificial stone products containing approximately 95% crystalline silica that Plaintiff worked with

or around:

COSENTINO COMPANIES AND C & C NORTH AMERICA, INC.

130. "The Cosentino Group is a family-owned business which was founded in Cantoria, Almeria (Spain) in 1979 that produces surfaces marketed as Silestone®, Dekton® and Sensa®, as well as natural stone marketed as Scalea®. The Group currently employs over 4,500 individuals worldwide in locations throughout, among others, Spain, Portugal, France, the United Kingdom, the United States, Canada, Mexico, Brazil, Argentina, Scandinavia, Turkey, South Africa, Malaysia, Australia and New Zealand. . . . The Cosentino Group is the largest supplier of engineered stone product throughout the world." Letter dated November 29, 2019 to the Hon. Niall Blair, Committee Chair of the Legislative Council Standing Committee on Law and Justice in Sydney, Australia.

131. In 1990 Cosentino began manufacturing artificial stone under the brand name Silestone in Almeria, Spain, in Andalusia in southeastern Iberia on the Mediterranean Sea.

132. "In 1997, Cosentino brought Silestone to a new market by forming a subsidiary called Cosentino North America. And its appeal caught on quickly. Silestone's durability and resistance to stains was huge for kitchen designers, and it was featured in *Time* and *Good Housekeeping*. After that, business grew rapidly, and the company partook in promotional videos through groups like Home Depot and even Super Bowl advertisements." See "US Countertop Workers Falling Sick from Silica Dust," *Occupational Health & Safety* (Dec. 5, 2019).

Cosentino Enters the United States Market

133. In an interview with Surface Magazine in 2017, Eduardo Cosentino was asked "How did Cosentino enter into the U.S. market?" He answered: "We started our operation here in 1998 with four or five people. Then we signed a deal with Home Depot and started a fabrication business. Kitchen countertops and things like that. Now we have fifty distribution centers in the U.S." Charles Curkin, "The Spanish marble scion has led his namesake company to conquer the U.S. market," *Surface* (June 26, 2017).

134. Cosentino also operated its own network of shops called Stone Systems, and it came to have dozens of locations around the U.S." See "US Countertop Workers Falling Sick from Silica Dust," *Occupational Health & Safety* (Dec. 5, 2019).

Current Cosentino Entities in Spain

135. According to Registradores de Espana, there are three current Cosentino entities in Almeria, Spain: Cosentino SA, Cosentino Industrial SA, and Cosentino Global Sociedad Limitada. These three entities and their predecessors collectively acted in concert to design, manufacture, market, export, distribute and sell their deadly products, causing the new countertop fabricator silicosis epidemic which has claimed the health and lives of so many workers.

Cosentino History

136. A webpage on the Cosentino website is titled "Cosentino, 40 Years of International Growth and Expansion: COSENTINO 1980-2020." [See webpage available online at https://www.cosentino.com/usa/news/cosentino-40-years-of-international-growth-and-expansion/

137. This webpage states: "Last April 14th was the 40th year since the creation of the commercial company "Mármoles Cosentino S.A.", genesis of what ended up being Cosentino S.A. and finally Cosentino Group."

138. This webpage provides the following chronology of the company:

1980	Mármoles Cosentino is born
1985	For the first time, products are exported
1990	Launching Silestone
1997	First warehouse in the USA
2000	Cosentino Latina (Vitória, Brazil) is born
2005	The new antibacterial Silestone
	The first Spanish firm to advertise in the Super Bowl
2006	Expansion throughout Europe
2009	Launching Sensa by Cosentino®
2009/10	Acquisition of 100% subsidiaries in the USA
2013	Launching Dekton
2014	Cosentino reaches five continents.
	First Cosentino City: Sydney
2016/19	Cosentino has more than a dozen Cosentino City in the world

(London, Madrid, Miami, Los Angeles . . .)

2020 Cosentino celebrates 40 years with 5,000 employees worldwide.

Cosentino Industrial SA

139. According to Registradores de Espana, Cosentino Industrial SA commenced doing business December 15, 1989 and has its registered office at C/ Francis Martinez 2 Macael 04-Almery, Spain and is business entity No. A04117297.

140. According to Registradores de Espana, the business of Cosentino Industrial SA includes "the extraction, manufacturing, processing and marketing of natural stones, and development and innovation for the production and marketing of artificial stone . . . ; research and development of mining deposits, drilling work, cutting, projects and blasting work," "exploitation and extraction for al; mining resources (rocks and industrial minerals), . . . "Artistic representation" management and transfer of intellectual property rights, image rights, works and pre-existing rights."

141. According to Registradores de Espana, Cosentino Industrial SA's business is in sectors 2399, 2399, 0811, and 0990 - Manufacture of other non-metallic mineral products nec; manufacture of other non-metallic mineral products nec, extraction of ornamental and construction stone, limestone, gypsum, chalk and slate; support activities for other extractive industries."

142. According to Registradores de Espana, Cosentino Industrial SA's internet domain is www.cosentino.es.

143. According to Registradores de Espana, Cosentino Industrial SA is a "sole proprietorship, its sole owner being Cosentino SA.

144. According to Registradores de Espana, among Cosentino Industrial SA's Directors and Legal Representatives is Eduardo Martinez-Cosentino Ramos, who was appointed on September 27, 2012.

145. According to Bloomberg Markets, Cosentino Industrial SA produces quartz surfaces and "the company provides design, production, and distribution of surfaces such as kitchens and bathrooms worktops, cladding, and other products, as well as offers marble and granite products.

146. According to Bloomberg Markets, Cosentino Industrial SA operates throughout Spain.

Cosentino Global Sociedad Limitada

147. According to Registradores de Espana, Cosentino Global Sociedad Limitada (Cosentino Global Limited Company) commenced doing business September 24, 2020 and has its registered office at CTRA A-334 Baza-Huercal Overa, Salida 60, Poligono Industrial (Edificio Oficinas) Km Cantoria 04850-Almeria, Spain and is business entity No. B01966597.

148. According to Registradores de Espana, the business of Cosentino Global Sociedad Limitada is "the production, distribution and marketing, both in national and foreign territory, of feature films and short films of cinematographic and audiovisual works in general, series and television programs and the exploitation of said works . . . , and the artistic representation, management and transfer of intellectual property rights, image rights, works and pre-existing rights, of service to the industrial sector such as industrial design, engineering and design of machinery, materials, industrial processes, industrial plants and others related to technical advice."

149. According to Registradores de Espana, Cosentino Global Sociedad Limitada's business is sector 4673 "Wholesale trade in wood, construction materials, and sanitary appliances."

150. According to Registradores de Espana, Cosentino Global Sociedad Limitada is a "sole proprietorship, its sole owner being Cosentino SA."

151. According to Registradores de Espana, included among Cosentino Global Sociedad Limitada's Directors and Legal Representatives are Eduardo Martinez-Cosentino Ramos, who was appointed Joint Administrator on January 20, 2022 and Francisco Martinez Cosentino Justo.

152. The United States Trademark for SILESTONE was filed by Cosentino SA with the U.S. Patent and Trademark Office and was subsequently transferred by Cosentino SA to Cosentino Global Sociedad Limitada, which is currently the owner of the SILESTONE trademark, such that Cosentino Golbal Sociedad Limitada is in the chain of distribution of SILESTONE and is hence subject to strict products liability for the defective design and defective warnings of SILESTONE.

153. Cosentino Global Sociedad Limitada has imported stone products manufactured by Cosentino Industrial SA to California, including to the Port of Oakland (4th largest port of unlading), Los Angeles (5th largest port of unlading), and Long Beach (10th largest port of unlading).

Cosentino SA Subsidiaries

154. According to Cosentino SA's website, Cosentino SA (formerly known as Cosentino Group SA) has the following subsidiaries:

Blanco Almenas S.L.

C&C North America Inc.

Carrara Stone Systems of Chicago, LLC dba Stone Systems of Chicago

Cosentino Canada Inc.

Cosentino Research & Development

Cosentino Ireland Ltd.

Cosentino Malaysia Sdn. Bhd.

Cosentino South Africa Pty Ltd

Cosentino Poland Sp. Z O. O.

Cosentino New Zealand Ltd

Cosentino Denmark Aps

Cosentino Finland Oy

Cosentino South East Asia Pty Ltd

Cosentino Center Israel Ltd

Cosentino Austria Gmbh

Cosentino Japan K.K.

Cosentino Norway A.S.

Cosentino UK Ltd.

Cosentino Latina Ltda.

Cosentino the Netherlands B.V.

Cosentino Deutschland Gmbh

Cosentino Scandinavia A.B.

Cosentino Portugal Unipessoal Lda.

Cosentino Italia S.R.L.

Cosentino Australia Pty Ltd.

Cosentino Swiss A.G.

Cosentino Belgium Bvba

Cosentino Milano S.r.l.

Cosentino Turkey Yapi İthalat İhracat Ve Ticaret Limited Şirketi İmza Sirküleri

Entorno Del Faro S.L.

Grupo Cosentino S.L.

Jardines La Tejera S.L.

Stone Suppliers Mexico S. De R.l. De C.v.

Stone Services of France Sarl

Stone, Systems & Services, Inc. dba Stone Systems of Minnesota

Stone Systems of South Florida, LLC

Stone Systems of Raleigh, LLC

Stone Systems of New Mexico, LLC

Stone Systems of New Jersey, LLC

Stone Systems of New England, LLC

Stone Systems of Houston, LLC

Stone Systems of Central Texas, LLC

Stone Systems of Atlanta, LLC

Stone Systems of Arizona, LLC

Stone Systems of North Texas

Stone Made Products, Inc. Dba Superficies De Piedra Innovadoras S. De R.l. De C.v.

Surister Del Arroyo S.L.

Vigia Del Valle S.L.

C&C North America's Liability for the Acts of Cosentino

155. At all material times hereto, Defendant, C & C North America, Inc., has been a subsidiary of Cosentino Group, a Spanish corporation; Defendant, C & C North America, Inc. has been wholly owned and controlled by Cosentino Group; and Defendant, C & C North America, Inc. has acted in the capacity of an agent, co-conspirator, and alter ego of Cosentino Group, and within the course and scope of its authority as Cosentino Group's agent, co-conspirator, and alter ego, and

with the permission, consent, knowledge, authorization, ratification and direction of Cosentino Group. The liability of Defendant, C & C North America, Inc. as an agent, co-conspirator, and alter ego of Cosentino Group, for the acts of Cosentino Group is evidenced and established by the following facts:

Cosentino Group Executive Officers

156. Francisco Martinez-Cosentino Justo is the Chairman, Chief Executive Officer, and President of Cosentino Group.

157. Eduardo Martinez-Cosentino Alfonso is the Executive Vice President for Global Sales of Cosentino Group.

158. Francisco Martinez-Cosentino Justo and Eduardo Martinez-Cosentino Alfonso are also members of the Executive Committee of Cosentino Group.

Eduardo Martinez-Cosentino Alfonso

159. Eduardo Martinez-Cosentino Alfonso is commonly known as Eduardo Cosentino.

160. Since 2005 Eduardo Cosentino has held the position of Executive Vice-President of Global Corporate Sales for Cosentino Group. ["Eduardo Cosentino on Cosentino" published in 2020 in the journal *Slippery Rock Gazette, the Beacon of the Stone Industry*, at https://www.slipperyrockgazette.net/index.cfm/pageId/3892/Eduardo%20Cosentino%20on%20Cosentino/].

161. In addition to his global sales responsibility, in 2010 Eduardo Cosentino was named CEO of C & C North America, Inc., where he has overseen the company's growth in the U.S. market. ["Eduardo Cosentino on Cosentino" published in 2020 in the journal *Slippery Rock Gazette, the Beacon of the Stone Industry*, available online at https://www.slipperyrockgazette.net/index.cfm/pageId/3892/Eduardo%20Cosentino%20on%20Cosentino/].

162. In addition to these duties, Eduardo Cosentino has also been a member of Cosentino Group's Steering Committee, its Executive Committee, and a member of Cosentino Group's Board of Directors. ["Eduardo Cosentino on Cosentino" published in 2020 in the journal *Slippery Rock Gazette, the Beacon of the Stone Industry*, available online at https://www.slipperyrockgazette.net/index.cfm/pageId/3892/Eduardo%20Cosentino%20on%20Cosentino/]

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Cosentino Centers in the US and California

163. Cosentino Group has about 110 Centers around the world, 50 of which are located in 16 countries in Europe, 42 in North America, 4 in Canada, 7 in Brazil, 5 in Australia, 1 in New Zealand, and 1 in Mexico. [https://www.cosentino.com/usa/cosentino-center/]

164. A Cosentino website lists the following Cosentino "Centers" in California, the name of each being preceded by a distinctive white blockish C in a grey circle:

Anaheim Center 611 East Cerritos Avenue - Anaheim

Los Angeles Center 12822 Rangoon Street - Los Angeles

Sacramento Center 10015 Foothills Boulevard Suite 150 - Roseville

San Diego Center 9020 Activity Road Suite C - San Diego.

[Cosentino webpage at https://www.cosentino.com/usa/cosentino-center/].

165. Each of these Cosentino Centers has links for "Call," "How to get there," "View store detail" and "Virtual Visit." [Cosentino webpage]

166. Clicking on the Los Angeles Center link brings one to a webpage with a heading "Cosentino » Where to buy » Los Angeles Center" and provides the following contact details: 12822 Rangoon Street 91331, Los Angeles, **Email** orders.la@cosentino.com, **PHONE** +1 (818) 381-8220.

167. There are more Cosentino Centers in the United States than any other country.

First Cosentino Center in North America

168. The first Cosentino Center in North America opened in 2010 in Anaheim, California.

169. An article titled "First North American Cosentino Center opens in Anaheim" was published in *Stone World* on September 8, 2010. [https://www.stoneworld.com/articles/86034-first-north-american-cosentino-center-opens-in-anaheim].

170. The article stated: "Cosentino, a global leader in natural stone, quartz and recycled surfacing, recently opened its first Cosentino Center in North America in Anaheim, CA. More than a showroom, the Cosentino Center is designed to support, promote and educate trade professionals by integrating distribution facilities, exhibition areas, workspaces for designers to bring clients, classrooms for continuing education, and fully functioning kitchens and event space for demonstrations." https://

www.stoneworld.com/articles/86034-first-north-american-cosentino-center- opens-in-anaheim.

171. The article further stated: "Officially opening with a reception for industry leaders on Wednesday, September 15th, the new Anaheim center aims to enhance both the trade and consumer experience, and marks the launch of a greater plan to significantly expand Cosentino's presence in the U.S. market over the next year." [https:// www.stoneworld.com/articles/86034-first-north-american-cosentino-center-opens-in-anaheim].

172. The article stated: "'We are thrilled to be introducing the Cosentino Center to the U.S. market by unveiling the first in Anaheim, CA,' said Lorenzo Marquez, Vice President of Marketing for Cosentino. 'This is the next evolution of the Cosentino brand -- offering a new take on the showroom experience, design innovation and demonstration.' The first Cosentino Center is located in central Anaheim, CA, a region known for its rich history in the natural stone industry, and only a 20-minute drive from downtown Los Angeles. The facility includes over 50,000 square feet of warehouse space and distribution center as well as a state-of-the-art showroom." [https://www.stoneworld.com/articles/86034-first-north-american-cosentino-center-opens-in-anaheim.].

Cosentino City Los Angeles

173. A Cosentino webpage says that a Cosentino City is "a space for design and architectural professionals to get inspired, connect, and create." This webpage shows pictures of buildings with Cosentino signage in Atlanta, Chicago, Los Angeles, New York, Miami, San Francisco, Montreal, Toronto and Washington. [https://www.cosentino.com/usa/professional/cosentino-city/].

174. A building which bears the name "COSENTINO®" is presently located at 8764 Beverly Blvd., West Hollywood, CA 90048. [Picture of the Cosentino Los Angeles building on the Cosentino website at https://www.cosentino.com/usa/professional/cosentino-city/los-angeles/].

