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

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| Coordination Proceeding<br>Special Title (Rule 3.550)<br><br>JOHNSON & JOHNSON TALCUM POWDER CASES | JCCP NO. 4872<br><br>[Assigned to Hon. Maren E. Nelson<br>Dept. 307] |
| This document relates to:<br><br>ALL CASES | **PEC'S NOTICE OF MOTION AND MOTION TO ALLOW JURISDICTIONAL DISCOVERY AND CONTINUE SCHEDULE RE MOTIONS TO QUASH**<br><br>Hearing: March 22, 2018<br>Time: 9:00 a.m.<br>Dept.: 307<br>[Filed concurrently with Memorandum of Points and Authorities; Declaration of Mark P. Robinson, Jr. (with JCCP Master Complaint), and [*Proposed*] Order] |

**TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on March 22, 2018, at 9:00 am, the Plaintiffs' Executive Committee will move this Court for an Order that Plaintiffs be permitted to conduct discovery on jurisdictional issues, and that the pending schedule for filing motions to quash asserting lack of

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CIT/CASE: JCCP4872
LEA/DEF#:

RECEIPT #: CCW612315029
DATE PAID: 02/20/18 03:21 PM
PAYMENT: $60.00 310
RECEIVED:

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|---|---|
| CHECK: | $60.00 |
| CASH: | $0.00 |
| CHANGE: | $0.00 |
| CARD: | $0.00 |

personal jurisdiction be continued until such time as discovery necessary to oppose such motions can be completed.

This motion is made and based upon *Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710 ("plaintiff has the right to conduct discovery with regard to the issue of jurisdiction to develop the facts necessary to sustain this burden") and other authorities cited in the accompanying Memorandum of Points and Authorities, and upon the fact that although many plaintiffs in this JCCP reside out of state and did not purchase or use Johnson & Johnson talc based products in the State of California, those same plaintiffs believe in good faith that evidence exists which will establish facts necessary to establish specific personal jurisdiction of this Court over Johnson & Johnson and Johnson & Johnson Consumer, Inc. (collectively, "J&J") under the U.S. Supreme Court's ruling in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County* (2017) 137 S.Ct. 1773. The requested discovery is therefore necessary to bring this evidence before the Court in order to oppose J&J's proposed motions.

This Motion is further based upon this Notice, the accompanying Memorandum of Points and Authorities, all pleadings, documents, and records on file with the Court, and on such oral argument as may be presented at the hearing on this matter.

DATED: February 20, 2018

ROBINSON CALCAGNIE, INC.

By: Mark P. Robinson Jr.

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

The Plaintiffs' Executive Committee ("PEC") respectfully requests that Plaintiffs be permitted to conduct discovery on jurisdictional issues, and that the pending schedule for filing motions to quash asserting lack of personal jurisdiction be continued until such time as the discovery necessary to oppose such motions can be completed. As the Court is aware, Johnson & Johnson and Johnson & Johnson Consumer, Inc. (collectively, "J&J"), intend to bring motions to quash based upon *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County* (2017) 137 S.Ct. 1773, (hereafter, "*BMS*"), asserting that various plaintiffs who reside outside California cannot establish personal jurisdiction because they did not purchase and/or use the talcum powder products here. As the Court is no doubt also aware, *BMS* does not foreclose a finding of specific personal jurisdiction whenever a plaintiff is a resident of another state. The *BMS* Court identified several factors which would give rise to personal jurisdiction in actions by non-residents including, but not limited to, evidence that a non-resident manufacturer has "engaged in relevant acts together with" a California resident corporation which caused injury outside of California, or that the non-resident manufacturer is "derivatively liable for" a California resident corporation's conduct in California which injured the plaintiff outside of California. (137 S.Ct. 1773 at 1783.) Under California law, there are a number of recognized theories of derivative liability. See e.g. *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 828 ("The nature of derivative liability so closely aligns the separate defendants' interests that they are treated as identical parties. [] Derivative liability supporting preclusion has been found between a corporation and its employees [] a general contractor and subcontractors [] an association of securities dealers and member agents [] and among alleged coconspirators [].")

As will be shown below, the JCCP Plaintiffs' Master Complaint (Exhibit 1 to the Declaration of Mark P. Robinson, Jr.) cites to extensive evidence developed in discovery in talc litigation in other jurisdictions involving both Imerys Talc America, Inc. ("Imerys") and the J&J entities, concerning their actions together and their conduct in California. (Exhibit 1, ¶¶ 94-101, 133-172.) These specific allegations are the basis for the more general individual allegations in the Notice of

Adoption (Exhibit 2 to the Declaration of Mark P. Robinson, Jr.), which include, inter alia, that Plaintiff, or Plaintiff's spouse, or Plaintiff's Decedent: "Was injured and suffered harm as a result of relevant actions Defendants JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER INC. engaged in together with IMERYS TALC AMERICA, INC. in California" and "Was injured and suffered harm as a result of conduct by IMERYS TALC AMERICA, INC. in California, for which JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER INC. are derivatively liable." (Exhibit 2, pp. 2:27-3:5.)

