SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOLORES GOMEZ,

Plaintiff

Index No:

Date Filed:

Plaintiff's designate
NEW YORK COUNTY
as the place of trial

CHANEL, INC., et al.

Defendants

The basis of the venue is Plaintiff is a New York domiciliary; Defendants, CHANEL, INC., FOOT LOCKER, INC., individually and as successor in interest to Woolworth Corporation, and FOOTLOCKER SPECIALTY, INC. Individually and as successor in interest to F.W. WOOLWORTH CO. are citizens of New York; and a substantial part of the events or omission giving rise to the claim occurred in New York City (CPLR 503(a)).

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's Attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York). In the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
May 20, 2020

Yours etc.,

WEITZ & LUXENBERG, P.C.
Attorneys for Plaintiff's
700 Broadway
New York, New York 10003
(212) 558-5500

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOLORES GOMEZ,

Index No.:

FULL CAPTION RIDER

Plaintiff,

-against-

CHANEL, INC.,
FOOT LOCKER, INC., individually and as successor-in-interest to WOOLWORTH CORPORATION,
FOOT LOCKER SPECIALTIES, INC., individually and as successor-in-interest to F.W. WOOLWORTH CO.,
PUBLIX SUPER MARKETS, INC.,

Defendants.

DEFENDANTS' ADDRESSES:

DOLORES GOMEZ DEFENDANTS ADDRESS LIST:

DEFENDANTS:	**SERVICE:**
CHANEL, INC.	CT CORPORATION SYSTEM 28 LIBERTY STREET NEW YORK, NEW YORK 10005
FOOT LOCKER, INC.	FOOT LOCKER, INC. 330 WEST 34TH STREET NEW YORK, NEW YORK 10001
FOOT LOCKER SPECIALTY, INC.	FOOT LOCKER SPECIALTY, INC. 330 WEST 34TH STREET NEW YORK, NEW YORK 10001
PUBLIX SUPER MARKETS, INC.	PUBLIX SUPER MARKETS, INC. 3300 PUBLICS CORPORATE PKWY LAKELAND, FLORIDA 33811

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOLORES GOMEZ,

Plaintiff,

-against-

CHANEL, INC.,
FOOT LOCKER, INC., individually and as successor-in-interest to WOOLWORTH CORPORATION,
FOOT LOCKER SPECIALTIES, INC., individually and as successor-in-interest to F.W. WOOLWORTH CO.,
PUBLIX SUPER MARKETS, INC.

Defendants.

Index No.:

VERIFIED COMPLAINT

Plaintiff, by her attorneys, WEITZ & LUXENBERG, P.C., upon information and belief, at all times hereinafter mentioned alleges as follows:

THE PARTIES

1. Plaintiff **DOLORES GOMEZ** is a resident of the State of Florida and reside at 10904 SW 72nd Street, Apt. 51, Miami, FL 33173.

2. DOLORES GOMEZ was diagnosed with Mesothelioma on September 10, 2019.

3. Plaintiff DOLORES GOMEZ, ("Plaintiff"), by and through undersigned counsel bring this action for personal injuries suffered as a proximate result of DOLORES GOMEZ's regular and prolonged use of, inhalation, ingestion, absorption, and exposure to asbestos laden talcum powder products known as Chanel after bath powder ("PRODUCTS"), which at all times relevant hereto, were advertised, applied, brokered, converted, compounded, delivered, designed, distributed, fabricated, fashioned, imported, installed, labelled, leased, licensed, lobbied, manufactured, marketed, mined, mixed, packaged, processed, produced, promoted, purchased, relabeled, removed, sold, specified,

supplied, tested, and/or used on behalf of by Defendants**, CHANEL, INC., FOOT LOCKER, INC., individually and as successor-in-interest to WOOLWORTH CORPORATION, FOOT LOCKER SPECIALTY, INC., individually and as successor-in-interest to F.W. WOOLWORTH CO., and PUBLIX SUPER MARKETS, INC.**

4. Plaintiff, DOLORES GOMEZ was diagnosed with Mesothelioma on September 10, 2019 as a result of her exposure to talcum powder contaminated with asbestos.

5. The terms "Defendant" or "Defendants" shall include all present and former employees, officers, executives, principals, owner, managers, contractors, and servants with authority (either apparent, actual or imputed by law) to have acted on Defendant(s)'s behalf during the relevant time period.

6. At all relevant times, Defendants actions and conduct, as more fully described below, were carried out by or through their duly authorized agents, servants, and employees, who were then and there acting in the course and scope of their employment, and in furtherance of Defendants' business.

7. For any entity referenced in the caption or elsewhere in the pleading of this Complaint, or in any complaint incorporating this Complaint by reference, where the term "successor" or "successor in interest" is used, Plaintiff alleges as follows: (1) the successor entity or corporation expressly or impliedly assumed the predecessor's tort liability or liabilities described herein; (2) there was a consolidation or a de jure or de facto merger of the seller and purchaser; (3) the purchasing entity or corporation was a mere continuation of the selling entity or corporation; or (4) the transaction was entered into fraudulently to escape such liabilities or obligations.

8. For any such named "successor" entity, Plaintiff further alleges that the named predecessor entity was the named successor's mere alter ego such that its corporate veil was or should be deemed pierced by virtue of any or several of the following factors: (1) absence of corporate formalities; (2) inadequate capitalization, (3) the successor's siphoning of funds from

the predecessor, (4) lack of significant business discretion on the part of the predecessor entity, and/or (5) the creation of the successor entity to fraudulently avoid liabilities to creditors, such as the Plaintiff herein.

9. Defendant, **CHANEL, INC.** is a duly organized domestic corporation who's principal place of business is the State of New York. At all pertinent times, CHANEL, INC., has been in the business of processing, importing, converting, compounding, designing, manufacturing, marketing, promoting, testing, supplying, distributing, selling, and otherwise placing in the stream of commerce asbestos-containing talcum based, cosmetic, hygienic, medicated, and/or powdered products including the PRODUCTS to which DOLORES GOMEZ was exposed in New York.

10. CHANEL, INC., has continually advertised and marketed talc as safe for human use.

11. CHANEL, INC., supplies customers with material safety data sheets for talc. These material safety data sheets are supposed to convey adequate health and warning information.

12. Defendant, **FOOT LOCKER, INC., individually and as successor-in-interest to WOOLWORTH CORPORATION,** is a duly organized domestic corporation doing business and/or transacting business in the State of New York. At all pertinent times, FOOT LOCKER, INC., individually and as successor-in-interest to WOOLWORTH CORPORATION, has been in the business of supplying, distributing, selling, and otherwise placing in the stream of commerce asbestos- containing, talcum based, cosmetic, hygienic, medicated, and/or powdered products including the PRODUCTS to which DOLORES GOMEZ was exposed in New York.

13. Dolores Gomez purchased asbestos laden talcum products, to which she was exposed from a Woolworth store, FOOT LOCKER, INC., individually and as successor-in-interest to WOOLWORTH CORPORATION, from Woolworth in New York City.

14. Defendant, **FOOT LOCKER SPECIALTY, INC., individually and as successor-in-interest to F.W. WOOLWORTH CO.,** is a duly organized domestic corporation doing business and/or transacting business in the State of New York. At all pertinent times, FOOT LOCKER SPECIALTY, INC. individually and as successor-in-interest to F.W. WOOLWORTH CO., has been in the business of supplying, distributing, selling, and otherwise placing in the stream of commerce asbestos- containing, talcum based, cosmetic, hygienic, medicated, and/or powdered products including the PRODUCTS to which DOLORES GOMEZ was exposed in New York.