175. The building located at 8764 Beverly Blvd., West Hollywood, CA 90045 is called "Cosentino City Los Angeles."

176. The website LinkedIn has a webpage for Cosentino City Los Angeles which has a picture of a storefront with signage stating "COSENTINO" with the distinctive white blockish

C in a tan square. [Exhibit "O": LinkedIn webpage for Cosentino City Los Angeles.]

177. The webpage states: "Located in the design district of West Hollywood, Cosentino City Los Angeles is the perfect environment for architects and designers to interact with the latest innovations in hard surface installation. Spread across 2,200 square feet, Cosentino City Los Angeles has an Atelier Lab, a central space featuring a library of materials where you can find inspiration and develop all kinds of projects. It also has several social areas, digital design tools and a patio that showcases the limitless possibilities Dekton provides for outdoor spaces. Schedule your appointment: Phone: +1 (310) 620-6084. We are waiting for you!" The page then states: Website: https://www.cosentino.com/usa/professional/cosentino-city/los-angeles/; Phone +1 (310) 620-6084; Industry: Architecture and Planning; Company size: 1,001-5,000 employees; Founded 1979; Specialties: #Dekton, #Silestone, #Sensa, #Architecture, #Design, and #Interiorism. [LinkedIn webpage for Cosentino City Los Angeles.]

178. Clicking on the website link takes one to a Cosentino webpage that states: "Welcome to Cosentino City Los Angeles: A Space for design and architecture professionals to get inspired, connect, and create." This webpage then has a picture of a building with signage that says: "COSENTINO®" with smaller signage stating "Silestone," "Dekton," and "Sensa." [Cosentino webpage https://www.cosentino.com/usa/professional/cosentino-city/]

179. The opening of Cosentino City Los Angeles was attended by Eduardo Cosentino, Executive Vice President for Global Sales of Cosentino Group.

180. An April 15, 2019 article in *KBB* [Kitchen & Bath Business] was titled "Cosentino Group Announces $1.1 Billion in Sales in 2018 and Celebrates LA City Center Grand Opening." [https://www.kbbonline.com/news/business/cosentino-group-announces-1-1-billion-in-sales-in-2018-and-celebrates-la-city-center-grand-opening/].

181. This article contains a photograph of five people, one of whom is Eduardo Cosentino (Executive Vice-President of Global Sales of The Cosentino Group), who is depicted holding a ribbon bearing the name "COSENTINO." Standing next to him in the photograph is Cindy Crawford. Another photograph in the article includes Santiago Alfonso (Marketing Director of the Cosentino Group). The photographs show these individuals in front of a backdrop that bears the

blockish C and wordmark COSENTINO followed by "CITY" and also bears the tradenames and trademarks for Cosentino' Silestone® amd Dekton®. [https://www.kbbonline.com/news/business/cosentino-group-announces-1-1-billion-in-sales-in-2018-and-celebrates-la-city-center-grand-opening/].

182. The opening of Cosentino City Los Angeles is not the first Cosentino event that Eduardo Cosentino attended in Los Angeles County with Cindy Crawford.

183. On May 16, 2017, photographs of Eduardo Cosentino and Cindy Crawford were taken in front of signage showing the blockish C and "COSENTINO" and were published with an announcement tiled "Cindy Crawford and Eduardo Cosentino NA Launch Silestone's 'Eternal Beauty and Eternal Style' Collection." The announcement also stated: "LOS ANGELES, CA - May 16: Cindy Crawford attends Cindy Crawford and Eduardo Cosentino's New Design Alliance and launch of Silestone's latest collection 'Eternal Beauty and Eternal Style' at Milk Studios on May 16, 2017 in Los Angeles California. (Photo by Emma McIntyre/Getty images)." [https://www.gettyimages.com/detail/news-photo/cindy-crawford-attends-cindy-crawford-and-eduardo-news-photo/683986976?adppopup=true]."

Cosentino Trade Name and Word Mark

184. **C COSENTINO** is a word mark for "non-metallic building materials, namely stone slabs and blocks for building and construction, slabs and blocks not of metal, for building and construction, rock materials used in countertops, worktops, cladding and tiles, rigid pipes, not of metal, for building, asphalt, pitch and bitumen; transportable buildings, not of metal; monuments, not of metal; marble, silica, namely, quartz, building glass, xylolith, gypsum, stone, slate, granite, sandstone, concrete, brick, ballast, namely, sand, limestone, lime building materials, rock crystal, quartz, asbestos cement, clay sold in powdered from for use in the manufacture of wallboard and plastics, ceramic tiles, alabaster." [Cosentino Trademark IC 019. US 001 012 033 050, filed February 25, 2016 with the U.S. Patent and Trademark Office].

185. The registrant of the **C COSENTINO** trademark is Cosentino S.A.U. Sociedad anónima unipersonal SPAIN Ctra. A-334, Km. 59 E-04850 Cantoria (Almeria) Spain." [Cosentino Trademark IC 019. US 001 012 033 050, filed February 25, 2016 with the U.S. Patent and

Trademark Office].

186. The last listed owner of the **C COSENTINO** trademark is Cosentino Global, S.L.U Sociedad Limitada Unipersonal Carretera A-334, Baza-Huércal-Overa, Salida 60, Polígono Industrial (Edificio Oficinas), E-04850 Cantoria (Almeria) Spain. [Cosentino Trademark IC 019. US 001 012 033 050, filed February 25, 2016 with the U.S. Patent and Trademark Office].

Cosentino Product Tradenames and Trademarks

187. SILESTONE BY **COSENTINO** S is a word mark for "non-metallic building materials, namely, agglomeration stones." [Cosentino Trademark IC 019. US 001 012 033 050, G & S, filed June 26, 2008 with the U.S. Patent and Trademark Office].

188. DEKTON BY **COSENTINO** is a word mark for "non-luminous, non-metallic, and non-mechanical coverings for facades; non-metallic tile coverings for walls and floors; non-metallic floor, wall, facade and ceiling building materials, namely, bathroom tiles and kitchen tiles; and non-metallic kitchen countertops and bathroom countertops for further installation; [clay slabs,] ceramic slabs, and slabs composed of ceramic surfaces; [asphalt, pitch and bitumen; transportable buildings, not of metal;] monuments, not of metal; non-metallic building materials, namely, marble, quartz, [glass; xylolith, gypsum,] stone, slate, granite, concrete, [brick,] limestone [asbestos, clay, and alabaster]." [Cosentino Trademark IC 019. US 001 012 033 050, G & S, filed April 25, 2013 with the U.S. Patent and Trademark Office].

C & C North America, Inc.

189. On March 21, 2003 C & C North America, Inc. was incorporated in the State of Delaware.

190. On July 9, 2008 C & C North America, Inc. filed a Statement and Designation by Foreign Corporation with the California Secretary of State, which stated that it will do business in California as SMDS East Coast, that its principal executive office was 13124 Trinity Drive, Stafford, TX 77477, that the address of its principal office in the State of California is 2980 Red Hill Avenue, Costa Mesa, CA 92626, and that its agent for service of process is CT Corporation System. [Statement and Designation by Foreign Corporation with the California Secretary of State]

191. The building at 2980 Red Hill Avenue in Costa Mesa had signage that consisted of

the blockish C and the word COSENTINO in white on a dark square, followed by the following italicized text: *Silestone & Marble Distribution Services.* [photograph of building]

192. The blockish C and the word COSENTINO in white on a dark square is the same word mark that was filed with the U.S. Patent and Trademark Office on February 25, 2016 identifying COSENTINO. S.A.U. Sociedad anónima unipersonal SPAIN Ctra. A-334, Km. 59 E-04850 Cantoria (Almeria) Spain as the Registrant and Cosentino Global, S.L.U Sociedad Limitada Unipersonal Carretera A-334, Baza-Huércal-Overa, Salida 60, Polígono Industrial (Edificio Oficinas), E-04850 Cantoria (Almeria) Spain as the last listed owner. [Cosentino Trademark IC 019. US 001 012 033 050, filed February 25, 2016 with the U.S. Patent and Trademark Office].

Cosentino's 1999 Material Safety Data Sheet for Silestone

193. On February 22, 1999 Cosentino issued a Material Safety Data Sheet for its Silestone® product which it identified as "Agglomerated stone slabs, tiles and fabricated items." Section 2 of this document, regarding "Hazardous Ingredients" has a table with five columns for Hazardous Ingredients, % by wt., % by vol., CAS #, and Other Limits. However, the table is blank; i.e, it does not identify any hazardous ingredients, even though the product contained as much as 95% crystalline silica, which causes silicosis, lung cancer and other occupational diseases. By failing to disclose crystalline silica as a hazardous ingredient of the product, Cosentino concealed this hazard from customers, their employees, and workers exposed to its lethal product.

194. Section 7 of the Material Safety Data Sheet concerns "Preventative Measures." The first part of this section concerns "Personal Protective Equipment." In this action Cosentino stated: "RESPIRATOR: Use respirator or particulate mask when cutting or abrading material." This instruction was inadequate and harmful, because the use of an air-purifying respirator or particulate mask is inadequate to prevent silicosis from cutting or abrading the product and misled workers to believe that they would be safe if they wore an air-purifying respirator or mask when cutting or abrading the product. The instruction failed to inform workers that because of the very high crystalline silica content of the product and the high exposures to respirable crystalline silica dust that result from cutting or abrading the product, the only type of respirator that could prevent workers from getting silicosis from cutting or abrading the product was an air-supplied respirator.

195. Section 7 of the Material Safety Data Sheet next contains information regarding "Procedures and Controls. Regarding "Engineering Controls." It states: "ASTME-1132-86 'Standard Practice for Health Requirements Relating to Occupational Exposure to Dust.'" This information was grossly inadequate, because the document to which it refers was not readily accessible, could only be purchased through the American Society for Testing Materials, and the document related to industrial dust, i.e., a nuisance dust, rather than respirable crystalline silica.

196. The next section regarding Procedures and Controls" was "Handling Equipment & Procedures" and stated: "Observe local safe handling procedures. Handle with care." This was a totally inadequate and meaningless instruction to workers how to handle Silestone safely. The instruction fails to tell workers to always use wet processing methods, to wear an air-supplied respirator, to wear full body protection to prevent all exposure to respirable crystalline silica dust, and fails to prescribe any engineering, ventilation, or administrative controls to prevent disease.

197. Section 8 of the Material Safety Data Sheet, regarding First Aid Procedures, states that the International Agency for Research on Cancer (IARC) [has] determined that crystalline silica is a probable carcinogen. This is a false statement, because two years earlier, in 1997, IARC determined that crystalline silica is a Group 1 (known human) carcinogen.

Early Cases of Artificial Stone Silicosis from Silestone

198. Occupational disease cases of Cosentino employees who worked in stone extraction at the Cosentino, S.A. facility in Almeria have been documented since as early as 2001 and 2002.

199. A document by the Ministry of Labor and Occupational Safety of Almeria dated August 7, 2002 refers to occupational disease claims of three Cosentino workers. The document concerns the Work Violation Act and states that an inspector from the Ministry made an inspection visit to Cosentino, S.A. in Cantoria regarding the occupational diseases of two workers: D. Miquel Centas Antolin and Francisco Azor Vargas. The document notes that a third worker, D. Manuel Gea Martinez, had earlier been diagnosed with occupational disease on May 3, 2001. The document refers to stone extraction work at the Cosentino facility in Almeria and states that the inspection visit was attended by Francisco Martinez Cosentino, Manager of Cosentino S.A., and Antonio Rubio Ruiz, head of the company's Occupational Risk Prevention Service. The occupational disease

claims of the three workers at Cosentino's Almeria facility may be the earliest cases of silicosis attributable to occupational exposure to Cosentino's Silestone artificial stone product.

200. A document dated December 3, 2002 on letterhead of the Ministry of Employment and Technological Development, Occupational Hazard Prevent Center, Almeria, provides details regarding the occupational disease of a fourth Cosentino employee, Jose Araque Martinez. Following is a translation of this document:

BOARD OF ANDALUCIA **Ministry of Employment and Technological Development**

Occupational Hazard Prevent Center, Almeria

3 DEC. 2002 2811

TECHNICAL REPORT REGARDING

INVESTIGATION OF OCCUPATIONAL DISEASE

1. **DATE EXTRACTED FROM THE REPORT**

1.1 About the Worker

- Name and Surname: Jose Araque Martinez
- D.N.I: 36-508-347
- Social Security Number: 07/47446686
- Date of Birth: 01-5-57
- Residence: C/ Obispo Rodenas, 50
- Location: Otula del Rio
- Province: Almeria
- Job: Operator Exp
- Category: Official 1
- Date of first employment: 02-5-79
- Duration of employment: 23 years
- Job when the disease was diagnosed: Freight forwarding
- Job previously done: Rework and finish parts

1.2 About the Employer

- Business Name: Costentino, S.A.
- Registered Office: C/ Fto. Martinez, 2- MACAEL
- Workplace: Ctra. Buza - Huercal-Overa, Km 59 - CANTORIA
- Activity: Industrial Natural Stone
- N.I.S.S.: 04/45683/07
- Location: CANTORIA
- Province: Almeria
- Telephone: 950-44-41-75
- Template: 373

1.3 About the Disease

- Date of diagnosis: 24-09-02
- Date of Receipt of Report: 14-10-02
- Type of Occupational Disease: Pneumoconiosis
- Diagnosis: Silicosis
- Symptoms of the disease: Cough, expectorate and dyspnea
- Degree of disease: Serious
- Nature of diagnosis: Of certainty
- Work that is considered to have caused the disease: Working with "Silestone"
- Time in months of exposure to the hazard: 8 years
- Date of previous medical examination: ------
- Date of last medical examination: 23-04-00

Cosentino's 2006 Material Safety Data Sheet for Silestone

201. In August 2006 Cosentino issued a Material Safety Data Sheet for its Silestone® product which it described as a "Solid quartz surface." Section 2 of this document contains a table (Table 1) that identified the components of the product as Orthophthalic polyester resin (5-25%), Pigments (<5%), Micronized silica (<0.1 mm) (5-50%) Grounded silica (0.1-10 mm) (10-90%),

Grounded quartz (0.1-10 mm) (5-50%), Grounded Glass/Mirror (0.1-10 mm) (5-50%), and Grounded granite (1-10 mm) (5-50%). The Material Safety Data Sheet also contains a table (Table 2) that identified three additives by CAS and EINECS numbers rather than chemical names, so workers could not know what the additives were without reference books to look up code numbers. The additives so mysteriously identified are (1) Cobalt, C5-23-branched carboxylate naphthenate octanoate complexes, (2) tert-Butyl peroxybenzoate, and (3) 3-(Trimethoxysilyl)propyl methacrylate.

202. After identifying the product's components, the Material Safety Data Sheet states: "This product does not contain free substances that involve a risk for the health in accordance to the Regulation of Dangerous Substances R.D. 255/2003 and according to the European Norms 67/548/EEC, 199/45/EE and its corrections 93/112/EEC, 2001/58/EEC y 2001/60/EEC." This statement, which suggested that Cosentino's Silestone did not entail a risk for health was false, because the expected and intended use of the product generates extremely hazardous respirable crystalline silica that causes silicosis and death. Cosentino made this statement even though EU Directive 67/548/EEC classifies as "dangerous" "substances and preparations" that are "very toxic," "which if they are inhaled ... may involve extremely serious ... chronic health risks and even death."

203. The next sentence of the Material Safety Data Sheet states: "The finished product does not contain any of the substances described in Table 2 since, once completed the production process, these are part of the three-dimensional structure of the polyester, included and immobilized in it. Therefore, this product is not classified as dangerous substance or product that involves a risk for the health according to the Regulation of Dangerous Substances R.D. 255/2003, and according to the European Norms 67/548/EEC, 199/45/EE and its corrections 93/112/EEC, 2001/58/EEC y 2001/60/EEC by means of which the present Security Data Sheet (MSDS) has been written up." This statement is also false because the additives in the product are toxic via inhalation and are known to cause lung disease, including fibrotic lung disease, and when Silestone is cut or ground these components of the product do not remain "immobilized" in the product, but become airborne and are inhaled by workers exposed to dust from Silestone, thereby causing respiratory tract damage.