The allegations and evidence recited in the Master Complaint establish the factual circumstances envisioned by the United States Supreme Court in *BMS,* and give rise to specific personal jurisdiction over J&J in California in an action brought by non-California plaintiffs. However, discovery relating to these allegations has not been conducted in the California JCCP, since discovery has been stayed due to the focus on the *Echeverria* action, which was tried last summer. Due to the early trial setting of that case, which involved a California resident with no jurisdictional issues, discovery was very narrow, and the Plaintiff was prohibited from conducting any discovery beyond minimal questioning of corporate representatives relating to foundation for documents produced in other litigation.

Therefore, jurisdictional discovery here is essential in order that Plaintiffs may properly respond to the proposed motions challenging personal jurisdiction. As the Court will recall, Plaintiffs raised the need for discovery relating to the connection between Imerys and J&J, and their respective conduct and interactions, as well as issues of agency, alter ego and conspiracy, in the Joint Status Conference Statement of October 30, 2017. (See Robinson Declaration, Exhibit 3.) However, the Defendants opposed the request, arguing that it was "premature." The Statement provided, in pertinent part:

> Plaintiffs request discovery schedule going forward, including but not limited to:
>
> Written discovery to all Defendants; Depositions of all Defendants pursuant to CCP 2025.230 regarding a number of topics relating to corporate structure, J&J involvement and oversight of JJCI re baby powder and talc products, Imerys warnings to J&J Defendants re talc, *Imerys operations and supply of talc to J&J entities*; document foundation, *agency, alter ego, and conspiracy, interactions between the individual Defendants, interactions between*

*the individual Defendants and third parties, and the history of the design, manufacture, and distribution of talc products*; Talc asbestos/other carcinogens discovery; Discovery from third parties, including subpoenas and depositions (Defendants object to the need for and appropriateness of the above discovery. *Defendants believe it is premature to address a discovery schedule until, at the very least, the Master Pleadings are at issue* and will be able to discuss this further at the Status Conference.)

(Joint Status Conference Statement, p.2:11-24, italics added.)

Plaintiffs would suggest that if discovery relating to these issues is premature, then motions to quash based upon personal jurisdiction, which under *BMS* turn upon the very issues which would be the subject of the requested discovery, are also premature. The Defendants cannot credibly argue that conducting this discovery before the motions to quash will cause them any undue prejudice. This discovery will inevitably be conducted in this JCCP. While the requested discovery will shed light on jurisdictional issues, it is also highly relevant to the liability issues in individual talc cases brought by California residents as well as non-residents. And although due to the expedited scheduling of the first trial, Ms. Echeverria was not permitted to conduct discovery concerning asbestos or the conduct of the Johnson & Johnson Defendants, including relevant acts engaged in together with with Imerys, as well as conduct on the part of Imerys for which the Johnson & Johnson Defendants could be derivatively liable, there is no reason other plaintiffs should not be permitted to conduct such discovery.

Moreover, there are many cases involving plaintiffs residing in other states who have yet to file and who will file in the future, alleging J&J engaged in relevant acts in California together with Imerys which caused injury outside of California, and that J&J is derivatively liable for Imerys' conduct in California which injured plaintiffs outside of California. There are also undoubtedly many plaintiffs whose causes of action have yet to accrue. This includes individuals who have used talcum powder products for decades but who have not yet developed ovarian cancer, as well as individuals who have been diagnosed and have not yet succumbed to their injuries, and whose heirs have causes of action for wrongful death that have not yet accrued. Those plaintiffs will also seek to conduct jurisdictional discovery here if it has not already been conducted.

Accordingly, this discovery should proceed now and before any motions to quash based upon alleged lack of personal jurisdiction are filed here. Any other sequence would be putting the cart

before the horse, and would unduly prejudice non-California plaintiffs who legitimately have the right to pursue their actions against J&J here based upon facts giving rise to specific personal jurisdiction in California.

## II. JURISDICTIONAL ALLEGATIONS IN THE MASTER COMPLAINT AND THE NEED FOR JURISDICTIONAL DISCOVERY

Attached to the Declaration of Mark P. Robinson, Jr., is the PEC's Master Complaint, Exhibit 1. The allegations in the Master Complaint include, but are not limited to the following:

f. JOHNSON & JOHNSON and IMERYS Conspired to Conceal the Dangers of Talc

94. Upon information and belief, the JOHNSON & JOHNSON Defendants and IMERYS and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves, in the State of California, to cause injuries, diseases, and/or illnesses by exposing consumers and Plaintiff or Plaintiff's Spouse or Plaintiff's Decedent to the harmful and dangerous PRODUCTS. JOHNSON & JOHNSON and IMERYS knowingly agreed, contrived, confederated and conspired to deprive Plaintiff or Plaintiff's Spouse or Plaintiff's Decedent of the opportunity of informed free choice as to whether to use the PRODUCTS or to expose themselves to the dangers associated with them. JOHNSON & JOHNSON and IMERYS committed the above described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of the talcum powder contained within the PRODUCTS.

95. Upon information and belief, in furtherance of said conspiracies, for decades JOHNSON & JOHNSON and IMERYS individually, jointly, and in conspiracy with each other, have been in possession of medical and scientific data, literature and test reports which clearly indicated that ordinary and foreseeable use of their PRODUCTS by women is unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.