15. Dolores Gomez purchased asbestos laden talcum products, to which she was exposed from a Woolworth store, FOOT LOCKER SPECIALTY, INC., individually and as successor-in-interest to F.W. WOOLWORTH CO., from Woolworth in New York City.

16. Hereinafter, unless otherwise delineated, FOOR LOCKER, INC., individually and as successor-in-interest to WOOLWORTH CORPORATION, and FOOT LOCKER SPECIALTY, INC., individually and as successor-in-interest to F.W. WOOLWORTH CO. shall be collectively referred to as "THE FOOT LOCKER DEFENDANTS."

17. Defendant, PUBLIX SUPER MARKETS, INC. ("PUBLIX") is a duly organized corporation with a principle place of business in Lakeland, Florida. At all pertinent times, PUBLIX., has been in the business of supplying, distributing, selling, and otherwise placing in the stream of commerce asbestos- containing, talcum based, cosmetic, hygienic, medicated, and/or powdered products including the PRODUCTS to which DOLORES GOMEZ was exposed.

18. PUBLIX has continually advertised and marketed talc as safe for human use.

19. DOLORES GOMEZ purchased asbestos-containing talcum products, to which she was exposed from stores owned and operated by PUBLIX in Florida.

20. Defendants Unknown Businesses and/or Corporations A-Z are unknown entities whose conduct as described herein caused or contributed to the damages of the Plaintiff's, all of whose names and legal identities are unknown to the Plaintiff's at this time, but will be substituted by amendment when ascertained, individually and jointly.

21. Defendants have done business in New York State and/or have conducted and/or transacted business in New York State, have committed one or more tortious acts within New York and/or have otherwise performed relevant acts within and/or without this State giving rise to Plaintiff's asbestos-related injury and losses within New York, which acts subject each Defendant to the jurisdiction of New York Courts.

22. Defendants regularly did and/or solicited business in New York; engaged in a persistent course of conduct in New York; and/or derived substantial revenue from goods used or consumed or services rendered in New York.

23. Defendants, which derive substantial revenue from interstate and/or international commerce, expected and should reasonably have expected their acts to have consequences in New York.

24. Defendants are corporations or other business entities organized under the laws of the various states of the United States that were and/or are doing business in the State of New York and/or were and/or are participating in a conspiracy and/or concert-of-action that was or is located or conducted in New York and/or had effects in New York, including, but not limited to, the violation within the state of its laws and regulations. Defendants mined, milled, processed, imported, converted, compounded, designed, manufactured, marketed, supplied, distributed, sold, used and/or otherwise placed in the stream of commerce asbestos-containing products to which DOLORES GOMEZ was exposed.

25. If it is deemed that Article 16 of the CPLR applies to this action, Plaintiff asserts that this action falls within one or more of the exceptions set forth in CPLR 1602, including, but not limited to, the exception for public employees (CPLR 1602(1)(b)); the exception based upon defendants' non-delegable duty to warn of the health hazards of asbestos (CPLR 1602(2)(iv)); the exception for cases in which a claimant suffers a "grave injury" (CPLR 1602(4)); the exception for actions requiring proof of intent (CPLR 1602(5)); the exception for cases in which a person is held liable for causing a claimant's injury by having acted with reckless

disregard for the safety of others (CPLR 1602(7)); the exception for cases in which a defendant is held liable by reason of the applicability of Article 10 of the Labor Law (CPLR 1602(8)); the exception for cases involving any person held liable for causing a claimant's injury by having unlawfully released into the environment a substance hazardous to public health, safety or the environment (CPLR 1602(9)); the exception for any parties found to have acted knowingly or intentionally and in concert to cause the acts or failure upon which liability is based (CPLR 1602(11)); and the exception for persons held liable in a product liability action in which the manufacturer of the product is not a party to the action and jurisdiction over the manufacturer could not with due diligence be obtained (CPLR 1601(10)).

26. Plaintiff has been damaged as against each Defendant and is entitled to compensatory and punitive damages in an amount to be determined by a trier of fact. The amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

27. The actions and conduct of the Defendants as more fully described below were carried out through their respective offices, by authorized agents, servants and employees, who were acting in the course and scope of their employment and authority, and in furtherance of the business and profit of the Defendants.

28. Each Defendant, has been engaged in the mining, production, processing, design, manufacture, marketing, supply, delivery, distribution, sale, promotion, and/or lobby on behalf of talc contaminated with asbestos and/or the PRODUCTS.

29. At all times herein mentioned, each of the Defendants, inclusive of the Defendants, was the agent, servant, partner, aider and abettor, co-conspirator, and joint venturer of each of the remaining Defendants herein and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy, and joint venture and rendered substantial assistance and encouragement to the other Defendants, knowing that their conduct constituted a breach of duty.

30. There exists, and at all times herein mentioned, there existed a unity of interest in ownership between certain Defendants and other certain Defendants such that any individuality and separateness between the certain Defendants has ceased and these Defendants are the alter ego of the other certain Defendant, and exerted control over those Defendants. Adherence to the fiction of the separate existence of these certain Defendants as any entity distinct from other certain Defendants will permit an abuse of the corporate privilege and would sanction fraud and would promote injustice.

31. The injuries and damages to Plaintiff was caused by the wrongful acts, omissions, and fraudulent representations of Defendants.

32. At all times herein mentioned, Defendants were each engaged in the business of, or were successors in interest to, entities engaged in the business of research, designing, formulating, compounding, testing, mining, milling, manufacturing, producing, processing, assembling, inspecting, selling, distributing, marketing, labeling, promoting, packaging and/or advertising for sale or selling, and/or or lobbying on behalf of, the PRODUCTS, including in the State of New York.

33. At all times herein mentioned Defendants were each authorized to do, or otherwise engaged in, business within the State of New York, and did in fact supply the aforementioned product within the State of New York, and nationwide.

34. At all times herein mentioned, the officers and directors of Defendants authorized and directed the production and promotion of the PRODUCTS when they knew, or with the exercise of reasonable care should have known, of the hazards and dangerous propensities of the PRODUCTS, and thereby actively participated in the tortious conduct which resulted in the physical injuries described herein.

35. The Plaintiff, DOLORES GOMEZ used the PRODUCTS as part of her regular cosmetic, beauty, and hygiene routine from approximately 1961, continuously until approximately 1991. She regularly dusted the PRODUCTS on various parts of her body which may have included at times: face, neck, shoulders, arms, armpits, legs, feet, collarbones, décolletage, breasts, vagina, and perineum. During this time she repeatedly

inhaled, ingested, absorbed, and was regularly exposed to Asbestos dust emanating from the Asbestos laden talc within the PRODUCTS. This was an intended and foreseeable use of the PRODUCTS based on the advertising, marketing, and labeling of the PRODUCTS.

36. Plaintiff was exposed on numerous and frequent occasions to the PRODUCTS which were mined, milled, produced, processed, designed, manufactured, marketed, tested, compounded, mixed, supplied, delivered, distributed, sold and/ or lobbied for by the Defendants.

37. As a direct and proximate result of the Defendants' reckless, callous, calculated, and reprehensible conduct, Plaintiff was injured and suffered damages, namely Mesothelioma, which required or will require surgeries and treatments. At the time of her diagnosis the Plaintiff was sixty-five (65) years old.

38. Plaintiff alleges that the cumulative effect of each exposure to Defendants PRODUCTS caused or contributed to her injuries, such that the Defendants are jointly and severely to the Plaintiff's for the resultant asbestos related illness/disease and/or risk of death alleged herein.