204. Section 3 of the Material Safety Data Sheet is titled "Risks Identification and General Safety Measures." This section begins with the following statement: "This product presents no type

of risks for the human health or environment in accordance to the Regulation of Dangerous Substances R.D. 255/2003, and according to the European Norms 67/548/EEC, 199/45/EE and its corrections 93/112/EEC, 2001/58/EEC and 2001/60/EEC." This is a false statement, because the product contains extremely high concentrations of crystalline silica as well as the other and components and additives that are toxic to the respiratory tract and can cause silicosis and other fibrotic lung disease and death, and because EU Directive 67/548/EEC classifies as "dangerous" "substances and preparations" that are "very toxic," "which if they are inhaled . . . may involve extremely serious . . . chronic health risks and even death."

205. Section 3 of the Material Safety Data Sheet also states: "A prolonged exposure to the dust derived from the dry cutting and polishing treatments can cause serious health problems as pneumoniosis, silicosis, as well as a worsening of the people affected by pulmonary diseases as bronchitis, emphysema, etc." This statement is false because silicosis occurs from wet cutting Silesone and polishing treatments, and is misleading because the statement does not quantify the duration of "prolonged exposure" that can cause silicosis, leading workers to believe it would take decades of exposure to cause silicosis, although exposure to Silestone and other artificial stone products can cause acute silicosis in less than 5 years and accelerated silicosis in less than 10 years.

206. Section 3 of the Material Safety Data Sheet then states: "In order to reduce a casual [sic] exposure it is always recommended to use water as dust reducer. It is advisable the use of tools cooled by water and to perform the operations of dry cutting, milling and polishing of this product in a suitably ventilated place. Otherwise, it is essential to use respiratory personal protection for dust and particles type FFP1 according to norm UNE-EN 143:2001 and its revisions UNE-EN 143/AC 2002, UNE-EN 143/AC 2005." This instruction is inadequate because it merely recommends the use of wet processing methods to reduce dust, rather than stating that wet processing methods must always be used with all saws, and cutting, grinding and polishing tools to prevent silicosis. It is also inadequate because it doesn't specify the types of ventilation that provide a suitably ventilated space. The last sentence is also inadequate, because it refers to a European Standard that is not available online and is only available for purchase, the referenced standard appears not to be applicable for extremely high exposures to respirable crystalline silica, and the instruction suggests that particle air-

purifying respirators are adequate to prevent silicosis, although air-purifying respirators do not prevent silicosis in workers exposed exposed to respirable crystalline silica from fabricating artificial stone. The instruction is harmful because it does not inform workers that the only type of respirator that can prevent silicosis from exposure to high levels of respirable crystalline silica is an air-supplied respirator and it instead suggests that air-purifying respirators provide adequate protection.

207. Section 4 of the Material Safety Data Sheet, titled "First Aids" begins with the following statement: "This product is not hazardous in normal use, but not using the right equipment during fabrication operations as cutting, drilling, etc can cause a situation of emergency." This sentence is false and harmful, because Silestone is indeed hazardous in normal use, because the normal use of the product causes silicosis and death. To the extent that the statement constitutes a use instruction, it is also inadequate, because it indicates that "the right equipment" must be used for fabrication operations, but does not specify what that equipment is.

208. Section 6 of the Material Safety Data Sheet, titled "Manipulation and Storage" Aids" begins with the following statement regarding "Manipulation": "It is not necessary special measures for the manipulation of this product, but it is recommended to follow the next precautions." This statement is false and harmful, because manipulating the product as designed, intended, and expected results in the generation of respirable crystalline silica that causes silicosis and other occupational diseases, such that special measures for "manipulation of this product" are always required.

209. Section 7 of the Material Safety Data Sheet, titled "Control of Exposure/Personal Protection," begins with a subsection titled "Limit Values of Exposure," which states: "In accordance to the previously exposed and relying to the norm 2000/39/CE, as well as to the R.D. 274/2001 which it sends us to the values published by the National Institute of Health and Hygiene at Work (INSHT), the limit of the daily exposition to the dust resulting of the elaboration of Silestone® is 2 mg/m3. It appears in Table 1 for the y ear 2006 published by the mentioned INST in the line "Silica, vapor. Breathable fraction"." This statement is unintelligible and is therefore inadequate. Assuming that the statement means that the exposure limit for Silestone dust is 2 mg/m3, the statement is incorrect, because as of 2006, the permissible exposure limit and all recommended exposure limits for respirable crystalline silica in the United States were many times

lower than 2 mg/m3. Indeed, by 1991 OSHA had adopted a Permissible Exposure Limit for respirable crystalline silica which was 10 / (% quartz + 2) mg/m^3. Since the percentage of quartz in Silestone was approximately 90%, the OSHA permissible exposure limit for the product was approximately 0.1 mg/m^3 - 20 times less than that stated in the Silestone Material Safety Data Sheet. The statement was therefore not merely false; it was extremely dangerous because it overstated the permissible exposure limit to the product by a factor of 20 – a level of exposure that causes silicosis.

210. Section 7 of the Material Safety Data Sheet then has a subsection for "Exposure Controls" that provides the following information regarding "Respiratory protection": "Respiratory personal protection for dust and particles type FFP1 according to norm UNE-EN 143:2001 and its revisions UNE-EN 143/AC 2002, UNE-EN 143/AC 2005, even working with water as dust reducing agent during the elaboration of this product." This instruction is not only inadequate, but is extremely dangerous and harmful, because the type of respirator prescribed is the least filtering mask of the FFP series of masks that only filters 80% of airborne particles and allows inward leakage up to 22%, which is wholly inadequate to protect workers from respirable crystalline silica exposure and actually causes silicosis rather than preventing silicosis.

211. Section 10 of the Material Safety Data Sheet, titled "Toxicological Information" states: "As another product of natural stone that contains quartz or quartz dust as quartz, marble or granite, the operations of dry cutting, milling or any other treatments of this product can generate dust susceptible to produce irritation in eyes, nose and respiratory tract. A prolonged exposure can cause serious health problems, including pneumoconiosis." This statement is false and misleading, because Silestone is an artificial stone (engineered stone product), is not a natural stone product and has toxicological properties that are much different than natural stone. These include the extremely high crystalline silica content of Silestone (which is much higher than the crystalline silica content of natural stone), the extremely small size of the particles of crystalline silica that are generated from cutting and grinding Silestone (most of the particles generated being in the ultrafine to nano-sized range unlike crystalline silica particles from natural stone), and the toxicological properties of the resin, metallic pigments and other additives of the product that are produced during fabrication processes as particles and probably metal fumes, thereby increasing the respiratory toxicity of the

product. None of these toxicological properties of Silestone are mentioned and the information that is provided, which suggests that Silestone is no more toxic than natural stone, is false and misleading. The statement that "a prolonged exposure can cause serious health problems, including pneumoconiosis," is misleading because the duration of exposure that constitutes "a prolonged exposure" is not specified, so workers are left to speculate whether the "prolonged exposure" that can cause harmful effects is days, weeks, months, years, or decades. The word "pneumoconiosis" is also vague and confusing, because it is not a commonly used word and readers would unlikely know that it refers to a plethora of occupational dust diseases of the lungs, the most relevant of which is silicosis, which is not mentioned by name in this section even though it is the lung disease most strongly associated with occupational exposure to respirable crystalline silica dust.

212. The last paragraph of Section 10 of the Material Safety Data Sheet states: "In accordance to RD 363/1995, regulation about notification of new substances and classification, packed and labeled of dangerous substances, the sample put under test is not considered classifiable within any group of risk on the basis of its acute toxicity by ingestion." This statement is false and misleading, because the referenced regulation requires notification and warnings for new hazardous substances in commerce that companies market and sell, including substances specified in subdivision 2 of Article 2 of the regulation, which includes dangerous substances, including those that are "very toxic," which is defined in subsection (f) of Article 2, subdivision 2 of the regulation as "substances and preparations that, by inhalation, ingestion or skin penetration in small quantities, can cause acute or chronic effects and even death."

213. Section 15 of the Material Safety Data Sheet, regarding Regulatory Information," states: "Silestone is not classified as dangerous substance or product that involves a risk for the health in accordance to the Regulation of Dangerous Substances R.D. 255/2003 and according to European Norms 67/548/EEC, 199/45/EE and their corrections 93/112/EEC, 2001/58/EEC and 2001/60/EEC." Once again, this is a false statement, because the product contains extremely high concentrations of crystalline silica as well as the other and components and additives that are toxic to the respiratory tract and can cause silicosis and other fibrotic lung disease and death, and because EU Directive 67/548/EEC classifies as "dangerous" "substances and preparations" that are "very

toxic," "which if they are inhaled . . . may involve extremely serious . . . chronic health risks and even death."

214. Section 16 of the Material Safety Data Sheet, regarding "Other Information," contains three paragraphs, the first of which states: "The information contained in this document is, in accordance to all our actual acknowledges, true and exact. However any recommendation or suggest formulated here are out of our guarantee, because the conditions of use of our product are out of our control. Besides, nothing of contains here can be interpreted like a recommendation to use any product breaking the laws and trials of security or patents come into effect about any subject or its use." This paragraph appears to constitute a representation that the information in the Material Safety Data Sheet is true and correct, although most of the information provided is either, false, misleading or unintelligible, and could not have been genuinely believed by Cosentino to be "true and exact."

215. The second paragraph of Section 16 of the Material Safety Data Sheet states: "The receiver of our product will have to observed, under its responsibility, the corresponding regulations and norms. In any case the data contained in this Security Data Sheet constitute a guarantee of specific properties or generate any contractual relation." Although this paragraph appears to constitute an an attempt by Cosentino to disclaim all responsibility for its dangerous and lethal product and to shift all such responsibility to those who receive the product, the language actually states that "the data contained in this Security Data Sheet constitute a guarantee of specific properties" of the product and therefore actually constitutes a guarantee by Cosentino of safety.

216. The last paragraph of the Material Safety Data Sheet repeats the previous false statements that the MSDS is in accordance with the aforementioned European laws.

Silicosis Cases in Spanish Workers Exposed to Cosentino's Silestone

217. The first cases of silicosis in Spanish artificial stone workers were published in 2010 by researchers at the National Institute of Silicosis at the University Hospital in Asturias, Spain. They reported 3 cases in workers who had been employed for 17 years by a small ornamental stone company that fabricated and installed in homes and buildings. The workers were all young: 32, 34, and 37 years old. Chest x-rays of all 3 workers showed nodular opacities with diffuse bilateral

distribution and more profuse localization in the upper lobes, with a slight increase in mediastinal and/or hilar nodes. In case 1, a cluster of nodules was observed with progressive massive fibrosis; this worker was diagnosed with complicated silicosis. Martínez C, et al., "Silicosis, a Disease With an Active Present," *Arch. Bronconeumol.* 2010; 46(2):97-100 [in Spanish with English abstract]. These cases were apparently of workers who were exposed to Cosentino's Silestone product.

218. In 2011, researchers at Galdakao Hospital in Bizkaia, Spain published a study of 11 workers who were exposed to different types of quartz surfaces since 1995. Four of the subjects worked in the cutting workshop; the rest of the workers worked in assembly (i.e. fabrication), without any specific respiratory protection apparatus. They diagnosed 6 of the 11 workers with silicosis, which equated to a disease prevalence in this work environment of 54.5%. Of the 6 workers affected, 5 (83.3%) were assembles (fabricators). The investigators attributed silicosis in these workers to quartz conglomerates (artificial stone). Pascual S, et al., "Prevalence of silicosis in a marble factory after exposure to quartz conglomerates," *Arch. Bronconeumol.* 2011; 47(1):50-51 [in Spanish with English abstract]. These workers were exposed to Cosentino's Silestone.

219. On May 29, 2011 an article appeared in Diario de Cadiz titled "Silicosis has affected almost twenty Pelagatos workers." The article noted that this irreversible fibrotic-pulmonary disease is contracted through Silestone, a material used to manufacture countertops. A conference on occupational health organized by Comisiones Obreras (CCOO) in San Fernando brought to light information that affects workers in the Pelagatos industrial estate. From the Occupational Health Secretariat of that union, Manuel García Túnez, confirmed that a total of 19 workers from that industrial zone who are engaged in the manufacture of Silestone have suffered from silicosis. The union official pointed out that this disease is contracted through prolonged contact with a material used in countertops, Silestone (a quartz agglomerate), but that this condition is due to the fact that few measures are taken to prevent occupational hazards. Thus, he said that among the twenty people affected by silicosis there are already people with absolute disability and others who are able to work. In the same way, he criticized the functions of the mutuals that, in his opinion, "are more interested in their business than in the worker." He also pointed out that the health authority, in terms of occupational health, "is a real disaster in the entire Andalusian community, but much more in the

province of Cádiz."

Cosentino's 2013 Material Safety Data Sheet for Dekton®

220. In April 2013, Cosentino issued a Material Safety Data Sheet for its product DEKTON®, which described the product as an "Ultra-compact surface designed for use indoors and outdoors, particularly kitchen and bathroom worktop, flooring, cladding and facades."

221. Section 2 of this Material Safety Data Sheet, regarding "Hazards Identification" states: "There is no provision for any risk associated with the finished DEKTON® material in the CLP (EC) regulation n^{0}. 1272/2008. However respirable crystalline silica dust can be generated in manufacturing operations. Respirable crystalline silica causes harm to the lungs, such as silicosis, through prolonged or repeated exposure (Hazard H372). A series of preventative measures should be adopted to prevent or minimise exposure." This statement is false and misleading for the following reasons: First, the purpose of the referenced regulation "is to ensure a high level of protection of human health" and to provide "an obligation . . . for suppliers to label and package substances and mixtures placed on the market," suppliers being defined as including "any manufacturer, importer, downstream user or distributor placing on the market a substance, on its own or in a mixture, or a mixture." Second, crystalline silica is specifically identified in Annex 1 of the regulation as a hazardous substance. Third, the regulation requires suppliers (including manufacturers) of a hazardous substance or mixture to "ensure that the substance or mixture is labelled and packaged in accordance with [the regulations] before placing it on the market." Because DEKTON® is a chemical mixture that is not a finished, end-use product sold to consumers, but is rather an industrial product sold to companies that fabricate countertops for installation in kitchens and bathrooms, the ordinary, intended and expected use of the product is for it to be cut, ground, and polished, thereby releasing respirable crystalline silica dust. Accordingly, contrary to Cosentino's assertion, there is risk associated with DEKTON® and the referenced regulation does require health hazard and other disclosures for the product.

222. The Material Safety Data Sheet then states: "Contens [sic] crystalline silica < 11%" and provides the following warning: "HAZARD: H372 Causes damage to lungs through prolonged or repeated exposure (inhalation)." This is information is vague and misleading, because it does not

specify how many days, weeks, months, years or decades constitutes "prolonged" exposure or the number of exposures that constitute "repeated exposure" that causes such damage.

223. The Material Safety Data Sheet then provides four instructions under a heading "Prevention": P260 Do not breathe dust generated in the cutting, grinding, and polishing processes; P264 Wash face and hands thoroughly after handling; P270 Do not eat, drink or smoke when using this material; P284 Wear respiratory protection for particles (P3)." The first instruction is meaningless and impossible of performance, because dust is always generated in cutting, grinding and polishing DEKTON®, and workers cannot hold their breath an entire workshift so as not to breathe dust dust generated in the cutting, grinding, and polishing processes. The second instruction, although a useful general hygiene instruction, not a means of prevention, i.e., washing one's face and hands after handling DEKTON® cannot prevent silicosis. The third instruction is also not a means of preventing silicosis and is a rather useless instruction, because DEKTON® is too hard to eat (one cannot eat stone), DEKTON® dust does not present an appreciable ingestion hazard, so that there is no appreciable risk to one's health of eating or drinking when using DEKTON®, and there is no risk of fire or explosion from smoking when using DEKTON®, because it is not flammable. The fourth instruction, to "wear respiratory protection for particles" (which is accompanied by a pictograph of a worker wearing a particulate filter respirator) is inadequate, because air-purifying respirators are inadequate to prevent silicosis from inhaling DEKTON®, and the only type of respirator that is adequate to prevent silicosis from inhaling DEKTON® is a NIOSH-approved air-supplied respirator. Thus, this preventive instruction is actually harmful, because it prescribes the wrong type of respirator to prevent silicosis from inhaling respirable crystalline silica dust from DEKTON®, and would thereby mislead workers to believe that wearing a particulate air-purifying respirator would prevent silicosis and thereby preserve their health and safety.