96. Upon information and belief, in furtherance of said conspiracies, JOHNSON & JOHNSON and IMERYS, despite the medical and scientific data, literature, and test reports possessed by and available to said Defendants, individually, jointly, and in conspiracy with each other, wrongfully, fraudulently, willfully and maliciously agreed among themselves to withhold, conceal and suppress medical information regarding the increased risk of ovarian cancer, as set out hereinabove. Upon information and belief, in furtherance of said conspiracies, JOHNSON & JOHNSON and IMERYS, despite the medical and scientific data, literature, and test reports possessed by and available to said Defendants, individually, jointly, and in conspiracy with each other, caused to be released, published and disseminated medical and scientific data, literature, and test reports containing information and statements regarding the risks of ovarian cancer which JOHNSON & JOHNSON and IMERYS knew were incorrect, incomplete, outdated, and misleading. Upon information and belief, specifically, through the CTFA, JOHNSON & JOHNSON and IMERYS collectively agreed to release false information to the public regarding the safety of talc on July 1, 1992; July 8, 1992; and November 17, 1994. Upon information and belief, in a letter dated September 17, 1997, JOHNSON & JOHNSON and IMERYS were criticized by their own toxicologist consultant

for releasing this false information to the public, as stated hereinabove, yet nothing was done by JOHNSON & JOHNSON and IMERYS to correct or redact this public release of knowingly false information.

97. Upon information and belief, in furtherance of said conspiracies, JOHNSON & JOHNSON and IMERYS, despite the medical and scientific data, literature, and test reports possessed by and available to said Defendants, individually, jointly, and in conspiracy with each other, by these false and fraudulent representations, omissions, and concealments, intended to induce Plaintiff or Plaintiff's Spouse or Plaintiff's Decedent and others to rely upon false and fraudulent representations, omissions and concealments, and to continue to expose themselves to the dangers inherent in the use and exposure to the PRODUCTS.

98. Upon information and belief, individually and in concert with each other, JOHNSON & JOHNSON and IMERYS participated in a common plan to commit the torts alleged herein, and each acted tortiously in pursuance of the common plan to protect and promote the health and safety of talc use, to the known detriment of the public, including Plaintiff or Plaintiff's Spouse or Plaintiff's Decedent.

99. Plaintiff or Plaintiff's Spouse or Plaintiff's Decedent reasonably and in good faith relied upon false representations, omissions, and concealments made by JOHNSON & JOHNSON and IMERYS regarding the nature of the PRODUCTS, and as a result suffered the injuries and damages alleged herein.

100. Defendants conspired and entered into the aforementioned agreements in the State of California, and engaged in the aforementioned acts in furtherance of their conspiracy and agreements together with each other in California, and as a result of the foregoing conduct in furtherance of their conspiracy and agreements, each of the Defendants is derivatively liable for the conduct of the others in California.

101. As alleged in this Complaint, the term "talcum powder products" or "PRODUCTS" refers to Johnson & Johnson's Baby Powder and Shower to Shower products and all constituent elements of those products, including talc, asbestos, fibrous talc, and other constituent and related elements and fibers contained within." ...

h. Defendants' wrongful acts are indigenous to the State of California

133. Defendants' wrongful acts are connected to California in that the PRODUCTS and/or talc (mixed with asbestos fibers such as chyrysotile, anthrophyllite, and tremolite, as well as asbestiform fibers such as fibrous talc) intended for use in the PRODUCTS were analyzed, tested, marketed, advertised, distributed and sold in California and certified by Defendant IMERYS as free of asbestos and asbestiform fibers in California for sale throughout the United States.

134. At all pertinent times, JOHNSON & JOHNSON was and continues to be connected to California through their predecessor ownership in California talc mines, mills and processing plants. JOHNSON & JOHNSON originally sourced all raw talcum powder for Johnson's Baby Powder PRODUCTS from domestic mines located in California. California served as the exclusive source of talc for JOHNSON & JOHNSON from the inception of its Johnson's Baby Powder PRODUCTS line until 1926. In 1926, JOHNSON & JOHNSON changed its sourcing of raw talcum powder from domestic mines located in California to talc sourced in Italy.

135. In 1941, due to the outbreak of World War II and the attendant difficulties in procuring talcum powder from its Italian source, JOHNSON & JOHNSON returned to California for sourcing of its talc from approximately 1941 through 1946. After 1946,

JOHNSON & JOHNSON returned to sourcing the raw talcum powder used in its PRODUCTS from Italy, specifically, Italy's Val Chisone region and its associated mines.

136. In 1971, California talc is again investigated by JOHNSON & JOHNSON as a source for its Baby Powder PRODUCTS line when Defendants began the process of evaluating and qualifying the Grantham Mine, located in the Death Valley region of California. The Grantham ore was considered as a potential source of raw talcum powder for use in its PRODUCTS despite the fact that it was shown to contain both tremolite and chrysotile.