AS AND FOR A FIRST CAUSE OF ACTION SOUNDING IN NEGLIGENCE

39. Plaintiff repeats, reiterates, and re-alleges each and every allegation of this Complaint contained in the paragraphs above, with the same force and effect as if fully set forth herein.

40. Defendants knew, or with reasonable diligence should have known and/or ascertained, that their PRODUCTS were inherently dangerous and hazardous to the health and well-being of those using, exposed to or coming in contact with Defendants' PRODUCTS.

41. Defendants knew, or with reasonable diligence should have known and/or ascertained, that the Plaintiff would use or come into contact with Defendants' PRODUCTS and in

so doing, would become exposed to asbestos from the Defendants' products in the course of ordinary and foreseeable contact, application, and use of those products.

42. Defendants knew, or with reasonable diligence should have known and/or ascertained that the Plaintiff used, came into contact with, and was exposed to Defendants' PRODUCTS and the asbestos laden talc contained in their PRODUCTS without any knowledge of the dangers and potential risk of harm to which he/she was being exposed.

43. At all pertinent times, Defendants knew or should have known that the use of talcum powder based products, contaminated with asbestos, significantly increases the risk of Mesothelioma.

44. At all relevant times, the Defendants knew or should have known that their asbestos and asbestos-containing products were inherently dangerous to those who used, handled, or came in contact with them, and that such hazards were beyond the expectations of the ordinary user or handler who would come into contact with these products.

45. Defendants knew, or with reasonable diligence should have known and/or ascertained, that the reasonable and foreseeable use of, or contact with, their asbestos-containing products would cause the release of asbestos into the air, creating danger and unreasonable risk of injury and harm to those breathing the air contaminated with such asbestos, and to those breathing in asbestos brought home on work clothing.

46. Defendants were and are miners, millers, processors, importers, converters, compounders, designers, manufacturers, assemblers, marketers, suppliers, distributors, sellers, and/or users of products that contained asbestos to which DOLORES GOMEZ was exposed

47. DOLORES GOMEZ inhaled, ingested, absorbed, and was otherwise exposed to asbestos from Defendants' products.

48. As a direct and proximate result of her inhalation and/or ingestion of asbestos from Defendants' products, DOLORES GOMEZ developed permanent and disabling personal injuries, including Mesothelioma.

49. Defendants had a duty to mine, mill, process, import, convert, compound, design,

manufacture, assemble, market, supply, distribute, sell, use and/or otherwise place in the stream of commerce products that were not unreasonably dangerous or defective when used as intended or in a reasonably foreseeable manner.

50. Defendants had a duty to warn DOLORES GOMEZ, her family members and foreseeable users of their products of the hazards and defects that Defendants created, knew of and, within the exercise of reasonable care, should have known.

51. During the time that Defendants mined, milled, processed, imported, converted, compounded, designed, manufactured, assembled, marketed, supplied, distributed, sold, used and/or otherwise placed in the stream of commerce asbestos products, they knew, and in the exercise of reasonable care should have known, that said products were defective, ultra- hazardous, dangerous, and/or otherwise highly harmful to the public, including DOLORES GOMEZ.

52. Defendants knew, and in the exercise of reasonable care should have known, that the use of their products would release asbestos, thereby creating a dangerous and unreasonable risk of injury to users and others coming into contact said asbestos.

53. DOLORES GOMEZ did not know the nature and extent of the injury that would result from contact with and exposure to asbestos from Defendants' products.

54. Defendants knew, and in the exercise of reasonable care should have known, that DOLORES GOMEZ would come into contact with and be exposed to asbestos from THE PRODUCTS and would inhale and/or otherwise ingest asbestos as a result of the ordinary and foreseeable use of said products.

55. At all pertinent times, THE FOOT LOCKER DEFENDANTS and PUBLIX negligently sold and distributed asbestos-contaminated products to the end user. At all pertinent times The Defendants facilitated and enabled the Defendant's tortious conduct by lobbying for and conspiring with the Defendants who mined, milled, processed, tested, designed, sold, packaged and distributed the PRODUCTS to keep the public ignorant of the harmful and deleterious effects of the PRODUCTS. Each Defendant knew or should have known that consumers of the PRODUCTS were using it to powder their faces and bodies, would thereby inhale, ingest, absorb, and be

otherwise exposed to asbestos.

56. The Defendants, knew or should have known that the talc, contaminated with asbestos, would be used in the PRODUCTS, without adequately taking steps to ensure that ultimate consumers of the PRODUCTS, including Plaintiff, received the information that The Defendants possessed on the carcinogenic properties of talc laden asbestos, including its risk of causing Mesothelioma.

57. Despite knowledge of the unsafe and dangerous nature and properties of their asbestos laden talc products, the Defendants willfully, recklessly and negligently:

a. failed to warn the public at large, and more particularly this Plaintiff, of the dangers and hazards associated with or caused by the use of, exposure to or contact with Defendants' PRODUCTS resulting from the ordinary, anticipated and foreseeable use of Defendants' PRODUCTS;

b. failed to study, investigate and/or properly test their PRODUCTS for both potential and actual hazards associated with the use of, exposure to and contact with Defendants' PRODUCTS, when such products were used in a reasonably foreseeable and anticipated manner;

c. failed to communicate or convey their suspicions and knowledge with respect to potential or actual dangers and health hazards associated with the use of, exposure to or contact with Defendants' PRODUCTS resulting in exposure to talc, contaminated at times with asbestos, to the users and consumers of the Defendants' PRODUCTS;

d. failed to properly design and manufacture Defendants' PRODUCTS to insure safe use and handling by users and consumers under conditions that were reasonably anticipated and foreseeable;

e. failed to advise the public at large, and more particularly this Plaintiff's, of the necessity for protective garments, safety equipment and appliances to protect the user/consumer

from harm caused by exposure to talc, contaminated with asbestos, and associated with the ordinary and foreseeable use of, and contact with, Defendants' PRODUCTS;

f. failed to institute, adopt or enforce appropriate safety protocols for handling and use of PRODUCTS to individuals working with, utilizing, handling or otherwise coming into contact with Defendants' PRODUCTS;

g. failed to adequately package their PRODUCTS in a manner which would insure safe handling and use by those individuals, including this Plaintiff's, who the Defendants' knew or should have reasonably anticipated would be exposed to talc contaminated with asbestos in the ordinary and foreseeable use of Defendants' PRODUCTS;

h. failed to remove their PRODUCTS from the stream of commerce despite knowledge of the unsafe and dangerous nature of those PRODUCTS;

i. continued to mine, produce, process, design, manufacture, market, supply, deliver, distribute, install, use, purchase, remove and sell the PRODUCTS for general application and purposes without any alteration or change, despite the potential and known health hazards and dangers posed to the foreseeable and anticipated user and consumer of those PRODUCTS;

j. failed to timely develop and utilize substitute materials for talc in their PRODUCTs;

k. failed to design or redesign talc-containing products contaminated with asbestos to prevent, impede or minimize the exposure to talc contaminated with asbestos; and,

l. failed to recall and/or issue a post-sale warning for their PRODUCTS

m. misrepresented or failed to disclose that asbestos was in their products, thus denying DOLORES GOMEZ and the public of the knowledge required to take necessary safety precautions while using or otherwise being exposed to their PRODUCTS;

n. ignored and suppressed medical and scientific information, studies, tests,

data and literature that Defendants acquired concerning the health risks associated with exposure to asbestos contained in their products;

o. failed to advise DOLORES GOMEZ, who Defendants knew, and in the exercise of reasonable care should have known, had been exposed to asbestos from the ordinary and foreseeable use of their products: (i) to cease further uncontrolled or unprotected exposure to said products and the inhalation and/or ingestion of asbestos therefrom; (ii) to be examined by competent medical doctors to determine the nature and extent of all diseases caused by inhalation and/or ingestion of asbestos; and (iii) to receive medical care and treatment for such diseases; and

p. otherwise disregarded the welfare of DOLORES GOMEZ in mining, milling, processing, importing, converting, compounding, designing, manufacturing, assembling, marketing, supplying, distributing, selling, using, promoting, lobbying on behalf of, and/or otherwise placing the stream of commerce products containing asbestos to which she was exposed.