224. Section 8 of the Material Safety Data Sheet is titled "Exposure Controls/Personal Protection" and contains a section regarding "Exposure Controls (Manufacturing and installation)" that states: "The manufacturer recommends methods that involve the use of water in the manufacturing of this material. Dust derived from the manufacturing processes could contain respirable crystalline silica (SiO_2)." The first sentence is an inadequate use instruction, because wet

processing methods ***must*** be used whenever DEKTON® is cut, ground or polished, to prevent silicosis, although wet processing methods alone are insufficient to prevent silicosis. The second sentence is misleading because it suggests that dust from manufacturing processes may not contain respirable crystalline silica, although respirable crystalline silica is generated whenever DEKTON® is cut, ground, drilled, millers, polished, or otherwise fabricated.

225. The section of the Material Safety Data Sheet regarding "Exposure Controls" then says: "Long term exposure to dust derived from the cutting and manufacturing processes without the use of suitable protection may cause serious deseases [sic] including pneumoconiosis such as silicosis, as well the deterioration of other lungs diseases such as bronchitis, emphysema, etc." This statement does not constitute an "exposure control," i.e., a means of controlling exposure. It is also a vague and inadequate description of health hazards, because it indicates that only "long term exposure" to dust from the product can cause silicosis, which could well be understood to be decades of exposure that results in chronic silicosis, although fabricating artificial stone countertops has most strongly been associated with acute silicosis (typically following exposure of less than 3 years) and accelerated silicosis (following exposure between 5 and 10 years). The sentence is also vague and misleading, because it does not define "suitable protection," which workers would typically understand to be the use of a particulate filter (air-purifying) respirator, which is inadequate to prevent silicosis in artificial stone fabricators, because the only type of respirator that can prevent silicosis in such workers is an air supplied respirator.

226. Section 8 of the Material Safety Data Sheet states: "Always use respiratory protection for P3 type particulates according to EN 143:2001 and its revisions EN 143/AC 2002, EN 143/AC 2005 . . . during the preparation of Dekton®." While this type of air-purifying respirator will reduce exposure to crystalline silica, it will not eliminate such exposure and will not prevent silicosis, as will a NIOSH-approved air supplied respirator. The instruction to use this respirator is thus harmful.

227. Section 11 of the Material Safety Data Sheet is titled "Toxicological Information." This section provides little toxicological information regarding the product. Although Section 3 of the Material Safety Data Sheet identifies silicoaluminates, amorphous silica, crystalline silica, zircon and inorganic pigments as the ingredients of DEKTON®, no toxicological information is provided

regarding any ingredients of the product other than crystalline silica, and the information provided regarding crystalline silica throughout the Material Safety Data Sheet is inadequate, incomplete, misleading and false. Especially because Cosentino did not disclose the cancer hazard that exposure to DEKTON® presents in the Hazards Identification section of the Material Safety Data Sheet, that information should be disclosed in Section 11 of the Material Safety Data Sheet. In particular, this section of the Material Safety Data Sheet should state that crystalline silica is a known human carcinogen, because the International Agency for Research on Cancer classified crystalline silica as a Group I (known human) carcinogen in 1997. The only statement regarding cancer in the entire document is the last sentence of Section 11 which states: "Persons affected by silicosis have a higher risk of suffering from lung cancer." Although true, this statement is misleading, because it suggests that silicosis causes cancer. However, silicosis does not cause cancer; it is crystalline silica that causes cancer. Persons who have been diagnosed with silicosis typically have a greater cumulative exposure to crystalline silica than do persons who have not been diagnosed with silicosis, so persons who have silicosis have an increased risk of developing lung cancer because of their greater exposure to crystalline silica. Cosentino's failure to disclose the carcinogenic hazard of DEKTON® due to its crystalline silica content not only violates the Hazard Communication Standard, but also violates California's Safe Drinking Water and Toxic Enforcement Act ("Proposition 65"), which requires manufacturers of carcinogenic products to warn individuals (including workers) exposed to such products that they contain a chemical (crystalline silica) known to the State to cause cancer.

Cosentino Denies Responsibility for Silicosis Cases of Workers in Andalusia

228. In July, 2015, Younes Nachett authored an article regarding silicosis among Spanish workers in Andalusia who had been occupationally exposed to crystalline silica from Cosentino's Silestone. On July 28, 2015 Santiago Alfonso Rodriguez, Cosentino's Director of Communications sent a letter to the newspaper, denying Cosentino's responsibility for the silicosis cases in Andalusia:

> We are contacting you regarding the publication in the newspapers that you direct of the articles titled "The deadly dust" of kitchen countertops with a Quartz base," VivaSevilla, July 28, 2015, and Viva Caldiz, July 28 2015, authored by journalist Younes Nachett and published in the digital edition of the media.
>
> In the aforementioned publications, false and misleading statements are made regarding Cosentino and products such as Silestone, that are attributed to causing illnesses and even deaths.

> Extensive documentation and statements from the company were provided to the journalist, Younes Nachett, at his request, which we shared for his knowledge as an attached document.
>
> The materials that we produce are harmless to health and, as the author who signed the report explained in detail, improper handling is the cause of these diseases, but your newspaper insists that our material is especially harmful to health.
>
> We ask you to attend to this communication by proceeding to rectify the information in everything related to Cosentino and Silestone, both in the aforementioned article and in any other of your publication in which it may be replicated.
>
> In the legitimate defense of the good name of our company and our interests, we reserve the right to take any legal action that may be appropriate.
>
> Sincerely, Santiago Alfonso Rodriguez
>
> Director of Communications, Cosentino

229. Cosentino stated that according to the National Institute of Silicosis, the measures to control dust in the cutting and polishing process are based on irrigation with water so that the particles settle, and that adequate controls are used that do not return them to the atmosphere and remove them from the environment with aspiration and ventilation. To the extent that these procedures fail, personal protection measures must be used. Devices can be used to filter and prevent the inhalation of these materials when carrying out work such as mining. It is important to avoid tobacco, in any case, but especially in workers who handle the stone and take the appropriate measures to prevent tuberculosis." Cosentino claimed that "Silestone® is a safe product, that exposure to the material is not harmful in any case . . . , what happens is that these marble factories lacked safety measures of any kind, both for granite and for quartz countertops," which "cannot be attributed" to Cosentino. Cosentino insisted that "neither was the risk unknown to the marble workers, nor to the mutual companies, nor were the safety measures and health surveillance protocols that had to be adopted different from those of other materials with silica content." Cosentino also claimed that "since the start of marketing Silestone® products, the company printed commercial catalogs in which it was indicated that their composition contains more than 90% quartz, the composition of Silestone® could not be unknown to the marble workers and in fact it was not, which is why they could have applied safety measures from the beginning that were none other than those that they should already be applying for the handling of granite. Cosentino also claimed that "already

in 2005, coinciding with the entry into force of the European directive that regulates the labeling of products, Cosentino began to include an eye-catching label that warned of the health risks of handling these products without protection and in 2009, this information was expanded with much more explicit labeling. Cosentino argued that responsibility for the silicosis epidemic among Spanish workers exposed to its product was with the workers' employers rather than Cosentino: "Knowing that the focus of the problem is clear, it is essential that those responsible for companies that cut, polish and install stone materials assure compliance with safety measures because they are the ones who must supervise compliance with requirements are also responsible for incorrect actions."

The First Silicosis Lawsuit Against Cosentino in the United States

230. Ublester Rodriguez was a Mexican immigrant who came to the United States at age 14. He spoke no English, did not receive a formal education, and worked in restaurant kitchens until changing jobs and working with countertop cutting. Since 2000, Rodriguez has worked on cutting and polishing slabs of an artificial stone to make kitchen and bathroom countertops." "Just 10 years after beginning work with Cosentino, Rodriguez noticed serious health problems that affected his day-to-day. He had to stop playing soccer for fun because he got tired very easily. He developed a persistent cough, and after getting some X-rays done, the doctor told him he had severe silicosis at 33 years old. Rodriguez had never heard the terms before." "His lungs are so damaged that he is on oxygen about six hours a day. Unfortunately, he will likely need a lung transplant." "The shop Rodriguez worked for is run by Cosentino . . . ." "His employer [Stone Systems] did not explain anything about Silestone's makeup, the fact that it's made from mostly quartz, and it contains a lot of silica. Silestone can be as much as 90 percent crystalline silica – twice as much as natural granite. The only thing his employer warned him about was injuries related to cutting, for example. He explained that no mention of potential lung disease was ever communicated." "Around the time of Rodriguez's diagnosis, the company had just begun to issue warnings around the shop of risk of silicosis, and it had not tested the workplace air until just the year previous. The 2009 inspection fo the air showed that silica exposure levels were well above the legal limit in three of seven workers who wore monitoring devices to assess the air quality around them. Still, a 2011 round of air tests had the same results: three of seven monitored workers above the permissible exposure limit, and

employees still at risk. This was the case even though all the processes including cutting and grinding were using water to keep down the dust. The company says it believed it was taking the necessary measures to protect employees, especially since the early 2000s. Travis Dupre, the current vice president of sales for Stone Systems, testified and said the following: "We felt like we were doing what was reasonable. We had switched everything to wet grinding. We had moved into a facility with better ventilation. We'd enforced no dry cutting. We felt like we were taking the reasonable steps." Mr. Rodriguez filed a lawsuit against his employer Stone Systems and against Cosentino, which settled in 2016. The lawsuit "was settled confidentially, with no admission of liability. Neither Cosentino nor Stone Systems made public statements regarding the legal proceeding or the documents associated." "US Countertop Workers falling Sick from Silica Dust: More and more cases of countertop workers getting sick indicates the hazards are cutting Silestone, a material made of quartz that releases dangerous silica," *Occup. Health & Safety* (Dec. 5, 2019).

Martin Mendiola Sues Cosentino in Los Angeles for Causing His Lung Disease

231. On August 1, 2017 Martin Mendiola, who was a lifelong never-smoker, filed a lawsuit in Los Angeles Superior Court (Case No. BC 670691), alleging that his exposure to silica in the course of his employment with Sistone, Inc. and Realstone, Inc. from 1981 to August 2016 caused him to suffer disabling lung disease, at which time he was determined to be disabled and could no longer work. He alleged that he was diagnosed with chronic obstructive pulmonary disease (COPD) on August 1, 2015 and that "his latest breathing test returned with a 64% spirometry reading."

232. Mr. Mendiola alleged that "Defendants intentionally, deliberately, callously, and/or with willful and wanton disregard exposed workers [to] highly toxic pulmonary dust and material know[n] to cause silicosis," that Defendants "concocted a fraudulent scheme to deceive workers as to the nature of such hazards, and they fraudulent concealed from workers data on actual workplace conditions that would have caused the workers to cease working . . . ." Mr. Mendiola further alleged that "[t]his fraudulent concealment continued for years until exposed and in the discovery of medical testing it conf[i]rmed that indeed PLAINTIFF had and has silicosis."

233. Mr. Mendiola alleged that "for years DEFENDANTS did next to nothing to protect

the health and safety of the [ ] PLAINTIFF" and that "DEFENDANTS kn[ew] that the workers were using and working with material that was . . . known by DEFENDANTS to cause diseases such as silicosis, lung cancer . . . , chronic obstructive pulmonary disease (COPD), renal disease, and tuberculosis." Mr. Mendiola alleged that "DEFENDANTS fraudulently concealed this information from workers deliberately so as to avoid the added costs . . . and inconvenience of providing adequate respiratory protection [to] PLAINTIFF, knowing that the actual, [p]articulate levels were certain to cause harm." He further alleged that "[t]he workers so impacted would have refused to work with said products and or materials[] without at least adequate [r]espiratory protection and protective clothing had DEFENDANTS disclosed the facts to them."

234. On or about September 4, 2018, Mr. Mendiola named Cosentino S.A. as a doe defendant in the case.

235. On October 26, 2018 Cosentino S.A. filed a motion to quash service of the summons and complaint, arguing that "the Court lacks personal jurisdiction over [Cosentino S.A.] because the Summons and Complaint served are substantially defective and the Court lacks personal jurisdiction of . . . Defendant due to improper service." Cosentino S.A. also claimed that the Los Angeles Superior Court "lacks personal jurisdiction over . . . Defendant because the allegations noted in Plaintiff's Complaint did not arise out of any contacts that . . . Defendant COSENTINO, S.A., might have had with the State of California; and . . . did not purposefully avail itself of any benefits of doing business in the State of California."

236. In support of this motion, Cosentino S.A. submitted a Declaration of Jorge Cuervo Vela, Legal Director of Defendant COSENTINO, S.A., acknowledging that on or about September 19, 2018, he was sent a copy of the doe amendment naming COSENTINO S.A. as a defendant in the case and that the "Amendment to Complaint, Summons, and Complaint . . . were left at the reception desk of Cosentino Center Los Angeles." Although the signage on that building at the time bore word marks, tradenames, and trademarks of Cosentino and some of its products, Mr. Vela nevertheless declared that "COSENTINO, S.A. does not operate Cosentino Center Los Angeles."

237. On November 14, 2018, Plaintiff's counsel filed his declaration in support of Plaintiff's opposition to the motion, attaching as an exhibit a press release dated November 12, 2015

on Cosentino's website titled "Cosentino Unveils Innovative 'Cosentino Center' in Los Angeles." This press release showed a photograph of Cosentino Center Los Angeles which bore a blockish "C" and the word "COSENTINO," which constitutes a word mark (a type of trademark) owned by the Cosentino Group S.A. The press release stated: "The new state-of-the-art Cosentino Center in Los Angeles is an interactive showroom and warehouse that will enhance the kitchen and bath design experience for architects, designers, fabricators, distributors and consumers in the region. The center officially opened today. As a family owned business headquartered in Spain, Cosentino has long been the trusted surfacing brand in Europe. The Los Angeles opeining is part of the company's larger strategic plan to underscore its position as the surfacing leader in the U.S. market with increased availability and distribution of its products. The Center will create jobs in the area and allow architects and designers to regionally source their favorite surfacing materials. The new Los Angeles location boasts a 29,000 square-foot warehouse and distribution space that displays the full portfolio of Cosentino brands: **Dekton®**, . . . **Silestone® Natural Quartz** . . . . 'The Southern California design community is an integral market for Cosentino,' said Lorenzo Marquez, VP of Marketing for Cosentino North America. 'The opportunity to greatly strengthen our presence in the region is a testament to Cosentino's growth in North America, and the value of the area to the A&D world. We are excited to partner with architects, designers and consumers in Southern California through our showroom experience, design knowledge and resources. . . . The Los Angeles Cosentino Center is located in the heart of Los Angeles County's stone and tile distribution district at 12822 Rangoon St., Los Angeles, CA 91331. Phone: 818-381-8220. © Cosentino S.A. All rights reserved."

238. The judge in the case granted Cosentino's motion to quash, apparently due to technical defects in the proof of service of the complaint on Cosentino. Nevertheless, as acknowledged by the Declaration of Jorge Cuervo Vela, Cosentino, S.A.'s Legal Director, the complaint in the *Mendiola* case clearly was received by Cosentino S.A. and put Cosentino on notice that its artificial stone products were causing lung disease, including silicosis and chronic obstructive lung disease among workers in Los Angeles County who were occupationally exposed to respirable crystalline silica from Cosentino's deadly products.