137. Tremolite, chrysotile, anthophyllite, other forms of asbestos and asbestiform minerals, as well as known carcinogens such as heavy metals (including nickel,hexa-valent chromium, cadmium, cobalt, copper, iron, and manganese), as well as arsenic, quartz, silica, and lead, were known by JOHNSON & JOHNSON to be constituent minerals that were incapable of being wholly removed from the talcum powder which it used in the manufacture of its Baby Powder and Shower to Shower product lines.

138. For more than half a century JOHNSON & JOHNSON in concert with Defendant IMERYS performed experimental analyses and studies detailing the presence, contamination levels, and inability to mitigate, the amounts of these carcinogens in the raw talcum powder used in the PRODUCTS.

139. At all pertinent times, Defendant IMERYS (formerly known as Luzenac America and its predecessors), and/or its predecessors in interest, were engaged in the business of mining, milling, manufacturing, research and developing, processing and testing talc in California.

140. In 1919, the Inyo Talc Company began producing talc from a mine in Talc City, California, and a processing the talc at a mill at Keeler, California. Inyo changed its name to Sierra Talc and in 1942 Sierra Talc expanded is talc production in California with the purchase of the Pacific Coast Talc, Bay Street Mill, in California. Sierra Talc then purchased Muroc Clay Company, and the Randolph Street Mill, located in Los Angeles, California.

141. In 1953, Defendant opened the Panamint Mine in California which was in operation for over 30 years until its close in 1986.

142. In 1964, Cyprus Mines purchased Sierra Talc, and in 1973 the United Sierra Division became the Cyprus Industrial Minerals Company, and was renamed Cyprus Industrial Minerals Corporation. Shortly thereafter, in 1974, Cyprus Industrial Minerals relocated its headquarters to Los Angeles, California. Cyprus subsequently became a major player in the market for talcum powder, logging production of 122,000 tons and revenues of $11 million in 1976.

143. In 1992, Rio Tinto purchased the talc assets of Cyprus Industrial Minerals, incorporating these assets as Luzenac America Incorporated. Included in these assets were the mines and processing facilities of Windsor Minerals, Inc. a former subsidiary of JOHNSON & JOHNSON which maintained significant talc producing and milling assets located in Vermont and in California.

144. At all pertinent times, JOHNSON & JOHNSON was and continues to be connected with California by and through their dealings, communications and contracts with Defendant IMERYS. JOHNSON & JOHNSON Defendants' relationship with IMERYS was specifically related to Defendants' talc and the PRODUCTS, and thus is and was specific to the issues herein.

145. JOHNSON & JOHNSON worked closely with Defendant IMERYS for the supply and testing of its PRODUCTS. Defendant IMERYS' nucleus of operations and control center for PRODUCT analysis and testing was through its the Corporate Research and Development

Laboratory, which was at all relevant times, based in San Jose, California. Defendant IMERYS tested JOHNSON & JOHNSON'S talc for asbestos and asbestiform talc fibers at their California facility knowingly using faulty test methods that had "detection limits" and as such could only vouch that asbestos was "not detected." And yet, IMERYS approved the respective talc samples despite IMERYS' knowledge of the presence of deadly asbestos fibers as well as asbestiform fibers and other harmful constituents in the talc.

146. Defendant IMERYS was complicit in exposing the general public, including Plaintiffs, to the PRODUCTS through the testing of talcum powder supplied to JOHNSON & JOHNSON using a knowingly flawed, inaccurate and imprecise, methodology at its California Corporate Laboratory where research and development, analysis, testing and the approval of talc supplies for Defendants' PRODUCTS were conducted. Defendant IMERYS' California Corporate Laboratory was the quality control nerve center for JOHNSON & JOHNSON'S PRODUCTS.

147. The testing methodology employed by Defendant IMERYS in qualifying its raw talcum powder as "free of asbestos" is incapable of ensuring the absence of harmful asbestos and asbestiform talc fibers, and was developed by members of the industry, through the auspices of its trade group, the CTFA, as a means of avoiding more accurate, and precise testing protocols. To this day, Defendant IMERYS continues to use this flawed testing methodology in qualifying its ore as "free of asbestos".

148. Defendant IMERYS further tested the raw talcum powder supplied to JOHNSON & JOHNSON through a second proprietary testing method developed by JOHNSON & JOHNSON. Such testing is a pre-requisite to maintaining its status as a supplier of talc to JOHNSON & JOHNSON.

149. Despite knowledge by JOHNSON & JOHNSON that the testing methodology used in detecting and quantifying the level of asbestos and asbestiform fibers in the PRODUCTS was incapable of ensuring the complete absence of the same, JOHNSON & JOHNSON has, and continues to, market its PRODUCTS as "free from asbestos and asbestiform fibers".

150. In addition to asbestos, JOHNSON & JOHNSON knew or should have known that the talcum powder used in the PRODUCTS contained other harmful constituents, including arsenic, quartz, silica, and heavy metals such as nickel, cadmium, cobalt, copper, iron, manganese and chromium. JOHNSON & JOHNSON'S contracts, communications and business relationships with several testing laboratories in California were specifically related to Defendants' talc and the PRODUCTS, and thus is and was specific to the issues herein. JOHNSON & JOHNSON contracted with EXOVA Inc. in Sante Fe Springs, California and the RJ LEE GROUP in Berkeley, California to test for harmful carcinogens and other harmful constituents in the PRODUCTS. In addition, Forensic Analytical located in Hayward, California also tested the PRODUCTS for JOHNSON & JOHNSON.