58. The continued mining, milling, production, processing, design, manufacture, marketing, distribution, supply, use, purchase, delivery, sale, and lobbying on behalf of, by the Defendants of their PRODUCTS under the circumstances and conditions enumerated above, demonstrates the callous, reckless, willful, depraved, and wanton indifference to and disregard of the health, safety and welfare of the public at large, and more particularly, this Plaintiff.

59. The PRODUCTS were defective and unreasonably dangerous when they left the possession of the Defendants in that it contained warnings insufficient to alert consumers, including Plaintiff herein, of the dangerous risks and reactions associated with the subject product, including but not limited to its propensity to permanent physical injuries including, but not limited to, developing Mesothelioma, and other serious injuries and side effects, notwithstanding the Defendants' knowledge of an increased risk of these injuries and side

effects over other products.

60. The subject product manufactured and supplied by Defendant was defective due to inadequate post-marketing warning or instruction because, after Defendant knew or should have known of the risk of serious bodily harm from the use of the subject product, Defendant failed to provide an adequate warning to consumers of the defects of the product, and/or alternatively failed to conform to federal and/or state requirements for labeling, warnings, instructions, and/or recall, while knowing that the product could cause serious injury.

61. At all pertinent times, a safer feasible alternative to the PRODUCTS has existed. Cornstarch is an organic carbohydrate that is quickly broken down by the body with no known health effects. Cornstarch powders have been sold and marketed for the same uses as talc with nearly the same effectiveness.

62. Defendants knew, or with reasonable diligence should have known and/or ascertained, that the reasonable and anticipated use of, exposure to or contact with their Asbestos contaminated talc PRODUCTS would cause the release of asbestos fibers, creating danger and unreasonable risk of injury and harm.

63. Defendants knew, or with reasonable diligence should have known and/or ascertained, that the Plaintiff would use or come into contact with Defendants' talc products, contaminated with asbestos, and in so doing would inhale, become exposed to, and absorb the talc particles and asbestos fibers as they were discharged and released from the Defendants' products in the course of ordinary and foreseeable contact, application and use of those products.

64. Defendants knew, or with reasonable diligence should have known and/or ascertained

that the Plaintiff used, came into contact with, and was exposed to Defendants' talc products, contaminated with asbestos, and the particles emanating from and released by those products without any knowledge of the dangers and potential risk of harm to which she was being exposed.

65. Plaintiff used the subject product for its intended purpose.

66. The Defendants, as miners, millers, blenders, manufacturers and/or Sellers/ distributors of the PRODUCTS are held to the level of knowledge of an expert in the field.

67. If any warnings were given by Defendants, they were either not accurate, clear, ambiguous, and/or otherwise inadequate.

68. Plaintiff reasonably relied upon Defendants' skill, superior knowledge, and judgment.

69. Defendants had a continuing duty to warn Plaintiff of the dangers associated with the PRODUCTS.

70. If Plaintiff had received adequate warnings regarding the risks of the subject product, she would not have used it.

71. As a result of the Defendants' negligence and recklessness, the Plaintiff's unwittingly and unavoidably inhaled, ingested and/or absorbed talc particles contaminated with asbestos, resulting in the development of her Mesothelioma; Plaintiff has been caused to endure severe physical pain and suffering and mental anguish; has been placed at increased risk for developing other serious bodily injuries; has expended sums of money for medical care, treatment and monitoring related to her exposure to the PRODUCTS, will be required to expend additional monies for medical care, treatment and monitoring in the future; has been prevented from pursuing her normal activities and employment; has been deprived of her ordinary pursuits and enjoyment of life; has suffered pecuniary losses; and has otherwise been damaged.

72. The illnesses and disabilities of the Plaintiff are a direct and proximate result of the Defendants' negligence and carelessness, and their demonstrated reckless, immoral, malicious, and/or wanton disregard for her safety and well-being.

SECOND CAUSE OF ACTION
NEGLIGENCE PER SE

73. Plaintiff repeats, reiterates, and incorporates herein by reference the prior and subsequent allegations of this complaint with the same force and effect as if hereinafter set forth at length.

74. The Federal Food, Drug, and Cosmetic Act (FDCA), codified as 21 U.S.C. §§ 301-399, governs the manufacture, sale, supply, distribution and marketing of cosmetic products in the United States. 21 U.S.C. § 321(i) defines cosmetics by their intended use as (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any party thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles. Talc Defendants' products and the ingredients therein are cosmetic products as defined by 21 U.S.C. § 321(i).

75. The FDCA was designed to protect consumers from hazardous cosmetic products. Plaintiff was and are members of the class of persons the FDCA was intended to protect. The FDCA prohibits the manufacture, sale, supply, distribution and marketing of adulterated cosmetics in interstate commerce. 21 U.S.C. § 331. Adulterations refer to violations involving product composition, whether they result from ingredients, contaminants, processing, packaging, or shipping and handling. A cosmetic product is adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under conditions of use as are customary and usual. 21 U.S.C. § 361. The FDCA governs all persons and companies involved in cosmetics in interstate commerce— including manufacturers, packers, distributors and retailers—who are accordingly responsible for ensuring that they are not dealing in products that are adulterated or misbranded. Under the FDCA, Talc Defendants owed Plaintiff a duty not to sell to or otherwise expose DOLORES GOMEZ to adulterated, hazardous cosmetic products.

76. Talc Defendants mined, milled, processed, imported, converted, compounded,

designed, manufactured, assembled, marketed, supplied, distributed, sold, used and/or otherwise placed in the stream of commerce talc and talc-containing cosmetic products throughout the United States and the internationally. In violation of the FDCA, and their duty to Plaintiff, said products were contaminated with various carcinogens, including asbestos, a poisonous and deleterious disease-causing mineral known by Talc Defendants since the early to mid-1900s to cause death and disease. Under normal and customary use and application, Talc Defendants' talc-containing products released respirable and ingestible asbestos, and end users, including DOLORES GOMEZ, were exposed to and consequently inhaled and/or ingested carcinogens, including asbestos. Talc Defendants manufactured, sold, supplied, distributed and marketed adulterated cosmetic products that were contaminated with asbestos and other carcinogens in clear violation of the FDCA. Talc Defendants' violation of the FDCA, which governs the sale of cosmetic products, including talcum powder and the ingredients therein, and DOLORES GOMEZ's subsequent inhalation and/or ingestion of asbestos from said products were substantial factors in bringing about DOLORES GOMEZ's Mesothelioma as well as Plaintiff's consequential damages. In violating the FDCA, which was enacted, among other things, to prevent the sale of carcinogen- containing products, Talc Defendants were and are negligent per se.

77. Talc Defendants-and their employees, officers, directors, and/or managing agents—participated in, authorized, expressly and impliedly ratified, and had full knowledge of and should have known of each of the acts set forth herein. Talc Defendants are liable for the oppressive and malicious acts of their predecessors and divisions, and each Talc Defendant's employees, officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of and should have known of the acts of each of their predecessors and divisions.