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More Spanish Workers Get Silicosis from Silestone and Sue Cosentino

239. On February 19, 2019 the Spanish newspaper Eldiario published an article by Nestor Ash. It was titled "Andalusian silicosis reaches the courts: a court investigates a complaint against the manufacturer of Silestone." This article noted that silicosis is the main occupational disease in Andalusia, according to a report from the Ministry of Health, which attributes it to quartz agglomerate (artificial stone). The article noted that the highest incidence had been registered in Cádiz, although all the production of quartz agglomerate comes from Almería. The article reported that several workers afflicted with the disease had filed a complaint. It related the story of one worker: José Araque spent the last two years of his life on a sofa, lying on his side to avoid the hemorrhages that every so often flooded his right lung, the only one that barely worked. His lungs had been filled with small silica stones twenty years before, while he was handling the quartz conglomerate that is manufactured in the complex that the Cosentino Group has in Cantoria (Almería) and whose star product is Silestone countertops. Araque died in 2015, a victim of silicosis, which today is the main occupational disease in Andalusia. Several afflicted with silicosis filed a complaint against those responsible for the company. They believe that the lack of adequate safety measures caused the death of Araque and injuries to other workers. "He knew he had little chance of life, but the last few years were spent waiting for death. He was very afraid, he was exhausted, and at the moment he began to bleed . . . he said that he was worthless," recalls his widow, Paqui Silva. He started suffering from respiratory problems in 1998. "He had a fever. We would go to the emergency room, antibiotics and work again. He was always very tired." In 2002, a biopsy confirmed that he suffered from silicosis and two years later they removed a large part of his left lung, eaten away by the disease. For years he suffered more and more frequent hemorrhages, which forced him to travel urgently from Huércal-Overa to Granada, intubated to avoid drowning in his own blood. The last years of his life, Araque spent suing his company. In 2004, he started a legal battle to determine the degree of disability that he suffered. A medical court deemed him disabled from work, but did not grant him absolute disability. In his mid-thirties, he was left without a job and with a salary of 800 euros. In 2015, thirteen years after he was diagnosed with silicosis, the labor inspectorate reviewed his case and acknowledged that Araque was completely unable to

work. "Now that they know I'm dying, they give me this," lamented the man, as his widow recalled. He died a few months later. Araque's case is one of the few cases brought against Cosentino, the great marketer of quartz agglomerates in Andalusia and Spain. Cosentino employs around 1,500 workers at its factory in Cantoria (Almería). It is the great company of the marble region. It ended 2017 with revenues of 901 million euros and 57 million euros in profit. Last year some affected workers and relatives filed a complaint against the managers of the company, charging them with alleged crimes of reckless homicide and injuries. The article noted that silicosis accounts for 18.55% of occupational diseases in Andalusia and is the most common occupational disease in Andalusia, having displaced pathologies from exposure to asbestos as the most common occupational disease according to the monograph "Communications of suspected occupational diseases 2009-2016," prepared by the surveillance and occupational health service of the Ministry of Health. The report, published in May 2018, links the rise in disease to quartz agglomerates, which became popular in the real estate boom years. The reported cases of silicosis, 279 in total, were concentrated in the provinces of Cádiz, Córdoba and Almería, with a maximum peak in 2011. From that year on, the cases in Almería decreased. The total number of cases reported in the period 2009-2016 was 122 in Cádiz, 37 in Almería and 37 in Córdoba, the most affected provinces. "If there is one, there must be more", thought Dr. Rabadán and his team, who began an active search that led them to 24 small workshops where compacted quartz countertops were cut. "Word spread and among those we searched for and those who turned up, we began to do tests and biopsies. The CT images [chest tomography] were shocking, you could see the white lungs," explains the doctor. The silicosis produced by the quartz agglomerate is especially virulent and evolves much more rapidly than the silicosis of the miners. The reason for the aggressiveness of this variant is the material that produces it. Silestone is a composite material that contains around 80% silica and cristobalite, which is crystalline silica derived from high temperatures. When dumped into a silo, the silica produces dust; when a hopper is cleaned, it produces dust; when a countertop is cut, dust is produced. "The silica particles are so small they are respirable, and masks are not effective in preventing inhalation of the small particles, explained the doctor. In total, 122 cases were reported in the province of Cádiz in the period 2009-2016 and those affected ended up formed the Association of Affected and Sick with

Silicosis (ANAES), founded by Agustín Cebada shortly before undergoing a lung transplant that was not successful. Today the president of the association is Ismael Aragón, who suffers from silicosis like two of his brothers, his father and ten other relatives. They all worked in the marble shop. "We did the fine work, the adaptation to the home," he recalls. According to his account, they worked with Cosentino countertops. "A lot of cutting, a lot of sanding." In those *boom times*, no one in the marble shops took any safety measures. "They had not told us everything it contained: lead, arsenic, cadmium. . . . Some labor inspector has come to tell us that this must be worked with Ebola suits," laments Aragón, who noted that a case of the disease has already been detected in an office worker: "We pray that our wives, who worked in the offices, are not sick." The Cosentino company denied any responsibility in these cases, and emphatically claimed that the cutting, manufacturing and installation of the quartz agglomerate slabs could be done in a "totally safe" manner, following the measures indicated on the labels of each slab, the Safety Data Sheet and the Good Practices Guide. "Unfortunately, the implementation and continuity of existing safety measures in each marble shop is the exclusive responsibility of the owner of the same," said the company. According to his widow, Antonio signed a confidentiality agreement with Cosentino. Paqui, the widow of José Araque, also mentioned these clauses, supposedly signed by some workers in exchange for compensation or a new job away from silica dust. José Antonio López, president of the association of affected people from Almería, confirmed that it is a common practice in the company: “They wanted to deal with me, but they played with my life: I was about to die. I don't even want to go through the door. I can tell you about 15 or 20 people who are working in factories with silicosis.” The company admitted the existence of confidentiality clauses. The existence of these contracts could explain the sharp drop in reports of silicosis in Almería, after the peak of 2011. Those affected would guarantee themselves a position in the company away, in theory, from the supposed source of contamination, and avoid a retirement with a pension that barely reached half of the worker’s salary. "Some workers don't want us to do the examination, because they would be unemployed and they don't know how to do anything else," admitted Dr. Andrés Rabadán. For him, this refusal poses an "ethical" problem. Cosentino, however, claimed that the number of "relocated" workers did not exceed ten, out of the "less than 25 cases" of silicosis registered in his factory. Another possible explanation for the sharp

drop in reports of silicosis in Almería is that, following the first cases detected, Cosentino adopted strict safety measures that it claimed was able to effectively protect its employees from silica dust. Cosentino claimed that it adopted comprehensive protective measures according to the work area (water nebulizers, localized exhaust ventilation, forced environmental ventilation) with the use of respirator masks, "thus guaranteeing that the worker does not have any exposure to dust from silica." Just over a year ago, Interviú magazine published some images that refuted this statement. In them you can see areas of the Cosentino factory in Cantoria wrapped in a cloud of dust that barely allows you to see what is a few meters away. Eldiario.es Andalucía has had access to two videos, supposedly made in 2017, and provided by one of the sources consulted for this report. In one of them a massive dust leak is observed in some facilities; in the other, dust is generated by various polishers. However, the place of the recording could not be verified, according to Cosentino. "The images published in the Interviú article did not represent the reality of the factory at all, nor has it been proven in any way that they had been taken in our production centers," the company claimed, attributes its publication to the interest in creating "an unjustified alarm." The company asserted that measurements of exposure to silica dust would "objectively" prove that workers can carry out their work safely. The last possible explanation is that doctors are not detecting the disease. This is what the report of the Junta de Andalucía suggests. For Doctor Rabadán, it would not be strange: "It is not an easy disease to detect. We have experience that no one else in the world has. We have seen more than a hundred cases." Those affected from Almería refer to several workers who were not diagnosed in Almería, and were in Cádiz. Dr. Rabadán believes an active search is necessary for cases of silicosis to surface: "If you wait, not many will appear, and if you do an active search they will."

Judgment By Spanish Court that Cosentino's Disclosures Were Deficient

240. On February 20, 2019 Eldiario published the second in the series of articles by Nestor Ash, titled "A ruling established the responsibility of Silestone manufacturers for failing to warn of the risk of silicosis." This article stated that "The Provincial Court of Bilbao ruled in 2017 that Cosentino disclosures of the risks of handling quartz agglomerate was "late, insufficient and confusing." This article noted that the manufacturers and especially Cosentino denied all responsibility for how the material was handled in the marble factories to which it supplied the

product. The Almeria-based company claimed that it currently conducts training courses for marble shops and issues information bulletins in which it explains the protective measures that must be adopted to cut, process and install its countertops. These measures are also outlined in the safety labels incorporated in each table, the Safety Data Sheet and the Good Practices Guide. "Unfortunately, the implementation and continuity of existing safety measures in each marble shop is the exclusive responsibility of the owner of the same," said the company. However, a sentence of the Criminal Court 1 of Bilbao, which was confirmed by the Provincial Court of Vizcaya in May 2017, questioned the thesis of the exclusive responsibility of the company fabricating the countertops. These rulings determined that Cosentino, as a manufacturer of quartz agglomerates, had joint responsibility for the illness of various workers at a Vizcaya marble factory, because Cosentino disclosed the hazards of the material they supplied "late, insufficiently and confusingly." Nevertheless, the heads of Cosentino and Levantina de Granitos (a company that imported a similar product from Israel) were acquitted due to the statute of limitations for the reckless injuries, the crime with which they were charged. Marmolerías Cid, where several patients with silicosis worked, was a family business that had been dedicated since 1984 to the fabrication and installation of granite countertops. Around 1999, Marmolerías Cid began to acquire and work on Silestone countertops, which at that time were expanding rapidly throughout Spain. From 1999 to 2008, Marmolerías Cid acquired Silestone countertops manufactured by Cosentino for a value of 1.8 million euros, in addition to a similar product, Caesarstone, worth around 250,000 euros. The judgments declared that it had been proven that up until 2004 neither Cosentino nor Levantina de Granitos disclosed the hazards of handling this product, despite the general duty established by the 1995 Occupational Risk Prevention Law. In 2004, Cosentino added a label to the slabs with a warning that equated the risks of dry cutting or grinding Silestone to the risks of fabricating "natural stone products such as marble or granite: Prolonged exposure . . . can cause serious health problems, including pneumoconiosis." However, the safety sheets did not begin to be produced until 2005-2006, and there was no record that they were delivered to the marble factory until 2009, according to the judgment, which added that "they gave rise to confusion" because they compared Silestone slabs to those of natural stone, and insisted that they are safe for the end user, obviating the risk for the intermediate handler. The

court concluded that Silestone is a product that workers must handle with extreme safety measures. The court's ruling noted that the International Agency for Cancer Research has concluded since 1997 that silica is a carcinogenic substance, and that the slabs contain free crystalline silica in a percentage between 70% and 90%, "whose inhalation by minimal and continuous exposure for five years can cause silicosis." Neither the labor inspection, nor the risk prevention mutuals, nor the manufacturers warned of the composition of Silestone or the risks it entails, so the workers "performed the machining tasks without adequate protection, leaving them exposed . . . to respirable dust with a high silica content," the judgment concluded. The judgment considers that the heads of the marble factory could not be aware of the danger of this material, but that the manufacturers could be held responsible for the generation of silicosis in the workers, for failing to satisfy their "duty of disclosure" regarding the product that they were supplying. The judge reasoned that this omission resulted in no preventive measures being adopted, but ended up reducing the responsibility of the manufacturers because the legislation was imprecise, the product was new, and the manufacturers provided information, even if it was late, vague or deficient. In this way, the judge acquitted Francisco Martínez-Cosentino, president and general director of the company, for the offense. The sentence was appealed before the Provincial Court, which confirmed that "it is clear that there was a violation of the duty of disclosure by the manufacturing company" and affirmed the judgment.

Cosentino Falsely Claims its Products are Not Inherently Dangerous and that Silicosis from Exposure to its Products is Entirely Preventable

241. In a letter dated November 29, 2019 to the Hon. Niall Blair, Committee Chair of the Legislative Council Standing Committee on Law and Justice in Sydney, Australia, Cosentino claimed that "Cosentino has been making continuous efforts to raise awareness amongst the companies and persons working with the engineered stone products, by way of holding on-site Occupational Health & Safety educational sessions to the industry during many years, worldwide." This statement is false, because Cosentino only initiated its educational program as a public relations effort to salvage Cosentino's reputation and to avoid liability for causing silicosis worldwide after news media reported the artificial stone fabricator silicosis epidemic in 2019, especially because Spanish courts had issued judgments finding that Cosentino had failed to adequately disclose the

toxic hazards of its product and that the disclosures that it made were inadequate, confusing, and late. Whereas Cosentino had previously disclaimed all responsibility for the silicosis cases among Spanish workers who fabricated Silestone and blaming the epidemic on its customers for failing to provide a safe workplace, in its letter to the Chair of the Australian Legislative Council Standing Committee on Law and Justice, Cosentino "acknowledg[ed] its corporate social responsibilities" "for the benefit of employees and suppliers alike" to provide adequate warnings and use instructions for its products. In this letter Cosentino acknowledged that "Silicosis dust disease related illnesses is one of the main challenges to be addressed by the engineered stone industry." In the letter Cosentino claimed that in the last fiscal year, "the Cosentino Group has provided approximately 1,200 hours of training to suppliers [and] more than 30,000 hours of training directly to employees." Thus, Cosentino finally acknowledged its duty to make adequate health hazard disclosures and to train its customers' employees regarding the extreme silicosis hazard of its products and how to use Cosentino's products safely so that they would not develop and suffer from silicosis. This was a complete reversal of Cosentino's prior stated position that it had no responsibility to its customers' employees, that their health and safety was solely the responsibility of their employers, and that Cosentino could not protect the health of its customers' employees because it lacked control over their workplaces. The new position that Cosentino presented in its November 29, 2019 letter to the Chair of the Australian Legislative Council Standing Committee on Law and Justice, was expressed as follows:

> At the outset, it is important for Cosentino to emphasise that it shares the concerns expressed on behalf of the AESAG [Australian Engineered Stone Advisory Group] concerning the welfare of persons engaged in the use of engineered stone products. A safe working environment for everyone involved in the lifecycle of those products is of utmost importance to Cosentino and for many years has been accepted as integral component to the sustainability of not only the manufacturers and suppliers of those products, but the many downstream industries and employers which rely on manufactured stone product for their livelihood.