151. At all pertinent times, JOHNSON & JOHNSON communicated with Defendant IMERYS' California Corporate Laboratory on asbestos testing methods and standards. As part of their agreements to test JOHNSON & JOHNSON'S PRODUCTS, Defendant IMERYS relied on testing by Intertek, a testing laboratory with several California locations including its North American Consumer Goods location in El Segundo, California.

152. At all pertinent times, Defendant IMERYS' California Corporate Laboratory managers made presentations throughout California (among other places) promoting IMERYS' flawed testing techniques and methodologies at several industrial mineral conferences, including but not limited to the California Society of Cosmetic Chemists, the ASTM conferences and the Michael E. Beard Asbestos Conferences.

153. JOHNSON & JOHNSON and IMERYS worked in concert to obtain a favorable determination by the Cosmetic Ingredient Review that their talc was safe, despite evidence to the contrary.

154. Further, Defendants JOHNSON & JOHNSON and IMERYS have undertaken a concerted and extensive effort to influence both regulators and the prevailing body of scientific evidence that talcum powder PRODUCTS are not carcinogenic, and that they contain no other carcinogenic constituents such as asbestos and asbestiform fibers. This effort has consisted of contracting with, and soliciting the input of, numerous California thought leader scientists to offer opinions, author peer-reviewed articles and supplemental analyses of the PRODUCTS in order to fend of negative publicity and government regulation aimed at mandating labeling requirements on cosmetic talcum powder PRODUCTS. JOHNSON & JOHNSON'S contracts, communications and business relationships with thought leaders and academic institutions in California were specifically related to Defendants' talc and the PRODUCTS, and thus is and was specific to the issues herein.

155. JOHNSON & JOHNSON contracted with the noted California thought leader scientist Dr. Hoda Anton- Culver of UC Irvine and Dr. Dwight Culver in formulating a response to discredit a significant talc inhalation study undertaken by the NTP in 1992. Dr. Dwight Culver, an occupational physician and consulting medical director to U.S. Borax (a subsidiary of Rio Tinto in Boron, California), provided consulting services to JOHNSON & JOHNSON, along with his wife, Dr. Hoda Anton-Culver, the Director of Epidemiology at the University of California-Irvine.

156. JOHNSON & JOHNSON also contracted with California thought leader Professor Gordon E. Brown, Professor of Mineralogy and Geochemist at Stanford University, to refute and discredit the analysis of JOHNSON & JOHNSON'S PRODUCT samples of tested by Dr. Lewin (see discussion below) who found Defendants' PRODUCTS contained asbestos. JOHNSON & JOHNSON continues to contract with Professor Brown as a thought leader consultant on a range of analyses and testing issues related to the safety of its PRODUCTS.

157. JOHNSON & JOHNSON also employed California thought leader Dr. Donald Dungworth of the University of California-Davis as a consultant in order to prevent the NTP from classifying talc as a carcinogen. Defendant JOHNSON & JOHNSON used Dr. Dungworth and his research in order convince the NTP to disregard studies where rats and mice exposed to talc suffered from cancer and/or lung disease.

158. JOHNSON & JOHNSON also sought the services of thought leader experts in occupational medicine, Dr. Clark Cooper and Dr. Irving Tabershaw, of the University of California Berkeley School of Public Health. Drs. Cooper and Tabershaw operated a consulting business known as Tabershaw-Cooper Associates.

159. JOHNSON & JOHNSON sought to influence the work of the Stanford Research Institute ("SRI"), based at Stanford University in California, in order to achieve favorable regulatory decisions in the late 1970s. The U.S. National Institute for Occupational Safety and Health ("NIOSH") contracted SRI for assistance with an official "criteria document" on talc. Defendants were aware that any decision by NIOSH would be based largely on findings by SRI and so hoped to influence both. To that end, Defendants hosted a delegation from NIOSH and SRI at one of their facilities to convince them that their "cosmetic-grade" talc was free of asbestos and posed no health risks.

160. At all pertinent times, JOHNSON & JOHNSON has maintained and continues to maintain a substantial presence and a vested financial interest in California with the presence of ten locations across the State in Fremont, CA, Irvine, CA; Irwindale, CA; La Jolla, CA;

Menlo Park, CA; Milpitas, CA; Sacramento, CA; San Diego, CA; South San Francisco, CA; and Vacaville, CA.

161. JOHNSON & JOHNSON'S California Innovation Center in Silicon Valley was recently created to develop relationships between JOHNSON & JOHNSON, California scientists, and their respective companies in the Western United States.

162. JOHNSON & JOHNSON'S Research and Development laboratory in San Diego, known as JLABS, houses scientific development by "resident companies" in the health care, pharmaceutical, and consumer goods markets, in which JOHNSON & JOHNSON invest, as a means to further establish relations with California and West Coast Scientists and Companies.