78. Additionally, Talc Defendants were and are negligent per se for the aforementioned reasons pursuant to various state laws and regulations, including, but not limited to, NY Education Law § 6811, et seq., and NJ Stat. § 24:5-1, et seq.

79. Talc Defendants' violation of the FDCA (and the other laws and regulations cited above) was a proximate cause of the injuries and damages alleged in this complaint.

AS AND FOR A THIRD CAUSE OF ACTION SOUNDING IN BREACH OF WARRANTY

80. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below.

81. Defendants expressly and impliedly warranted that their PRODUCTS were of good and merchantable quality and fit for their intended uses and purposes.

82. Defendants expressly and impliedly warranted through direct-to-consumer marketing, advertisements, and/or labels, that the PRODUCTS were safe and effective for reasonably anticipated uses, including use by women to their bodies.

83. At the time The Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the PRODUCTS, The Defendants knew or should have known of the uses for which the PRODUCTS were intended, including use by women for dusting their bodies, and as a part of a feminine hygiene routine, and impliedly warranted the PRODUCTS to be of merchantable quality and safe for such use.

84. The express and implied warranties made by these Defendants were false, misleading, and/or otherwise contained misrepresentations rendering these products unreasonably dangerous, defective, hazardous, and/or harmful when used and/or applied the manner, and for the purposes, intended and/or foreseeable.

85. Plaintiff relied on Defendants' express and/or implied representations as to the good and merchantability quality, and as to the safety and fitness of such products, in choosing to use those products and/or to be in areas in which those products were being used.

86. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, Plaintiff purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused her to develop Mesothelioma; Plaintiff was caused to incur, among other damages, medical bills, lost wages, and conscious pain and suffering.

87. Defendants designed, manufactured, assembled, fabricated and/or distributed the products in question in a defective condition and therefore breached an implied warranty of

fitness and an implied warranty of merchantability, in addition to various express warranties. The Defendants, as sellers, were merchants with respect to the products which they sold. In addition, these products were not fit for the ordinary purposes for which such goods are used. Defendants also had reason to know of the particular purpose for which these products would be used, as well as the knowledge that persons such as Plaintiff's would rely on the seller's skill to furnish suitable products.

88. Therefore, Defendants have breached the implied warranty of merchantability as well as the implied warranty of fitness for a particular purpose, in addition to various express warranties. Such breach or breaches of implied and express warranties by the Defendants was a proximate cause of the injuries and damages sustained by Plaintiff's.

AS AND FOR A FOURTH CAUSE OF ACTION SOUNDING IN STRICT LIABILITY

89. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below.

90. At all pertinent times, THE FOOT LOCKER DEFENDANTS and PUBLIX sold and distributed Asbestos contaminated products to the end users, including to the Plaintiff to powder their faces and bodies.

91. At all pertinent times, The Defendants knew and/or should have known of the unreasonably dangerous and carcinogenic nature of the asbestos contaminated talc it was mining, processing, and/or selling and distributing.

92. At all pertinent times, The Defendants, CHANEL, INC., THE FOOT LOCKER DEFENDANTS, and PUBLIX, were mining, milling, manufacturing, marketing, testing, promoting, selling and/or distributing the PRODUCTS in the regular course of business.

93. At all pertinent times, The Defendants sold or otherwise placed their talc

products, contaminated with asbestos, into the stream of commerce in a defective, unsafe and unreasonably dangerous condition.

94. The Defendants knew or otherwise expected that their talc products, contaminated with asbestos, would reach the ultimate user/consumer of their talc products, including this Plaintiff's, without substantial change from, or alteration of, the condition in which these products were originally manufactured and sold.

95. The Defendants knew, or in the exercise of reasonable diligence, should have ascertained that the Plaintiff and others similarly situated would be the ultimate users/consumers of Defendants' talc products, contaminated with asbestos, or would be exposed to their talc products, contaminated with asbestos.

96. The Defendants knew that their PRODUCTS would be used without inspection for defects and, by placing them in the marketplace, represented to the public at large and more particularly this Plaintiff that these products could be utilized safely, in the manner, and for the purpose for which they were intended.

97. The Defendants knew that their PRODUCTS were defective and were incapable of being made safe for their ordinary and intended uses and purposes and that these defects were not discoverable by the Plaintiff, or others similarly situated, in the exercise of reasonable care nor were the dangers and hazards of these products perceivable to the Plaintiff and others similarly situated such that she might otherwise have averted her injury by the exercise of reasonable care.

98. At pertinent times, Plaintiff DOLORES GOMEZ used the PRODUCTS to powder her body which is a reasonably foreseeable use.

99. At all pertinent times, all Defendants in this action knew or should have known that the use, inhalation, ingestion, and exposure to talcum powder based products, contaminated with asbestos, significantly increases the risk of Mesothelioma.

100. At all pertinent times, including the time of sale and consumption, the PRODUCTS, when put to the aforementioned reasonably foreseeable use, were in an unreasonably dangerous and defective condition because they failed to contain adequate and

proper warnings and/or instructions regarding the increased risk of Mesothelioma associated with the use of the PRODUCTS by women to powder their bodies. Defendants themselves failed to properly and adequately warn and instruct the Plaintiff as to the risks and benefits of the PRODUCTS given the Plaintiff's need for this information.

101. Had the Plaintiff received a warning that the use of the PRODUCTS would have significantly increased her risk of Mesothelioma, she would not have used the same. As a proximate result of The Defendants' design, manufacture, marketing, sale, and distribution of the PRODUCTS, Plaintiff has suffered personal injuries, economic and non-economic damages, including pain and suffering.

102. The development of Mesothelioma by the Plaintiff was the direct and proximate result of the unreasonably dangerous and defective condition of the PRODUCTS at the time of sale and consumption, including their lack of warnings; Plaintiff was caused to incur, among other damages, medical bills, lost wages, and conscious pain and suffering.

103. The Defendants' PRODUCTS were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to other express factual representation upon which the Plaintiff justifiably relied in electing to use the products. The defect or defects made the products unreasonably dangerous to those persons, such as Plaintiff, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of the Plaintiff injuries and damages.

104. The Defendants' PRODUCTS failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of Mesothelioma with the use of their products by women. The Defendants continue to market advertise, and expressly represent to the general public that it is safe for women to use their PRODUCT regardless of application. These Defendants continue with these marketing and advertising campaigns despite having scientific knowledge that their PRODUCTS increase the risk of Mesothelioma.

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105. Defendants' actions described above were performed willfully, intentionally, and with reckless disregard of the life and safety of the Plaintiff and the public.

106. As a direct and proximate result of the actions and inactions of the Defendants as set forth above, Plaintiff was exposed to asbestos in the PRODUCTS and suffered the injuries and damages set forth hereinabove.

107. Defendants sold or otherwise placed their talc products, contaminated with asbestos, into the stream of commerce in a defective, unsafe and unreasonably dangerous condition.

108. Defendants knew or otherwise expected that their PRODUCTS would reach the ultimate user/consumer of their PRODUCTS, including this Plaintiff, without substantial change from, or alteration of, the condition in which these PRODUCTS were originally manufactured and sold.

109. Defendants knew, or in the exercise of reasonable diligence, should have ascertained that the Plaintiff and others similarly situated would be the ultimate users/consumers of Defendants' PRODUCTS or would be exposed to their talc products, contaminated with asbestos.

110. Defendants knew, or reasonably should have known, that their PRODUCTS would be used without inspection for defects and, by placing them in the marketplace, represented to the public at large and more particularly this Plaintiff that these products could be utilized safely, in the manner, and for the purpose for which they were intended.