In its letter Cosentino then defended its products, asserting that "Cosentino quartz products (Silestone®) are produced according to very strict quality criteria and comply with all technical requirements of existing regulations." However, this statement was merely an effort by the company to deflect attention from the silicosis epidemic and deaths by urging legislators to instead focus on the product's manufacture being in compliance with regulatory requirements. After defending its

compliance with regulatory requirements regarding the manufacture of its lethal products, Cosentino expressed its positions regarding those of the Australian Engineered Stone Advisory Group. The first position that Cosentino expressed was: "Engineered quartz products are not inherently dangerous. Silicosis associated with the use of those products is 100% preventable when manufacture, fabrication and installation occur in accordance with published OH&S guidelines." This assertion was false, because multiple scientific studies published in the peer-reviewed literature have shown that even when all precautions and protections that had been suggested by Cosentino (i.e., use of wet processing methods and air-purifying respirators) were implemented and rigorously followed, workers nevertheless developed silicosis, because the extremely high crystalline silica content of Silestone and other artificial stone products does render them inherently dangerous. In addition, Cosentino's assertion that "engineered quartz products are not inherently dangerous" because of their extremely high crystalline silica content is refuted by the company's own decision to begin manufacturing products that contained much less crystalline silica, e.g., its Dekton® and Dekton Xgloss® family of products which it reformulated to have a total crystalline silica content of just 5-11% according to Cosentino's October 2018 Safety Data Sheet for the product, its Dekton® LITE product which it formulated to contain just 3-9% crystalline silica according to Cosentino's May 2020 Safety Data Sheet for the product, its SILQ® product which Cosentino formulated to have a crystalline silica content of 51-92% according to Cosentino's May 2022 Safety Data Sheet for the product, and its Sensa® and Scalea® family of natural stone products which contain less crystalline silica than Costentino's traditional artificial stone products according to its September 2022 Safety Data Sheet for the product, although the range or typical crystalline silica content of this product is not stated in the September 2022 Safety Data Sheet for the product. In its November 29, 2019 letter to the Committee Chair of the Legislative Council Standing Committee on Law and Justice, Cosentino strongly opposed banning all artificial stone products, recommended by the Australian Engineered Stone Advisory Group, arguing that such a ban "would create enormous disadvantage to the countless businesses and households which rely on the trades that are closely aligned with the use of all those products, including the retail, marketing and distribution networks that have developed in parallel with the core trades." However, Cosentino's argument that "businesses and

households which rely on the trades" would suffer "enormous disadvantage" is untrue, because the needs of consumers and business for stone countertops could readily be satisfied by natural stone countertops which contain much less crystalline silica than artificial stone countertops, as well as Cosentino's new artificial stone products, some of which it formulated to have lower concentrations of crystalline silica, such as its Dekton® and Dekton Xgloss® family of products which it formulated to have a total crystalline silica content of just 5-11% according to Cosentino's October 2018 Safety Data Sheet for the product, and its Dekton® LITE product which it formulated to contain just 3-9% crystalline silica according to Cosentino's May 2020 Safety Data Sheet for the product.

Cosentino Admits Negligence

242. On February 7, 2023, Reuters reported that Francisco Martinez, who owns Cosentino, "admitted in court that he covered up the dangers of his company's star product, which allegedly led to nearly 1,900 workers contracting the occupational lung disease silicosis, court documents showed on Tuesday." He "accepted a six-month suspended prison sentence for five counts of serious injury due to gross negligence in a plea bargain with the court in the northwestern region of Galicia." Reuters wrote: "Cosentino said in a statement the plea deal only admitted liability for insufficient technical information affecting five workers at a specific workshop and therefore could 'not be extrapolated to other past or future proceedings.'" Reuters noted that "Prosecutors had initially sought a prison term of two years and nine months." The Reuters report stated: "Cosentino, based in the southern province of Almeria, is planning an IPO that could be worth more than 3 billion euros. The company employs over 5,000 people worldwide and posted record sales of 1.4 billion euros in 2021. In the ruling, the judge said Martinez had failed to adequately label the 95% silica content of Cosentino's bestselling quartz agglomerate, branded as "Silestone", despite being aware of the safety and health risks its manipulation entailed." Reuters also reported that "the 71-year-old businessman also agreed to pay 1.1 million euros ($1.2 million) in compensation to the five stonemasons - one of whom has since died - who had sued him for failing to warn of the risk of silicosis linked to cutting and polishing Silestone countertops." Reuters further reported that "Cosentino said managers at stone-cutting workshops 'are responsible for ensuring that their workers have the necessary means of protection and that they implement them appropriately.' 'It is entirely

incorrect that Cosentino has admitted to having concealed the fact that the handling of Silestone has caused the majority of cases of silicosis that have affected 1,856 workers,' it added." The Reuters report concluded, stating that "Martinez is set to return to the dock in July for a separate trial in the northern city of Bilbao. Prosecutors are asking for two and a half years' imprisonment on six counts of reckless injury." David Latona, "Owner of Spain's Cosentino admits negligence over silicosis in workers - documents," *Reuters* (February 7, 2023).

Cosentino Calls for a Ban of High-Silica-Content Artificial Stone

243. On February 22, 2023, WA today, a news agency from Western Australia reported: "One of the world's largest stone benchtop companies and a coalition of health experts have separately called for a ban on products blamed for a deadly silicosis epidemic. The push from manufacturer Cosentino and key health organisations, including the Lung Foundation Australia and Public Health Association Australia, came as a leading government voice on workplace relations also called for immediate action from state and federal governments to 'right a terrible wrong'. . . . Manufacturer Cosentino produces more than one in every five domestic kitchen benchtops sold in Australia and is facing international scrutiny over its safety record. It is now pushing for a nationally co-ordinated approach to reduce risks associated with products containing high levels of silica, ahead of a meeting of workplace safety ministers next week. 'We have an immediate solution without disrupting the construction and building market', a Cosentino spokesperson said. 'And prices won't increase.' Two weeks ago Cosentino was found guilty in a Spanish Court of negligence. Reuters reported that the company's owner accepted a six-month suspended prison sentence after admitting to covering up the dangers of the product. It is also facing legal action in Australia. A coalition of peak health groups, including the one writing a government action plan on silicosis, also backed a ban on high-silica-content products, and urged leaders to boost the policing of workplaces and overhaul compensation schemes for sick workers. The Cosentino spokesperson said restrictions should start tomorrow, not next year or in 18 months. 'The immediate solution is everyone buys products that are less than 40 per cent silica,' he said. . . . The spokesperson said Cosentino had developed a product containing between 10 per cent and 40 per cent silica which could be distributed at scale if products with higher levels of silica were stopped from entering the market." Adele

Ferguson and Angus Thompson, "Benchtop giant, health groups demand dangerous-stone ban," Watoday (February 22, 2023).

Second Criminal Trial Against Cosentino

244. On July 8, 2023 elDiario published an article by Nestor Ash titled "Cosentino faces a year and a half in prison in his second trial for silicosis," with a subtitle "The judge considers it proven that Cosentino acted "grossly negligent" with the Silestone handlers suffering from silicosis." The article reported:

> The second criminal trial against Francisco Martínez-Cosentino, founder and owner of the Almeria multinational stone surfaces, has been seen for sentencing this Friday. The Prosecutor's Office accuses Cosentino and two former managers of Levantina, the other large Spanish manufacturer, of crimes against the health of eight workers at a Vizcaya marble factory, who contracted silicosis while handling quartz agglomerate countertops from both companies without their warning of its dangerousness. The prosecutor believes that serious injuries were caused recklessly.
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> In addition, the doctor from the prevention service and the three owners of Novogranit, the marble factory where those affected worked, are accused. The trial was held before Criminal Court 5 of Bilbao. The Prosecutor's Office requests that Martínez-Cosentino and the owners of Levantina be sentenced to a year and a half in prison, the payment of 3,600 euros and that they be disqualified from managing companies for two years. It also asked that among all the defendants they assume the payment of compensation of between 25,000 and 102,000 euros to the workers, although Cosentino satisfied that responsibility in 2019 through private agreements.
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> "We did provide information, regardless of the fact that the risks of working with stone are known to marble factories. We are confident that the courts will recognize that the company has acted correctly", says a company spokesperson, who explains that the case is similar to another that occurred in Bermeo, in which Cosentino was acquitted.
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> **Prosecutor: the company did not prevent and the manufacturer did not warn**
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> The facts contained in the indictment of the Prosecutor's Office, which this newspaper has been able to consult, include a common practice in hundreds of marble shops in Spain during the real estate boom, and that is what places Cosentino in the pillory, although authorized sources of the company clarify that there are no more open cases, nor do they expect them.
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> As detailed in the Prosecutor's brief, workers from a small marble factory cut and polished Silestone (Cosentino) and Ceasarstone (Levantina) countertops for years, with a high content of crystalline silica, which when cut generates a respirable dust that causes a form of especially aggressive silicosis. Until 2012, Novagranit did not apply basic safety measures to prevent inhalation.

And this, despite the fact that the Labor Inspectorate had demanded in 2009 about twenty measures in 2009, among which were working in the wet, installing nebulizers, providing FFP3 masks, preventive training, risk assessment...

Cosentino supplied around 85% of the countertops, and Levantina the rest, but neither was diligent in disclosing the risks of quartz agglomerates, according to the prosecutor. Until 2009, the Almería-based company did not provide any safety data sheet, and only from March of that year did it begin to report the risk of prolonged exposure to crystalline silica causing pulmonary fibrosis and pneumoconiosis such as silicosis. Before, Silestone was compared to natural stones such as quartz, marble or granite, which contain a maximum of 20% silica. Quartz agglomerates are around 90%. That is to say, nothing to do with the effects of risk.

In her brief, the prosecutor notes that Cosentino had already had an infringement report in 2002, in which the Labor Inspectorate verified that there had been patients with silicosis in its factory in Cantoria (Almería) since at least 2000. She deduces hence, Francisco Martínez-Cosentino knew about the risk at least since 2002, but he did not inform the marble works until 2009.

Neither did Levantina say anything about the dangers of handling Ceasarstone until 2009, and until December 2009 it did not prepare a safety data sheet or deliver a label, despite the fact that those responsible (Cipriano Gómez and Antonio José Pinos) "knew or had the obligation to know" the risks of the product.

The responsibility of the preventive physician

Finally, the Prosecutor's Office also points to the Novogranit doctor, whom it points out for failing to comply with the prevention protocol, which requires annual examinations in cases in which it is suspected that silicosis can be contracted, such as in marble shops.

In fact, the workers had to go to the National Silicosis Institute or other public centers to be diagnosed with the disease, since the prevention service did not perform a CT scan with which to observe the characteristic cystic nodules of silicosis. Despite the fact that they were already developing the disease, the first chest X-rays did not detect it and they were declared "fit" until 2012. This caused them to remain in the crystalline silica exposure posts after contracting the disease, " thus increasing the risk of aggravation of his ailment," says the prosecutor.

For the Public Ministry, the owners of the company, the manufacturers and the prevention service failed in their obligation to protect the health of the workers. As a result, eight of the ten workers at the marble mill contracted silicosis. Several have recognized absolute permanent disability or for their profession, almost all suffer respiratory distress, coughing and expectoration, and many report sleep problems, depression or anxiety.

The sentence in February

This Friday, the Prosecutor's Office has reduced its request to sentence Martínez-Cosentino from two and a half years in prison to

> one and a half years, taking into account the delay in the procedure (it was opened in 2013) and that Cosentino has already paid compensation. "The company decided a long time ago not to leave the workers stranded, without waiting for the last minute and for criminal cases," explains a Cosentino spokesperson. The private prosecution withdrew in 2019, when the compensation was paid, but the case went ahead promoted by the Prosecutor's Office.
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> Unlike what happened last February, when Martínez-Cosentino was sentenced by a Vigo court to six months in prison after reaching an agreement with the Prosecutor's Office, in this case the trial has been fully completed in five sessions, in which the owners of the manufacturers, those of the marble works, witnesses and various experts have testified.
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> Quartz agglomerate silicosis is an epidemic of unknown magnitude . It has been the main occupational disease in Andalusia for some time. From 2007 to 2019, 1,856 reports of this disease were communicated to Social Security, but experts warn that the methodological limitations of this communication system mean that the real figure is probably around triple. During this time, the Junta de Andalucía allowed its plan against silicosis to expire without coming close to meeting its objectives.
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> The Vigo ruling caused a notable media, business and political uproar because, for the first time, the owner and architect of Cosentino, a key company in Andalusia, present in dozens of countries, with a turnover of 1,401 million euros, was criminally convicted amid prospects of going public. The ruling concluded that, "grossly negligent," he did not warn of the risks of manipulating his product despite knowing about them "at least since the year 2000".
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> Cosentino was satisfied with that sentence, but this time he has decided to fight to the end.

https://www.eldiario.es/andalucia/cosentino-afronta-ano-medio-prision-segundo-juicio-silicosis_1_10359970.html

Knowledge of the Silicosis Hazard by Cosentino Officers and Directors

245. Throughout the time that Cosentino manufactured and sold its artificial stone products, exposing stone countertop fabricators and installers to respirable crystalline silica from the company's products, Cosentino's officers and directors were aware that Cosentino's artificial stone products were defective because they contained extremely high concentrations of crystalline silica, were aware that the use instructions that Cosentino provided were inadequate to prevent silicosis and would actually cause silicosis in exposed workers, and were aware that fabrication companies could not protect fabricators and installers from the lethal silicosis hazard presented by Cosentino's defective artificial stone products. Among Cosentino's officers and directors who had this knowledge but who nevertheless consciously disregarded the health and safety of fabricators and

installers were the following officers and directors of the company:

Officers

Francisco Martinez-Cosentino	Justo, Chairman/CEO, President of Cosentino Group
Jose Martinez-Cosentino Justo	Vice President and General Treasurer
Pilar Martinez-Cosentino Alfonso	Executive Vice President. Deputy Chairman, Director
Eduardo Martinez-Cosentino Alfonso	Executive Vice President of Global Sales and Chief Executive Officer of Cosentino North America
Valentin Tijeras Garcia	Vice President Global Product and Research & Development
Angel Madariaga Alvarez	Vice President of Engineering & Projects
Alberto Quevedo Gonzalez	Vice President of Global Production
Santiago Alfonso Rodriguez	Vice President of Global Marketing & Communication
Brandon Calvo	Chief Operations Officer of Cosentino North America

Directors

Isabel Martínez-Cosentino Ramos	Director
Eduardo Martínez-Cosentino Ramos	Director
María del Mar Martínez-Cosentino Ramos	Director
Eduardo Martínez-Cosentino Rosado	Director
Isabel Martínez-Cosentino Rosado	Director

FIRST CAUSE OF ACTION

FOR NEGLIGENCE

PLAINTIFF, ERDIS LEE POWELL, COMPLAINS OF ALL DEFENDANTS HEREIN NAMED FOR A CAUSE OF ACTION FOR NEGLIGENCE, PURSUANT TO CIVIL CODE § 1714, CACI 400, 401, 430, 431, 1220, 1221, 1222, 1223, AND ALLEGES:

246. Plaintiff incorporates herein by reference, as though fully set forth herein, the allegations and facts contained in all of the foregoing paragraphs.

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General Duty of Due Care

247. A basic tenet of California law is that everyone is required to use ordinary care in their activities so as to regard the safety of others and prevent injury to others from their conduct or omissions. (Civ. Code, § 1714, subd. (a); Williams v. J-M Manufacturing Co., Inc., (2024) 102 Cal. App. 5th 250, 259; Pedeferri v. Seidner Enterprises (2013) 216 Cal.App.4th 359, 365; Cabral v. Ralphs (2011) 51 Cal.4th 764; Merrill v. Navegar, Inc. (2002) 26 Cal.4th 465; Hilyar v. Union Ice Co. (1955) 45 Cal.2d 30, 36.) Civil Code § 1714 does not limit responsibility for negligence to a certain class of defendants; rather, it provides that "[e]very one is responsible for an injury occasioned to another by [one's] want of ordinary care or skill." (Safeco Ins. Co. v. Robert S. (2001) 26 Cal.4th 758, 764 (emphasis added).)

> Negligence may be active or passive in character. It may consist in heedlessly doing an improper thing or in heedlessly refraining from doing the proper thing. Whether the circumstances call for activity or passivity, one who does not do what he should is equally chargeable with negligence with him who does what he should not.

(Basler v. Sacramento Gas & Electric Co. (1910) 158 Cal. 514, 518.) Under general negligence principles, everyone is "obligated to exercise due care in his or her own actions so as not to create an unreasonable risk of injury to others, and this legal duty generally is owed to the class of persons who it is reasonably foreseeable may be injured as the result of the actor's conduct." (Lugtu v. California Highway Patrol (2001) 26 Cal.4th 703, 716 (emphasis added); Cal. Civ. Code, § 1714; see generally Rest.2d Torts, § 281; Prosser & Keeton on Torts (5th ed. 1984) § 31, p. 169; 3 Harper, et al., The Law of Torts (2d ed. 1986) § 18.2, 654-655.)

248. As manufacturers, importers, distributors, suppliers, brokers, designers, testers, and/or contractors of stone slab, block and tile products, Defendants owed Plaintiff a legal duty to exercise due care in manufacturing, designing, testing, importing, producing, supplying, brokering, contracting, and/or distributing stone products to which Plaintiff was exposed in his work as a countertop fabricator and installer.