163. To expand their product lines even further in California market, JOHNSON & JOHNSON recently established JJDC, INC, an investment venture fund, to incubate and develop start-ups in California.

164. At all pertinent times, JOHNSON & JOHNSON has maintained and continues to maintain an office in Sacramento, California dedicated to lobbying efforts encompassing issues, among other issues, Proposition 65 and the classifications of carcinogens, including talc used in Defendants' PRODUCT. JOHNSON & JOHNSON'S lobbying efforts in California were related to Defendants' talc and the PRODUCTS, and thus is and was specific to the issues herein. In the last fifteen years, JOHNSON & JOHNSON spent over ten million dollars ($10,000,000) to influence the laws and regulations of the State of California.

165. At all pertinent times, California's Proposition 65 was of particular interest to JOHNSON & JOHNSON, as labeling requirements on consumer goods flowing from the recognition of talcum powder as a carcinogen would have triggered labeling requirements on JOHNSON & JOHNSON's Baby Powder and Shower to Shower PRODUCTS which it had sought to avoid since the early 1970's when the FDA first began considering labeling and regulation of talcum powder and talcum powder containing PRODUCTS.

166. With full knowledge of the ultra-hazardous nature of the PRODUCTS, JOHNSON & JOHNSON marketed, sold, promoted, and distributed these PRODUCTS across the country through a nationwide distribution network with locations in; New Brunswick, New Jersey; Savannah, Georgia; Chicago; Illinois; Los Angeles, California; and Dallas, Texas.

167. At all pertinent times, JOHNSON & JOHNSON targeted California in their advertising and marketing strategies, and reaped significant profits from purchasers of their PRODUCTS. JOHNSON & JOHNSON'S contracts, communications and business relationships with several advertising, marketing, media and public relations firms in California was specifically related to Defendants' talc and the PRODUCTS, and thus is and was specific to the issues herein. JOHNSON & JOHNSON implemented an aggressive strategy to expand their PRODUCT sales specifically to Hispanic women. With the nation's largest Hispanic population, California and specifically California Hispanic women were and continue to be an important strategic market for Defendants' PRODUCTS.

168. At all pertinent times, JOHNSON & JOHNSON hired, supervised and directed third party media and public relations companies with offices in both Northern and Southern California to create sophisticated Spanish-language newspaper, magazine, billboard, radio, and television marketing and advertising campaigns to promote the PRODUCTS specifically to California Hispanic women. JOHNSON & JOHNSON'S campaign was so successful that Defendants created and produced a Spanish-language Johnson's Baby Powder bottle for placement on, among other locations, California grocery, pharmacy and big-box store (Target, Walmart, Kmart) shelves through-out the State.

169. At all pertinent times, JOHNSON & JOHNSON paid substantial funds to purchase California media from California advertising and marketing agencies to target the women of

California, and specifically target the Hispanic women of California, into purchasing their Baby Powder PRODUCTS while knowingly concealing the fact that the PRODUCTS contained the carcinogenic substances talc, asbestos and asbestiform fibers which posed a high risk of ovarian cancer and/or death.

170. The defective and dangerous PRODUCTS which were manufactured, produced, analyzed, tested and distributed throughout the United States without warnings of the ovarian cancer hazard caused by talc itselfand/or the presence of asbestos, asbestiform fibers, and other harmful constituents in the talc, and/or not using a safer alternative to talc such as cornstarch, based on the foregoing activities, give rise to an actionable conspiracy and the concert of action arose from and was connected with Defendants' conduct in the forum State of California

171. Defendants' liabilities arise from and relate to these contacts with the forum of the State of California.

172. Defendants purposefully affiliated themselves with the forum of the State of California giving rise to the underlying controversy. Such purposeful availment and activities within and related to the State of California included, but are not limited to, the Defendants' contractual relationships with the entities and discussed above giving rise to the source, supply, manufacturing, production, research and testing, analyzing, processing, distribution, advertising and marketing of the PRODUCTS in the State of California and being controlled and directed from the State of California; agreements between Defendants and entities, institutions and thought leader academics within State of California regarding the PRODUCTS where Defendants contractually consented to have state courts within the State of California adjudicate disputes; marketing and advertising of the PRODUCTS by Defendants targeted specifically to women within the State of California as opposed to the Nation as a whole; agreements and other arrangements between Defendants and hospitals and other healthcare providers specific to the State of California where, for example, expectant and post-partum mothers were provided gift baskets containing the PRODUCTS; conferences, tradeshows and other promotional activities by Defendants with regard to the PRODUCTS targeted specifically to the State of California; lobbying, consulting, and advisory efforts on behalf of Defendants with regard to the PRODUCTS stemming from law firms and other agents in the State of California; and other actions by Defendants targeted to the State of California to be obtained through discovery and other means. As the location from which Defendants' suit-related conduct arose out of, California has a substantial vested interest in the acts of Defendants which led to the underlying controversy.