111. Defendants knew that their PRODUCTS were defective and were incapable of being made safe for their ordinary and intended uses and purposes and that these defects were not discoverable by the Plaintiff, or others similarly situated, in the exercise of reasonable care nor were the dangers and hazards of these products perceivable to the Plaintiff and others similarly situated such that she might otherwise have averted her injury by the exercise of reasonable care.

112. In light of the above, the ordinary and foreseeable use of Defendants' PRODUCTS constituted a dangerous and hazardous activity and placed the ultimate user/consumer, and this Plaintiff more particularly, at an unreasonable risk of harm and injury.

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113. The risks and dangers created by the use of Defendants' products outweighed the utility of these products.

114. As a consequence of the defects of Defendants' products and the Plaintiff's resultant inhalation, ingestion, absorption and exposure to asbestos fibers resulting from the ordinary and foreseeable use of those talc products, contaminated with asbestos, Plaintiff has sustained serious and permanent injuries as more fully described herein.

115. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint contained in the paragraphs above, with the same force and effect as if fully set forth herein.

116. The PRODUCTS are defective in their design or formulation in that they are not reasonably fit, suitable, or safe for its intended purpose and/or its foreseeable risks exceed the benefits associated with its design and formulation.

117. At all times material to this action, the PRODUCTS was expected to reach, and did reach, consumers in the State of New York and throughout the United States, including Plaintiff's herein, without substantial change in the condition in which it was sold.

118. Defendants are strictly liable to Plaintiff by reason of the following:

(a) Defendants mined, milled, processed, imported, converted, compounded, designed, manufactured, assembled, marketed, supplied, distributed, sold, used and/or otherwise placed in the stream of commerce products containing asbestos;

(b) Defendants knew and had reason to know that DOLORES GOMEZ and other persons similarly situated would be users or consumers of their asbestos products or would otherwise be exposed to asbestos therefrom;

(c) Defendants mined, milled, processed, imported, converted, compounded, designed, manufactured, assembled, marketed, supplied, distributed, sold, used and/or otherwise placed in the stream of commerce products in a defective condition and that were unreasonably dangerous to DOLORES GOMEZ and other persons similarly situated;

(d) Throughout the many years that DOLORES GOMEZ and other similarly situated

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persons were exposed to asbestos from Defendants products, said products reached the users and consumers without substantial change in the condition in which they were mined, milled, processed, imported, converted, compounded, designed, manufactured, assembled, marketed, supplied, distributed, sold, used and/or otherwise placed in the stream of commerce;

(e) The ordinary and foreseeable use of Defendants products constituted a dangerous and ultra-hazardous activity and created an unreasonable risk of injury to users and bystanders; and

(f) Defendants products were defective in that they were incapable of being made safe for their ordinary and intended use and purpose, and Defendants failed to give any warnings or instructions (or failed to give adequate or sufficient warnings or instructions) about the risks, dangers and harms associated with exposure to asbestos from their products.

119. As a consequence of the defective conditions of Defendants' products, DOLORES GOMEZ inhaled, absorbed, and/or ingested asbestos during the intended, ordinary, and foreseeable use of said products, and Plaintiff were caused to suffer the injuries and damages alleged in this complaint.

120. At all times material to this action, the PRODUCTS were designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective and unreasonably dangerous condition at the time it was placed in the stream of commerce.

121. In addition, at the time the subject product left the control of the Defendants, there were safer, practical, and feasible alternative designs that would have prevented and/or significantly reduced the risk of Plaintiff's injuries without impairing the reasonably anticipated or intended function of the product. These safer alternative designs were economically and technologically feasible, and would have prevented or significantly reduced the risk of Plaintiff's injuries without substantially impairing the product's utility.

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122. Defendants, by virtue of the foregoing, are strictly liable to the Plaintiff for injuries and illnesses resulting from the defects and dangerous propensities of their talc products contaminated with asbestos alleged herein.

FIFTH CAUSE OF ACTION
STRICT LIABILITY – MANUFACTURING DEFECT

123. Plaintiff repeats, reiterate sand incorporates herein by reference the prior and subsequent allegations of this complaint with the same force and effect as if hereinafter set forth at length.

124. Talc Defendants mined, milled, processed, imported, converted, compounded, designed, manufactured, assembled, marketed, supplied, distributed, sold, used and/or otherwise placed in the stream of commerce products to which DOLORES GOMEZ was exposed through the intended and/or reasonably foreseeable uses thereof.

125. The design specifications, formulae, and/or performance standards applicable to Talc Defendants' product's did not incorporate, include or otherwise involve asbestos.

126. Because they contained asbestos, said products deviated from the design specifications, formulae, performance standards, and/or from otherwise identical units manufactured to the same manufacturing specifications or formulae.

127. Said manufacturing defect existed before the products left the Talc Defendants control.

128. As a result of said manufacturing defect, Defendants products contained asbestos and, therefore, were hazardous and not reasonably safe for their intended or reasonably foreseeable uses.

129. As a direct and proximate result of the manufacturing defect of Talc Defendant's products, DOLORES GOMEZ inhaled and/or otherwise ingested asbestos through or by the intended, ordinary and/or foreseeable use of said products, which caused her Mesothelioma, Plaintiffs' consequential injuries and damages alleged in this complaint.

SIXTH CAUSE OF ACTION STRICT

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LIABILITY – DESIGN DEFECTS

130. Plaintiff repeats, reiterates, and incorporates herein by reference the prior and subsequent allegations of this complaint with the same force and effect as if hereinafter set forth.

131. Talc Defendants mined, milled, processed, imported, converted, compounded, designed, manufactured, assembled, marketed, supplied, distributed, sold, used and/or otherwise placed in the stream of commerce products to which DOLORES GOMEZ was exposed through their intended and/or reasonably foreseeable uses.

132. Talc Defendants' products were not reasonably fit, suitable or safe for their intended purpose because they were designed in a defective manner by incorporating as an ingredient talc that contained or could contain carcinogens, including asbestos, and Talc Defendants did not employ a reasonable safer design or alternative, such as corn starch or other talc substitutes.

133. The risks and dangers created by the Talc Defendants' products outweighed the utility of these products.

134. The defects in Talc Defendants' products existed before they left Talc Defendants' control, and the products had not thereafter been substantially altered in a way that was not expected. DOLORES GOMEZ was a foreseeable user and the kind of person who was reasonably expected to come into contact with Talc Defendants' products.

135. As a direct and proximate result of the design defects of Talc Defendants' products, DOLORES GOMEZ inhaled and/or otherwise ingested asbestos through or by the intended, ordinary and/or foreseeable use of said products, which caused her Mesothelioma and Plaintiffs' consequential injuries and damages alleged in this complaint.

AS AND FOR A SEVENTH CAUSE OF ACTION NEGLIGENT MISREPRESENTATION

136. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below.

137. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiff, end users, and the public, that the PRODUCTS had been tested

and found to be safe and effective for use to the body. The representations made by Defendants, in fact, were false.

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

139. Defendants breached their duty in representing that the PRODUCTS have no serious side effects.

140. As a foreseeable, direct and proximate result of the negligent misrepresentation of Defendants as set forth herein, Defendants knew, and had reason to know, that the PRODUCTS had been insufficiently tested, or had not been tested at all, and that they lacked adequate and accurate warnings, and that it created a high risk, and/or higher than acceptable risk, and/or higher than reported and represented risk, of adverse side effects.

141. As a proximate result of Defendants' conduct, Plaintiff developed Mesothelioma, was caused to incur medical bills, lost wages, and conscious pain and suffering.

AS AND FOR AN EIGHTH CAUSE OF ACTION FRAUDULENT CONCEALMENT

142. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below.