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Breach of the General Duty of Due Care

249. At all times herein mentioned, Defendants, singularly and jointly, failed to use ordinary care to prevent harm to others, negligently acted or failed to act, negligently did things that a reasonably careful person would not do in the same situation, negligently failed to do things that a reasonably careful person would do in the same situation, negligently and carelessly researched or failed to research, manufactured, designed or failed to design, modified or failed to modify, tested or failed to test, warned or failed to warn of the health hazards, failed to provide safe use instructions or provided use instructions that were inadequate and thereby caused harm, labeled or failed to label, assembled, distributed, purchased, offered for sale, supplied, sold, inspected or failed to inspect, marketed, warranted, rebranded, manufactured for others, packaged and advertised, and/or failed to recall the stone products, so that said products proximately caused exposures to users, bystanders, family members, and others, including the plaintiff herein (hereinafter collectively called "exposed persons"), while being used in a manner that was reasonably foreseeable, thereby rendering said products and substances unsafe and dangerous for use by "exposed persons."

250. Defendants negligently and carelessly manufactured, designed, imported, produced, sold, tested, failed to test, supplied, contracted, brokered and/or distributed the stone slab and block products to which Plaintiff, ERDIS LEE POWELL, was exposed in his work as a countertop fabricator and installer.

251. Defendants failed to adequately warn Plaintiff, ERDIS LEE POWELL, of the toxic hazards of their stone products and failed to provide adequate instructions to Plaintiff, ERDIS LEE POWELL, how to safely use their products so as to prevent his exposure to silica dust.

252. Defendants, knew, or should have known, that the aforementioned stone products when used as intended, and/or foreseeably misused, would result in the indiscriminate release of toxic and carcinogenic dust, and exposure to "exposed persons," including plaintiff herein.

253. Plaintiff used, or has been otherwise exposed to, stone products referred to herein in a manner that was reasonably foreseeable and from the intended use of the stone products.

Failure to Test Artificial Stone Products

254. "[I]t is well settled that where an article is such that it is reasonably certain, if

negligently manufactured or designed, to place life and limb in peril, the manufacturer is chargeable with negligence if the defective condition could be disclosed by reasonable inspection and tests, and such inspection and tests are omitted." *Putensen v. Clay Adams, Inc.* (1970) 12 Cal.App.3d 1062, 1078; *Reynolds v. Natural Gas Equipment, Inc.* (1960) 184 Cal.App.2d 724, 736 [natural gas explosion]; *Canifax v. Hercules Powder Co.* (1965) 237 Cal.App.2d 44, 480 [dynamite explosion]; *Stevens v. Parke Davis and Co.* (1973) 9 Cal.3d 51, 66-67 [aplastic anemia from chloromycetin]; *Hilliard v. A.H. Robbins Co.* (1984) 148 Cal.App.3d 374, 398 [intrauterine device]; *West v. Johnson & Johnson Products, Inc.* (1985) 174 Cal.App.3d 831, 869 [failure to test tampon for bacterial contamination resulting in consumer developing toxic shock syndrome supported punitive damage award for conscious disregard of public safety]; see also, *Warner v. Santa Catalina Island Company* (1955) 44 Cal.2d 310, 319-320 [failure to test bullets that spattered and ricocheted on impact].

255. At the time that Defendants began manufacturing, importing, distributing, and selling artificial stone products in the United States, the Hazard Communication Standard mandated that "the chemical manufacturer, importer or employer shall determine the hazards of mixtures of chemicals as follows: (i) If a mixture has been tested as a whole to determine its hazards, the results of such testing shall be used to determine whether the mixture is hazardous; (ii) If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under paragraph (d)(4) of this section; (iii) If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the chemical manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and, (iv) If the chemical manufacturer, importer, or employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees in those concentrations, the mixture shall be

assumed to present the same hazard." [8 C.C.R. § 5194(d)(5).]

256. At the time that Defendants began manufacturing, importing, distributing, and selling their artificial stone products in the United States in the early years of this century, Defendants' artificial stone products were novel chemical mixtures comprised of very high concentrations of extremely small (ultrafine and nano-sized) crystalline silica particles embedded in a polymeric resin with metallic fibrogenic pigments and other toxic additives. Especially because of the novel chemical mixture that comprised artificial stone, those Defendants that manufactured artificial stone products had a duty to test their artificial stone products to determine their toxic effects by conducting acute, subacute, subchronic and chronic toxicity tests in different mammalian species as well as in vitro and other toxicity tests to determine the complete range of acute, subacute, subchronic, and chronic effects, before exposing workers to Defendants' novel chemical mixtures.

257. Plaintiff is informed and believe and thereon allege that those Defendants that manufactured and/or imported artificial stone products into the United States had the financial wherewithal (several hundreds of thousands of dollars) to conduct all necessary and appropriate toxicity testing of their novel artificial stone products, but nevertheless chose not to conduct any toxicity tests of their products to maximize profits at the expense of the health and wellbeing of stone countertop fabricators. Instead of conducting toxicity tests that would have determined the extreme hazards of Defendants' artificial stone products to the human lungs, Defendants decided to use stone countertop fabricators as guinea pigs to determine the toxic effects of their artificial stone products. Indeed, Defendants wantonly manufactured, imported, distributed and sold their artificial stone products without having conducted any toxicity tests at all, thereby causing a new worldwide epidemic of silicosis among artificial stone countertop fabricators and installers, with resultant incalculable pain, disfigurement, and misery to innumerable artificial stone countertop fabricators and their families and huge expense to society for reasonable and necessary medical care for the ever-increasing number of fabricators diagnosed with silicosis who require extensive medical care, including lung transplantation, resulting in billions of dollars of costs to society and the taxpayers.

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Duties Imposed on Defendants by Statutes and Regulations

258. Labor Code § 6390.5 is a health and safety statute enacted to protect, among others, workers in the position of Plaintiff, ERDIS LEE POWELL, and imposing on manufacturers and distributors of any hazardous substance the duty to label each container of a hazardous substance consistent with the Hazard Communication Standard. (8 C.C.R. § 5194).

259. The Hazard Communication Standard (8 C.C.R. § 5194) is a health and safety regulation promulgated to protect, among others, workers in the position of Plaintiff, ERDIS LEE POWELL, and imposing on manufacturers, suppliers, brokers, and distributors of chemical products the duty to, among other things:

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

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

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

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

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

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

(g) ensure that each container of hazardous chemicals leaving their facilities is labeled, tagged or marked with the (I) identity of the hazardous chemical(s); (ii) appropriate hazard warnings; and (iii) the name and address of the chemical manufacturer or other responsible party [8

C.C.R. § 5194(f)(1)];

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

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

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

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

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

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

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

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

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

(q) ensure that the information contained on material safety data sheets accurately

reflects the scientific evidence used in making the hazard determination [8 C.C.R. § 5194(g)(5)];

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

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

260. Defendants are manufacturers, suppliers, importers, producers, brokers, contractors, and/or distributors of stone products to which Plaintiff, ERDIS LEE POWELL, was exposed in the course of his work, and were obligated to comply with California Labor Code § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

Breach of Duties Imposed on Defendants by Statutes and Regulations

261. Defendants violated California Labor Code § 6390.5 and the Hazard Communication Standard (8 C.C.R. §5194) in the manufacture, importation, supply, brokering, contracting, production, and distribution of their toxic stone products to which Plaintiff, ERDIS LEE POWELL, was exposed by:

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) failing and refusing to ensure that the information contained on material safety data sheets accurately reflects the scientific evidence of the health risks posed by the toxic chemicals contained in their products [8 C.C.R. § 5194(g)(5)];

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

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

262. Plaintiff, ERDIS LEE POWELL, is a member of the class of persons designed to be protected by Labor Code § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

Standard of Care of Manufacturers and Suppliers of Highly Toxic Chemical Products

263. In addition to the foregoing common law duties of due care and the statutory and regulatory duties that Defendants owed to Plaintiff as manufacturers, importers, and distributors of hazardous chemical products, Defendants, as manufacturers and suppliers of highly toxic chemical products owed special duties of care to Plaintiff, ERDIS LEE POWELL, and other persons who would be exposed to the toxic, fibrogenic, and carcinogenic dust from Defendants' stone products.

264. Thus, in *Warner v. Santa Catalina Island Co.* (1955) 44 Cal.2d 310, 317, the California Supreme Court wrote: "The risk incident to dealing with fire, firearms, explosive or highly inflammable matters, corrosive or otherwise dangerous or noxious fluids requires a great deal of care to be exercised. In other words, the standard of care required of the reasonable person when dealing with such dangerous articles is so great that a slight deviation therefrom will constitute negligence."

265. Consistent with the duty of due care that those who manufacture and supply highly

toxic chemical products must exercise, Defendants owed Plaintiff and others duties of due care consistent with industrial standards of care of responsible chemical manufacturers and suppliers.

266. In 1976 Dow Chemical Company published a "Product Stewardship" brochure saying:

> **Responsible Care Commitment.** We are committed to exercising responsible care for our products both in manufacturing and distribution and later in their handling by distributors and use by our customers. This means assessing the environmental impact of the products and then taking appropriate steps to protect employee and public health, and the environment as a whole.
>
> **Responsibilities of Research and Development.** We expect Research and Development to:
>
> Determine that product testing is conducted at each stage of product development so that safety hazards and both short and long range environmental effects can be assessed . . . ."
>
> Give primary consideration to human safety . . . in selecting products for development and sale. . . .
>
> Dow employees, customers, plant communities and the public at large must be considered, as well as both short and long range environmental hazards in the distribution [and] use of our products.
>
> Provide information ... so ... distributors of our products, and customers may be instructed in the safe . . . use . . . of our products.
>
> **Responsibilities of Marketing.** We expect Marketing to:
>
> Furnish customers and distributors of Dow products appropriate information to foster the safe handling [and] use of Dow products.
>
> Alert Dow personnel immediately to problems of use involving human or environmental safety and assist in modifications of either products or use patterns, as required, to correct these problems.

267. In 1991 Dow Chemical Company issued a brochure titled "*Product Stewardship*: Guidelines for Visits to Customer Facilities." This brochure stated:

> **Customer Outreach.** Depending on the hazard potential of the product and the knowledge of the customer, it may be appropriate to visit the customer's facilities to help them understand the safe and proper handling, use, and disposal of our products. Customer visits should be considered whenever: a product is being used for the first time at a location; there is a product health or environmental concern; or, there is a need to better understand how a product is used by the customer.
>
> **Customer Plant Visits.** Most visits at customers' plants will be very positive and require little follow-up beyond the customary letter and any reports. However, occasionally a hazardous situation may be observed in a customer's plant or a product's misuse may be uncovered that demands immediate attention and follow-up.

> **Concern for Health and Safety of Customer's Employees.**
>
> If there is serious concern on the use of the product or for the health and safety of the customer's employees, or for the environment, the following steps should be taken:
>
> Inform the customer of your concern and get assurance that the situation will get immediate attention and be corrected by a given date.
>
> Offer to work with the customer and provide information that may assist him to solve his problems.
>
> Review the situation with your product management group and with legal counsel.
>
> Confirm, either by a visit or by a letter from the customer, that the situation has been corrected on the agreed follow-up date.
>
> If insufficient or no corrective action is taken, stop sales to the customer until adequate corrective action is taken.

268. In 1998 Gregory G. Bond, Ph.D., Corporate Director of Product Responsibility of The Dow Chemical Company, wrote an article titled "Product Stewardship: A New Mindset," that was reprinted in the March 1998 edition of *Environmental Protection*. Dr. Bond wrote: "Product stewardship is a basic requirement for every business operating in today's atmosphere of concern for the environment. . . . The purpose of product stewardship is obvious: to protect employees, community neighbors, customers and the environment." He wrote: "Our goal is to eliminate all injuries, prevent adverse environmental and health impacts, reduce wastes and emissions and promote resource conservation at every sage of the life cycle of our products." Critically, Dr. Bond wrote: **"It is not enough to develop a full EH&S program in your own company. Product stewardship must be transferred to distributors, customers, the customers of customers and other product receivers. This is particularly important for the more hazardous products.** (Emphasis added) Product stewardship transfer involves communicating all relevant EH&S product information to the customer. **"Depending on the hazard of the product, it may also involve visiting a customer's or distributor's plant to make sure safe handling and emergency equipment and processes are in place and functioning, and to determine the appropriateness of the customer's application. A responsible producer will not sell a product for inappropriate uses."** (Emphasis added) . . . . Commensurate with risk, there may be a review of the customer's storage, unloading and safe-handling practices. This may also include a pre-delivery inspection of

the customer's facilities, periodic reinspections, product safety training for employees, industrial hygiene surveys to determine the exposures of the employees, a dosimeter program to test average exposure over an employee's shift and analytical services if the product hazard necessitates them. In case of any discrepancies noticed during an audit, a remediation program is instituted." The article concluded with the following statement: **"It is our policy to cease sales of a product if the customer . . . is unable or unwilling to take appropriate steps to handle the product safely."** (Emphasis added)

269. These industrial standards of care have been implemented by responsible chemical product manufacturers and suppliers not only for toxic liquid chemicals, but also for solid chemical products that result in the formation of airborne toxic dust during fabrication processes.

270. Brush Wellman has long been the largest producer of beryllium metal and alloys.

271. Beryllium and crystalline silica are similar because beryllium is a metal and silica is a metalloid; they are both toxic to the lungs; they both cause pulmonary fibrosis, i.e., they scar the lung; crystalline silica causes "silicosis;" beryllium causes "berylliosis;" they both cause lung cancer.

272. In 1993, Brush Wellman adopted a policy titled "Promoting Customer Safe Handling Practices" which stated:

> **Purpose.** The following is designed to provide a uniform method for dealing with customers who are observed to be handling Brush [beryllium] products in such a way as to create a real or potential health hazard to their employees and/or customers. The steps outlined hereinafter are designed primarily to curtail such practices in a step-by-step manner in keeping with Brush Wellman's environmental, health and safety policies. BWI has a history of promoting a safe environment for its own employees and the general public. The purpose of the program outlined below is to reaffirm and formalize that policy as much as is reasonably possible for Brush's customers, their employees, and third parties with whom they may have contact. . . .
>
> **Stepwise Approach.** The following is a series of progressive steps aimed toward encouraging the safe handling of our products:
>
> Any new customers or existing customers who are observed to be involved in potentially unsafe practices should be notified and offered available educational, advisory and safe handling programs or materials to include, at a minimum, safe handling videotapes, applicable environmental health and safety sales literature, and where requested, individual training and attention at the customer site. The latter assistance may take the form of customer visit by Brush environmental, safety or medical personnel followed if appropriate by a written advisory report outlining what, if any, steps could be taken to improve the working environment.

> If, as a result of any later observation, the customer continues an unsafe practice, reinforcement of the need for proper handling procedures should be made immediately.
>
> If rigorous encouragement fails to correct the practice(s), a written advisory should be prepared and forwarded to the customer outlining our concerns and urging the customer to correct those practices immediately. A follow up to this written advisory should be made by Brush personnel.
>
> If all steps outlined above fail in their purpose and/or the customer affirmatively refuses to correct unsafe practices, consideration must be given to withholding further sale of our products to that customer.

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

274. The standard of care requiring manufacturers and suppliers of highly toxic chemical products to cease sales to customers who endanger the health and safety of their workers has been recognized by companies that sell natural and artificial stone slabs. Thus, Arik Tendler, the former Chief Executive Officer of Surface Warehouse L.P., which distributes Vadara artificial stone slabs, testified as follows: at a deposition in a stone countertop fabricator silicosis case on July 21, 2023:

> It is a basic rule in this industry. If you don't cut wet, you're not a fabricator so I won't even sell the slabs if I know. I am not going to sell you slabs. . . . When we know somebody is working unsafely, we don't sell him.... Usually market reps are the people -- our salespeople are the people that say, "Hey, I don't want to sell him. It is all dry over there." So it is a pretty well-known standard in the industry.