## III. LEGAL ARGUMENT

### A. A Trial Court Has Discretion to Continue a Motion to Quash for Lack of Personal Jurisdiction to Allow Discovery on Jurisdictional Issues

When a defendant moves to quash the service of summons, the judge may permit the plaintiff to conduct discovery concerning the issue of jurisdiction before the judge rules on the motion. (PLAINTIFF'S RIGHT TO DISCOVERY, Cal. Judges Benchbook Civ. Proc. Discovery § 11.1 November 2017 Update, citing *Goehring v Superior Court* (1998) 62 Cal.App.4th 894, 911 ("A

plaintiff is generally entitled to conduct discovery with regard to a jurisdictional issue before a court rules on a motion to quash.") See also *Burdick v. Superior Court* (2015) 233 Cal.App.4th 8, 30 ("A trial court has discretion to continue the hearing on a motion to quash service of summons for lack of personal jurisdiction to allow the plaintiff to conduct discovery on jurisdictional issues."); *HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1173 (same). The reason is that the burden of proof is on the plaintiff to develop facts necessary to demonstrate that "minimum contacts" exist. As the court stated in *Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710:

> Resolution of the question of personal jurisdiction must be accomplished under certain evidentiary rules. First, when jurisdiction is challenged by a nonresident defendant, the burden of proof is upon the plaintiff to demonstrate that "minimum contacts" exist between defendant and the forum state to justify imposition of personal jurisdiction. (*Shearer v. Superior Court* (1977) 70 Cal.App.3d 424, 430, 138 Cal.Rptr. 824.) The plaintiff has the right to conduct discovery with regard to the issue of jurisdiction to develop the facts necessary to sustain this burden. (*1880 Corp. v. Superior Court* (1962) 57 Cal.2d 840, 843, 22 Cal.Rptr. 209, 371 P.2d 985.)

According to Rylaarsdam & Edmon:

> [3:380] Discovery: In order to meet its burden of proof (below), plaintiff is entitled to conduct discovery with regard to the issue of jurisdiction before the hearing on the motion to quash; e.g., to establish the nature and extent of the defendant's "contacts" in California. (The hearing date is often continued to facilitate such discovery.) [*Mihlon v. Sup.Ct. (Murkey)* (1985) 169 CA3d 703, 711, 215 CR 442, 446]
>
> ...
>
> [3:386] Continuance to conduct discovery: The trial court has discretion to continue the hearing on a motion to quash service of summons for lack of personal jurisdiction to allow plaintiff to conduct discovery on the jurisdictional issues. [*HealthMarkets, Inc. v. Sup.Ct. (Berman)* (2009) 171 CA4th 1160, 1173, 90 CR3d 527, 538; see *School Dist. of Okaloosa County v. Sup.Ct. (City of Orange)* (1997) 58 CA4th 1126, 1131, 68 CR2d 612, 615 (citing text)]

(Cal. Practice Guide, Civil Procedure Before Trial (The Rutter Group 2018).)

While some authorities suggest that discovery requested to oppose a motion to quash should generally be limited to jurisdictional issues, as a practical matter no such limitation is necessary or appropriate here. Unlike the typical case where jurisdictional discovery is sought in a single action against a defendant who may or may not be in the case following the hearing on the motion to quash, the Johnson and Johnson Defendants are already parties to numerous actions here brought by California plaintiffs, and will remain so regardless of the ruling on the motions to quash. Those

California plaintiffs will necessarily be seeking this same discovery in connection with liability issues for use in their own cases. Because this discovery will be taken regardless of the outcome of the motions to quash, there is no reason to limit discovery at this point to jurisdictional issues.

**B. *BMS* Does Not Foreclose Specific Personal Jurisdiction Over Claims by Nonresident Plaintiffs**

In April of 2017, the United States Supreme Court issued its decision in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County* (2017) 137 S.Ct. 1773. In *BMS*, a group of plaintiffs, most of whom were not California residents, sued Bristol–Myers Squibb Company in California state court, alleging that the pharmaceutical company's drug Plavix had damaged their health. BMS is incorporated in Delaware, headquartered in New York, and it maintains substantial operations in both states. Although it engages in business activities in California and sells Plavix there, BMS did not develop, create a marketing strategy for, manufacture, label, package, or work on the regulatory approval for Plavix in the State. And the nonresident plaintiffs did not allege that they obtained Plavix from a California source, that they were injured by Plavix in California, or that they were treated for their injuries in California. (*Id.* at 1775.)

The California Superior Court denied BMS's motion to quash service of summons on the nonresidents' claims for lack of personal jurisdiction, concluding that BMS's extensive activities in the State gave the California courts general jurisdiction. The Court of Appeal held that California courts had specific jurisdiction over the claims brought by the nonresident plaintiffs. Affirming, the State Supreme Court applied a "sliding scale approach" to specific jurisdiction, concluding that BMS's "wide ranging" contacts with the State were enough to support a finding of specific jurisdiction over the nonresident plaintiffs' claims. That attenuated connection was met, the court held, in part because the nonresidents' claims were similar in many ways to the California residents' claims and because BMS engaged in other activities in the State. (*Id.* at 1775- 1776.)