143. At all times mentioned in this Complaint, Defendants had the duty and obligation to disclose to Plaintiff, the true facts concerning the PRODUCTS, that is, that the PRODUCTS was dangerous and defective, and likely to cause serious health consequences to users, including the injuries as described in this Complaint.

144. Defendants concealed important facts from Plaintiff which facts include, but are not limited to, the fact that Defendants:

a. Failed to disclose any connection between use of the PRODUCTS and the development of Mesothelioma;

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b. Did not inform users of studies related to use of the PRODUCTS and the development of Mesothelioma, and/or

c. Concealed from users that numerous adverse events have been reported linking use of the PRODUCTS to Mesothelioma.

145. At all times mentioned in this Complaint, Defendants made affirmative representations to Plaintiff prior to the day the PRODUCTS was first purchased by Plaintiff that the PRODUCTS were safe as set forth above while concealing the material facts set forth herein.

146. At all times mentioned in this Complaint, Defendants had the duty and obligation to disclose to Plaintiff the true facts concerning the PRODUCTS, which facts include, but are not limited to, the fact that the PRODUCTS was dangerous and likely to cause serious health consequences to users, including Mesothelioma.

147. At all times mentioned in this Complaint, Defendants intentionally, willfully, and maliciously concealed and/or suppressed the facts set forth above from Plaintiff, with the intent to defraud as alleged herein.

148. At all times mentioned in this Complaint, Plaintiff was not aware of the concealed facts set forth herein. Had she been aware of those facts, she would not have acted as she did, that is, the PRODUCTS would not have been purchased and used by Plaintiff and Plaintiff would not have been injured as a result.

149. Had Plaintiff been informed of the deaths and serious injuries associated with the PRODUCTS usage, Plaintiff would have immediately discontinued use of the PRODUCTS.

150. As a proximate result of the concealment or suppression of the facts set forth above, Plaintiff reasonably relied on Defendants' deception and, Plaintiff purchased the PRODUCTS and subsequently sustained injuries and damages as set forth in this Complaint. Defendants' concealment was a substantial factor in causing the injuries described herein.

151. As a result of the foregoing fraudulent and deceitful conduct by Defendants, and each of them, Plaintiff, for the sake of example and by way of punishing Defendants, seeks punitive damages according to proof.

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152. As a result of the foregoing fraudulent and deceitful conduct by Defendants, and each of them, Plaintiff was caused to suffer the herein described injuries and damages.

AS AND FOR A NINTH CAUSE OF ACTION CIVIL CONSPIRACY/CONCERT OF ACTI ON

153. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

154. Upon information and belief, the Cosmetic, Toiletries and Fragrance Council (CTFC) knowingly and willfully conspired with CHANEL, INC., THE FOOT LOCKER DEFENDANTS, and PUBLIX. This scheme to engage in a fraudulent marketing scheme included, among other things, that Defendant and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated, and/or conspired among themselves to cause Plaintiff's injuries, disease, and/or illnesses by exposing the Plaintiff's to harmful and dangerous PRODUCTS. Cosmetic, Toiletries and Fragrance Council and the Defendants further knowingly agreed, contrived, confederated, and/or conspired to deprive Plaintiff of the opportunity of informed free choice as to whether to use the PRODUCTS or to expose her to said dangers. Defendant committed the above described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to the PRODUCTS.

155. Plaintiff suffered serious injuries and pecuniary losses as a proximate result of the conspiracy described herein.

156. For decades, The Defendants mined, milled, processed, imported, converted, compounded, designed, manufactured, assembled, marketed, supplied, distributed, sold, used and/or otherwise placed in the stream of commerce products composed of talc that were sold and marketed as safe for daily use by consumers on their person to give off a pleasant smell, mask odors, prevent chaffing and/or absorb moisture. The Defendants' products were advertised as healthful for babies, children and adults to be applied regularly to maintain freshness, keep skin soft, mask odors with a floral fragrance, prevent chaffing and/or absorb moisture.

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157. The Defendants and CTFC made false statements to Plaintiff, the general public, news media and government agencies that exercise regulatory authority over The Defendants, including the U.S. Food & Drug Administration (FDA) and the National Institute of Occupational Health and Safety (OSHA).

158. The Defendants and CTFC, since at least the early 1900s, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos, in talc and that demonstrated the existence of health hazards to those exposed to asbestos-containing talcum powder products.

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

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

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

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

163. The Defendants and their affiliates, employees, agents and/or suppliers were members of the National Safety Council. In March of 1933, Waldemar C. Dreesen of the United States Public Health Service reported to the National Safety Council the results of a study conducted among tremolite, talc and slate workers. The study indicated that the talc was a hydrous calcium magnesium silicate, being 45% talc and 45% tremolite, and the National Safety Council stated The results of the study seemed to indicate a relationship between the amount of dust inhaled and the effect of this dust on the lungs of the workers. As early as 1934, the National Safety Council was publishing information stating that a cause of severe pulmonary injury is asbestos, a silicate of magnesium. In the September 1935 issue of National Safety News, an article entitled No Halfway Measures in Dust Control by Arthur S. Johnson reported lowered lung capacity resulting from asbestosis and similar conditions that developed from exposure to excess of many mineral dusts relatively low in free silica content. The article further noted that claims for disabilities from workers who alleged exposure to clay, talc, emery, and carborundum dusts had claims prosecuted successfully. The article concluded that in the absence of adequate diagnoses, occupational histories and a more satisfactory method of adjudicating claims than prosecution at common law, we must conclude that it is necessary to find a practical method for controlling all mineral dusts.198. In 1936, the National Safety Council published an article entitled Lesser Known Facts About Occupational Diseases stating that exposure to asbestos fibers, present in the weaving and grinding of dry asbestos material offers another type of dust which may cause fatalities among workers.In1958, The New York Department of Labor published Industrial Code Rule No. 12 establishing regulations applying to all employees and employers relating to dangerous air contaminants and listing both asbestos and talc as such substances.

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

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

166. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. The Defendants and CTFC, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers associated with cosmetic talcum powder products, such as The Defendants products.

167. In 1968, a scientific study of store-bought, commercially available talcum powders conducted by the Occupational Health Program, National Center for Urban Industrial Health, was published and presented by the American Industrial Hygiene Association revealing that, contrary to popular belief, talcum powders were not entirely pure, but rather contained various fibrous minerals, including tremolite, anthophyllite, and chrysotile. This was not unexpected, as the study explains, because these types of fibers are often present in fibrous talc mineral deposits.

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Available documents indicate that during the same year and in the years following, at least one company began testing store-bought talcum powders for asbestos content. Despite tests showing some commercial talcum powders contained asbestos, there is no evidence that positive results or the brand names of contaminated products were communicated to any governmental agency, the media or the public.

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

169. Soon thereafter, a symposium was held in August of 1971 at the FDA to discuss the issue of asbestos content of talcum powders with the talc industry, government officials, and doctors and scientists from Mt. Sinai Hospital—then the epicenter of the medical and scientific study of asbestos. Among other statements, participants and attendees heard: that asbestos should be banned in talcum powders; models should be set up to measure the levels exposure to asbestos experienced by persons using talcum powder containing asbestos at the lowest level of microscopic detection; and that finding asbestos in talc and talcum powder is extremely difficult, and the only truly reliable way to determine the asbestos content of talc and talcum powder is through TEM and electron diffraction. The Defendants and CTFC, citing costs as well as their fear of the public learning talc was contaminated with asbestos, ignored and completely rejected any measures to meaningfully test talc products to make sure they were free from asbestos and other carcinogens.