Deposition of Arik Tendler in the case of *Victor Gonzalez et al. v. ADB Global Trade LLC, et al.*, Los Angeles Superior Court Case No. 21STCV06984 at page 318, line 16 to page 319, line 6.

275. Defendants breached these industrial standards of care by failing to monitor the use of their toxic stone products by customers, by failing to assure that customers were using their products safely, by failing to counsel customers who were not using their products safely, and by

failing to cease selling their products to customers who persisted in using their products unsafely, thereby endangering the health and safety of their employees and others exposed to their products.

Plaintiff's Exposure to Defendants' Stone Products

276. Plaintiff, ERDIS LEE POWELL, was exposed to each of Defendants' products, including those products manufactured, distributed, contracted, brokered and supplied as alleged above, and to silica, metals and other toxins contained therein and released therefrom as alleged above.

Damages

277. As a direct and proximate result of the conduct or omissions of the defendants, as aforesaid, plaintiff was exposed to artificial stone dust, all to his general damage in a sum in excess of the jurisdictional limits of a limited civil case. This action is an Unlimited Civil Case as defined in Code of Civil Procedure § 88.

Punitive Damages

278. In exposing Plaintiff to their toxic and fibrogenic stone 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 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 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 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 the Defendants.

279. Defendants' conduct in exposing Plaintiff 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 to punitive and exemplary damages.

SECOND CAUSE OF ACTION

PRODUCTS LIABILITY - FAILURE TO WARN

AS AND FOR A SECOND, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR PRODUCTS LIABILITY, PLAINTIFF, ERDIS LEE POWELL, COMPLAINS OF ALL DEFENDANTS, PURSUANT TO CACI 430, 431, 1200, 1205, AND 1223, AND ALLEGES AS FOLLOWS:

280. Plaintiff incorporates herein by reference, as though fully set forth herein, the allegations and facts contained in all of the foregoing paragraphs.

281. At all times mentioned herein, defendants were the manufacturers, designers, importers, producers, suppliers, contractors, brokers, and/or distributors of hazardous stone slab, block, and tile products to which Plaintiff, ERDIS LEE POWELL, was exposed in fabricating and installing stone countertops.

282. The stone products which Defendants manufactured, imported, produced, contracted, supplied, brokered and distributed, and to which Plaintiff was exposed, were defective, because they lacked warnings or contained warnings that were inadequate to apprise Plaintiff of their toxic hazards and their serious effects upon the human body, and they either lacked instructions for handling and use or lacked instructions adequate to prevent exposure and disease to Plaintiff, ERDIS LEE POWELL, thereby causing his exposure.

283. Plaintiff, ERDIS LEE POWELL, was occupationally exposed to all of Defendants' toxic stone products.

284. Some of the toxic stone products to which Plaintiff, ERDIS LEE POWELL, was exposed, were manufactured, designed, distributed, contracted, brokered and/or supplied by Defendants.

285. From his use of the foregoing toxic stone products, Plaintiff, ERDIS LEE POWELL,

was exposed to Defendants' toxic stone products, including artificial stone products as well as natural stone products including granite, marble and other natural stone products.

286. Some of the toxic stone products to which Plaintiff, ERDIS LEE POWELL, was exposed, were manufactured, contracted, brokered and/or supplied by Defendants.

287. In exposing Plaintiff, ERDIS LEE POWELL, to said toxic and fibrogenic stone products, Defendants failed to warn Plaintiff of known dangers, 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.

288. Defendants consciously decided to market their stone products with knowledge of their harmful effects, without remedying the toxic effects of their stone products, and without providing use instructions adequate to prevent silicosis, 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 chemicals 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.

289. 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 of their toxic and lethal products was despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety of Plaintiff, entitling Plaintiff to punitive and exemplary damages.

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THIRD CAUSE OF ACTION

PRODUCTS LIABILITY - DESIGN DEFECT

AS AND FOR A THIRD, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR PRODUCTS LIABILITY, PLAINTIFF, ERDIS LEE POWELL, COMPLAINS OF ALL DEFENDANTS, PURSUANT TO CACI 430, 431, 1200, 1203, 1204, AND ALLEGES AS FOLLOWS:

290. Plaintiff incorporates herein by reference, as though fully set forth herein, the allegations and facts contained in all of the foregoing paragraphs.

291. At all times mentioned herein, Defendants were the manufacturers, designers, testers, importers, suppliers, producers, brokers, contractors, and/or distributors of stone slab, block and tile products to which Plaintiff, ERDIS LEE POWELL, was exposed in the course of his work as a countertop fabricator and/or installer. Defendants defectively designed their stone slab, block and tile products and failed to adequately warn of potential safety hazards of such products.

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

293. Defendants' stone products were also defective in their design because they did not perform as safely as an ordinary worker would expect when used or misused in an intended or reasonably foreseeable way.

294. Defendants knew and intended that their products would be used without inspection for defects therein and without knowledge of the hazards involved in such use. Said products were defective and unsafe for their intended purpose because exposure to stone dust can cause serious disease and death.

295. These design defects existed in Defendants' stone products when said stone products left defendants' possession.

296. Said products failed to be designed, as required by California law, to account for foreseeable risks, even if they arise from the conduct of others. (Collins v. Navistar, Inc. (2013) 214 Cal.App.4th 1486, 1511.) "Exposed persons" did not know of the substantial danger of using said

products. Said dangers were not readily recognizable by "exposed persons."

297. As a direct and proximate result of said design defects, while using Defendants' stone products in a manner that was reasonably foreseeable and intended by Defendants, Plaintiff,ERDIS LEE POWELL, was exposed to said stone products in the course of his work.

298. Some of the toxic stone products to which Plaintiff, ERDIS LEE POWELL, was exposed, were manufactured, designed, contracted, brokered and/or supplied by Defendants.

299. In exposing Plaintiff to their toxic and fibrogenic stone products, Defendants failed to warn Plaintiff of known dangers, 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 toxic 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.

300. 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.

301. Defendants also misrepresented the nature of their stone products, by withholding information from Plaintiff 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.

302. 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 to prevent disabling lung disease was despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety of Plaintiff, entitling Plaintiff to punitive damages.

FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

AS AND FOR A FOURTH, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR FRAUDULENT CONCEALMENT, PLAINTIFF, ERDIS LEE POWELL, COMPLAINS OF ALL DEFENDANTS, AND ALLEGES AS FOLLOWS:

303. Plaintiff, by this reference, incorporates the allegations and facts contained in all of the foregoing paragraphs.

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

> Less specificity is required of a complaint when it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy; even under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party. Per *Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, the Second Appellate district held that allegations of fraudulent concealment far less than what are stated herein are sufficient to state a cause of action for fraudulent concealment.

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

> Not every fraud arises from an affirmative misstatement of material fact. 'The principle is fundamental that "[deceit] may be negative as well as affirmative; it may consist of suppression of that which it is one's duty to declare as well as of the declaration of that which is false." [Citations.] Thus section 1709 of the Civil Code provides: "One who wilfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers." Section 1710 of the Civil Code in relevant part provides: "A deceit, within the meaning of the last section, is either: ... 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact...." ' " (*Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 95, 111 Cal.Rptr.2d 711.) "**[T]he elements of a cause of action for fraud based on concealment are: ' "(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact 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 must have sustained damage." ' " (*Kaldenbach v. Mutual of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830, 850, 100 Cal.Rptr.3d 637.)...

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

These principles are equally pertinent to the scope of defendants' duty to disclose. Although, typically, a duty to disclose arises when a defendant owes a fiduciary duty to a plaintiff (see, e.g., *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 346–347, 134 Cal.Rptr. 375, 556 P.2d 737), a duty to disclose may also arise when a defendant possesses or exerts control over material facts not readily available to the plaintiff. (See, e.g., *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 482, 55 Cal.Rptr.2d 225 [" '[t]he duty to disclose may arise without any confidential relationship where the defendant alone has knowledge of material facts which are not accessible to the plaintiff' "].) In *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 60 Cal.Rptr.2d 539, a decision relied upon by defendants, each of the circumstances cited by the court in which a duty to disclose may exist absent the presence of a fiduciary relationship concerns the defendant's exertion of control over material facts that were not disclosed to the plaintiff, that is, "when the defendant ha[s] exclusive knowledge of material facts not known to the plaintiff"; "when the defendant actively conceals a material fact from the plaintiff"; or "when the defendant makes partial representations but also suppresses

some material facts." (Id. at p. 336, 60 Cal.Rptr.2d 539.)

> Here, the amended complaint alleges defendants were "aware of the toxic nature of their products" and "owed a duty to disclose the toxic properties of their products to [Carlos] because [they] alone had knowledge of material facts, to wit the toxic properties of their products, which were not available to [Carlos]." It also alleges defendants owed a duty to disclose because they "made representations regarding their products, but failed to disclose additional facts which materially qualify the facts disclosed, and/or which rendered the disclosures made likely to mislead [Carlos]." These conclusory allegations are supplemented with respect to the single compound, DMF. The Joneses cite studies published as early as 1969 attesting to DMF's toxicity, several years before Carlos began working at Goodyear where he was exposed to the Dow product containing DMF.
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> At a minimum, the amended complaint states a viable claim for fraudulent concealment against Dow Chemical, the manufacturer of the product Polymide 2080–D/DHV, which allegedly contained DMF. The Joneses have alleged DMF was known to be 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.

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

306. Defendants' stone products are toxic.

307. Prior to Plaintiff's exposure to Defendants' stone products, Defendants were aware of the toxic nature of their stone products.

308. Pursuant to the Hazard Communication Standard, Defendants were under a legal duty to disclose by labels to Plaintiff, ERDIS LEE POWELL, and by Safety Data Sheets to his employers

or hirers both the toxic properties of their products and use instructions to that were adequate to prevent exposure.

309. Pursuant to California common law, Defendants were under a legal duty to fully disclose the toxic properties of their products directly to Plaintiff, ERDIS LEE POWELL.

310. Defendants also owed a duty to disclose the toxic hazards of their stone products to Plaintiff, ERDIS LEE POWELL, because Defendants alone had knowledge of material facts, to wit the toxic properties of their products, which were not accessible to Plaintiff, ERDIS LEE POWELL.

311. Defendants also owed a duty to disclose the toxic hazards of their stone products to Plaintiff, ERDIS LEE POWELL, 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, ERDIS LEE POWELL.

312. Defendants also owed a duty to disclose the toxic hazards of their stone products to Plaintiff, ERDIS LEE POWELL, because a transactional relationship existed between Plaintiff, ERDIS LEE POWELL, and Defendants inasmuch as Plaintiff, ERDIS LEE POWELL, purchased and/or received toxic stone products from Defendants.

313. Notwithstanding their knowledge of the toxic hazards of their stone products, at all material times hereto, Defendants concealed said toxic hazards from Plaintiff, ERDIS LEE POWELL, so that he would use Defendants' stone products in his work.

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

315. Prior to Plaintiff's exposure to Defendants' stone products, Defendants were aware that commonly used and recommended protective measures (e.g., use of wet processing methods and air purifying respirators) were inadequate to prevent fabricators from exposure.

316. Prior to Plaintiff's exposure to Defendants' stone products, Defendants were aware that Plaintiff's employers lacked knowledge of the extreme toxic hazards of Defendants' stone products and that Plaintiff's employers were unaware of the extreme protective measures that are necessary to prevent fabricators and installers from exposure.

317. At all times prior to Plaintiff's exposure to Defendants' stone products, Defendants nevertheless concealed from Plaintiff and from his employers or hirers the extreme protective measures that are necessary to prevent fabricators and installers from getting silicosis from exposure to Defendants' stone products.

318. At all times prior to Plaintiff's exposure to Defendants' stone products, Defendants failed to check and monitor the use of Defendants' stone products to determine whether Plaintiff's employers or hirers were using the products in such a manner so as not to endanger the health and safety of their workers, or whether Plaintiff's employers or hirers were endangering the health and safety of their workers.

319. At all times prior to Plaintiff's exposure to Defendants' stone products, Defendants failed to cease selling their toxic stone products to Plaintiff's employers or hirers, who, even with best efforts and intentions, were incapable of using Defendants' stone products safely, were incapable of protecting fabricators and installers from the respiratory and lethal hazards of Defendants' stone products, and, although they attempted to use Defendants' stone products as directed and intended, were nevertheless endangering the health and safety of their workers by exposing them to Defendants' toxic stone products.

320. Notwithstanding their knowledge of the hazards of their stone products, at all material times hereto, Defendants concealed said hazards from Plaintiff, ERDIS LEE POWELL, so he would use Defendants' stone products in his work.

321. Plaintiff, ERDIS LEE POWELL, was unaware of the hazards associated with working with Defendants' products and would not have acted as he did had he known of said hazards.

322. Defendants had a duty to disclose the toxic hazards of their products to plaintiff's employers or hirers; Defendants concealed significant health hazards from Plaintiff; Defendants intended that their products be used by Plaintiff; and therefore intended and had reason to expect that

their concealment of toxic hazards and health risks would be acted upon by Plaintiff, ERDIS LEE POWELL, who otherwise would not have used Defendants' stone products. In using Defendants' stone products, Plaintiff, ERDIS LEE POWELL, acted in justifiable reliance that Defendants had not concealed material facts of the toxic hazards of their stone products.

323. Some of the toxic stone products to which Plaintiff, ERDIS LEE POWELL, was exposed, was manufactured, distributed, contracted, brokered and/or supplied by Defendants.

324. In exposing Plaintiff to Defendant's hazardous stone products, via their fraudulent concealment, Defendants consciously disregarded Plaintiff's safety and such hazards were known by and such concealment was ratified by the corporate officers and managers of each of the defendants.

325. 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.

326. 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 was despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety of Plaintiff.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

AS FOR A FIFTH, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR BREACH OF IMPLIED WARRANTIES, PLAINTIFF, ERDIS LEE POWELL, COMPLAINS OF ALL DEFENDANTS, AND ALLEGES AS FOLLOWS:

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327. Plaintiff, by this reference, incorporates the allegations and facts contained in all of the foregoing paragraphs.

328. At all times mentioned herein, Defendants were the manufactures, suppliers, contractors, brokers, importers, producers and distributors of inherently hazardous stone products that were purchased by Plaintiff's employers or hirers and delivered to Plaintiff's employers or hirers' facilities, where Plaintiff, was exposed to Defendants' toxic stone products.

329. Defendants' stone products to which Plaintiff was exposed are toxic.

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

331. Defendants breached said implied warranties, because their inherently hazardous stone products were not reasonably fit for their intended uses, were not of merchantable quality, were defective, and failed to function as safely as an ordinary user and worker would expect when used in an intended or reasonably foreseeable manner.

332. Some of the toxic stone products to which Plaintiff, ERDIS LEE POWELL, was exposed, were manufactured, imported, produced, distributed, contracted, brokered and/or supplied by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment, seeking damages as follows:

As to Plaintiff, ERDIS LEE POWELL*:*

1. For past, present and future general damages in excess of the minimum jurisdictional amount of the court, according to proof;

2. For punitive damages according to proof;

5. For Plaintiff's costs of suit incurred herein; and,

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6. For such other relief as the Court deems just and proper, including but not limited to costs and pre-judgment interest provided in C.C.P. § 998, C.C.P. § 1032, and other provisions of law.

Dated: April 24, 2025

BRAYTON❖PURCELL LLP

By: _____
James P. Nevin
Attorneys for Plaintiff
ERDIS LEE POWELL

DEMAND FOR JURY TRIAL

Pursuant to Cal. Code of Civil Procedure § 600, et seq. (and Rule 38 of the Federal Rules of Civil Procedure should this case ever be removed to federal court), Plaintiff hereby demands trial by jury of all issues which may be tried by a jury.

Dated: April 24, 2025

BRAYTON❖PURCELL LLP

By: _____
James P. Nevin
Attorneys for Plaintiff
ERDIS LEE POWELL