The U.S. Supreme Court reversed, holding that California courts lack specific jurisdiction to entertain the nonresidents' claims. (*Id.* at 1778- 1784.) The Court held that for a court to exercise specific jurisdiction over a claim there must be an "affiliation between the forum and the underlying

controversy, principally, [an] activity or an occurrence that takes place in the forum State." The Court found that the California Supreme Court's "sliding scale approach" is difficult to square with U.S. Supreme Court precedents, and the California high court had found specific jurisdiction without identifying any adequate link between the State and the nonresidents' claims. (*Id.* at 1780- 1782.)

However, it is clear that the *BMS* decision did not by any means establish a blanket proscription on claims here by nonresidents injured by products sold by a manufacturer which is not a resident of California. The Court specifically identified circumstances which would give rise to specific personal jurisdiction, by describing what must be alleged and what the nonresident plaintiffs there had failed to allege:

> Specific jurisdiction is very different. In order for a state court to exercise specific jurisdiction, "the *suit* " must "aris[e] out of or relat[e] to the defendant's contacts with the *forum*." ,,, In other words, there must be "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation."... For this reason, "specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction."

(137 S.Ct. 1773, 1780, internal citations omitted, emphasis in original.)

The Court noted that the nonresident plaintiffs "did not allege that they obtained Plavix through California physicians or from any other California source." (*Id.* at 1773.) Here, unlike the plaintiffs in *BMS*, the talc used in the subject products originated from a California source – Imerys Talc America, Inc., a California Corporation. More importantly, while the plaintiffs there had sought to establish specific personal jurisdiction on the basis of *BMS's* "decision to contract with a California company [McKesson] to distribute [Plavix] nationally," the court noted that the plaintiffs had not alleged that BMS engaged in relevant acts together in California with the California entity, nor had they alleged that BMS was derivatively liable for the California entity's conduct in California:

> As noted, the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California. The mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents' claims. As we have explained, "a defendant's relationship with a ... third party, standing alone, is an insufficient basis for

> jurisdiction." *Walden,* 571 U.S., at ——, 134 S.Ct., at 1123. This remains true even when third parties (here, the plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents. Nor is it sufficient—or even relevant—that BMS conducted research in California on matters unrelated to Plavix. *What is needed—and what is missing here—is a connection between the forum and the specific claims at issue.*
>
> (137 S.Ct. 1781.)
>
> In this case, *it is not alleged that BMS engaged in relevant acts together with McKesson in California. Nor is it alleged that BMS is derivatively liable for McKesson's conduct in California.* ... The bare fact that BMS contracted with a California distributor is not enough to establish personal jurisdiction in the State.
>
> (137 S.Ct. 1783, emphasis added.)

Unlike the nonresident plaintiffs in *BMS,* the nonresident Plaintiffs here *have alleged* substantial and extensive relevant acts engaged in by J&J in California, including acts by J&J alone and by J&J together with Imerys, which are relevant to the injuries sustained by both resident and nonresident Plaintiffs. Moreover, unlike the nonresident plaintiffs in *BMS*, the nonresident Plaintiffs here, along with California resident Plaintiffs, *have alleged* substantial facts supporting a finding that the J&J Defendants are derivatively liable for the conduct of Imerys in California, which caused harm to residents of other states. The above-referenced allegations in the Master Complaint, if proven, would establish specific personal jurisdiction under *BMS.* Plaintiffs should be therefore be allowed an opportunity to conduct necessary discovery in order to provide this Court with the evidence supporting these allegations, which will be submitted in opposition to the proposed motions challenging this Court's jurisdiction.

## IV. CONCLUSION

Based upon the foregoing, The Plaintiffs' Executive Committee respectfully requests that Plaintiffs be permitted to conduct discovery on jurisdictional issues, and that the pending schedule for filing motions to quash asserting lack of personal jurisdiction be continued until such time as the discovery necessary to oppose such motions can be completed.

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DATED: February 20, 2018

ROBINSON CALCAGNIE, INC.

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I certify that I am over the age of 18 years and not a party to the within action; that my business address is:

ROBINSON CALCAGNIE, INC.
19 Corporate Plaza Drive
Newport Beach, CA 92660

On February 20, 2018, I served the foregoing document described as:

**PEC'S NOTICE OF MOTION AND MOTION TO ALLOW JURISDICTIONAL DISCOVERY AND CONTINUE SCHEDULE RE MOTIONS TO QUASH (WITH JCCP MASTER COMPLAINT)**

on the parties in this action as stated on the attached service list as follows:

___ (By Federal Express) Said documents were delivered to an authorized courier or driver authorized by the express service carrier to receive documents with delivery fees paid or provided for.

___ (By Mail) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. SEE ATTACHED SERVICE LIST

___ (By Personal Service) I caused each document to be delivered by hand to the home of the addressee.

_X_ (By Electronic Service) I served each document via electronic transfer of the document file to Case Anywhere for service on all registered case. Each document electronically served pursuant to the Order authorizing Electronic Service shall be deemed to have been served under the California Rules of Civil Procedure. Electronic service shall be complete at the time of transmission.

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

___ FEDERAL: I declare that I am employed in the office of a member of a Bar of this Court at whose direction the service was made.

Executed on February 20, 2018, at Newport Beach, California.

Barbara Anderson