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

171. Contemporaneously, evidence began to emerge from testing conducted by

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various regulatory agencies revealing that asbestos was being found in food, beer and drugs, including intravenously injected medicines. In 1972, and later in 1973, the FDA filed notices of proposed rulemaking requiring talc used in food, food packing and drugs to be asbestos-free. These were some of the same grades of talc used by The Defendants.

172. The talc industry's response, including that of The Defendants, was swift and well-coordinated through CTFC, an exclusive lobbying and advocacy group representing the cosmetics industry that conspired and worked in concert with The Defendants to purposely create a flawed, voluntary testing and surveillance methodology for detecting asbestos in talc and block efforts to label and warn consumers regarding the dangers associated with the talc products, including The Defendants products.

173. Regarding the FDAs proposed 1972 ruling-making, the FDA Director of Product Development and Cosmetics, Dr. Schaffner, invited representatives of the talc industry to a meeting in August of 1972 to discuss the results of Dr. Lewin's study and inform them that the FDA was preparing to release a Proposed Statement of Policy On Asbestos in Cosmetics Containing Talc Dr. Schaffner explained that he was duty-bound and must publicize the brand names of the talcum powders that contained asbestos. CTFCs president, Dr. Merritt, strongly objected to the FDA alerting the general public and publishing the brand names of the talcum powders, as it would cause the manufactures economic hardship. Dr. Merritt also threatened to sue the FDA to prevent the disclosure of the brand names. Unsurprisingly, the FDA, The Defendants and CTFC never revealed or publicized the brand names of the talcum powders that contained asbestos, much to the detriment of the Plaintiff's and the general public.

174. In 1973, CTFC created a talc subcommittee and the Scientific Advisory Committee to develop a testing methodology for detecting asbestos in talc. Initially, CTFC designated a group of its members to tests talc grades used in talcum powder utilizing the methodology proposed by the FDA in its notice of rulemaking. Six samples of talc used in commercially available talcum powders, plus one talc sample purposely spiked with tremolite and chrysotile, were circulated mong the members, including representatives of The Defendants. Of the eight participating

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members, four found asbestos in every sample, three did not find asbestos in any sample (including the spiked sample), and one found asbestos only in the spiked sample. In conclusion, all members agreed that the best and most reliable method of detecting asbestos in talc is not optical microscopy, but rather TEM and electron diffraction. The same members, however, dispensed with this analytical method, claiming TEM and electron diffraction equipment was too expensive, despite The Defendants then owning or having unfettered access to same.

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

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

177. Beginning in 1975 and 1976, researchers at New York Air Resources Board, Mt. Sinai School of Medicine, and the FDA became increasingly concerned that CTFC, The Defendants were slow to address the issue of asbestos in talc and talcum powders. The Defendants had not issued any recalls, provided consumer warnings, informed the FDA of any effort to ensure that talcum

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powders on the market did not contain asbestos, or developed a reliable methodology or protocol for ensuring that talc and talcum powder did not contain asbestos.

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

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

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

181. The Defendants and third parties collectively met with and corresponded with CTFC, as well as collectively met with the FDA, to individually and collectively advocate for the use of voluntary XRD testing of miniscule portions of the tons of talc to be used in consumer products. Talc Defendants and Talc Supplier Defendants voluntary method—that was developed collectively by The Defendants and CTFC and advocated to the FDA in lieu of regulations requiring asbestos labeling or warnings on talcum powder products—was inadequate because levels of asbestos contamination in talc commonly fell below the detection limit of XRD. The Defendants and CTFC also knew that asbestos contamination was not uniformly distributed, such

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that the miniscule amounts tested would not reveal the true level of contamination in talc products, such as those to which DOLORES GOMEZ was exposed.

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

183. The Defendants and CTFC made and published such representations, claiming that their testing method was adequate, that they were ensuring that talcum powder products were safe, and that the talc reaching consumers was safe, despite having substantial knowledge and evidence to the contrary. The Defendants intentionally and knowingly did so to avoid FDA regulations that may have required them to place warnings regarding the asbestos content of their products, and thereby inform the public, including Plaintiff's, that talc-containing products contained asbestos.

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

185. CTFC, The Talc Defendants and Talc Supplier Defendants have represented to various news media outlets and the public at large that their products are asbestos-free, when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods. No asbestos detected means something much different than no asbestos, but due to Talc Defendants' and Talc Supplier Defendants' repeated conflation of the terms, the public has been lead to erroneously believe talc products are sage. Furthermore, since

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Talc Defendants, Talc Supplier Defendants and CTFC did not have sufficient testing protocols in place to support the claims that talc products were safe or asbestos-free, such statements were recklessly made, as they had no reason to believe them.

186. Between 1970 and the 1990s, tests conducted by and on behalf of The Defendants and the talc industry continued to show that talc and talcum powder products contained asbestos. None of these positive tests have ever been produced or made known to any regulatory agency, and knowledge of their existence is only because of civil litigation.

187. The Defendants' and CTFCs failure to disclose these positive results and the inadequacies of their testing protocols continued through the 1980s, 1990s and 2000s, even when various government agencies raised concerns about the safety of talc, including the issue of asbestos content.

188. To this day, many talc-containing products presently on the market contain asbestos. Instead of publicizing this fact, The Defendants and CTFC continue to deny all the above to protect their pecuniary interests, to the severe detriment of the public in the United States and worldwide, including Plaintiff.

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

190. The Defendants (and other entities in the talc industry and cosmetic industries, including the CTFC), individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in both their

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finished products as well as talc shipments from Talc Supplier Defendants and other sources that were used to produce finished products.

191. The Defendants, and even the outside laboratory McCrone Associates, sent letters to CTFC, to be and which were forwarded collectively to the FDA, stating that results of testing of talc used by them after 1972 had not revealed the presence of amphibole or chrysotile asbestos, when in fact all of these entities had received or performed tests indicating the contrary by 1976, when such false representations were made. The Defendants made and published such representations claiming that their testing method was adequate, they were ensuring that talcum powder products were safe, and that their testing of talc reaching consumers was safe, despite knowing the contrary. The Defendants intentionally and knowingly did so to avoid FDA regulations that may have required the The Defendants to place warnings regarding the asbestos content of their products, and thereby inform the public, including Plaintiff, that talcum powder products contained carcinogens, including asbestos, and were therefore dangerous.

192. After 1976, The Defendants and the CTFC continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos in talc.

193. The Defendants failed to place any warning on their talc and talcum powder products or ever disclose the fact that these products contained carcinogens, including asbestos, at any point, up to and including the present, despite the clear hazard and direct information that their products did and continue to contain such carcinogens.

194. The Defendants and CTFC, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, distribution and use of talcum powder products, and controlled the level of knowledge and information available to the public, including Plaintiff, regarding the hazards of exposure to carcinogens, including asbestos, from talc and talc-containing products.

195. The Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including DOLORES GOMEZ, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos in their talc

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knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder products, including those to which DOLORES GOMEZ was exposed.

197. The Defendants and CTFC, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data

and embarked upon a plan of deception intended to deprive the public at large, including Plaintiff's, of alarming medical and scientific findings, many of which remained in their exclusive possession and under their exclusive control.

198. The Defendants and CTFC conspired and/or acted in concert with each other and/or with other entities through agreement and consciously parallel behavior: (a) to withhold from users of their products—and from persons who The Defendants knew and should have known would be exposed thereto—information regarding the health risks of inhaling and/or ingesting asbestos and other carcinogens contained in talc and talcum powder products;

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

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

(d) to falsely represent that talc and talcum powder products, including those of Talc Defendants and Talc Supplier Defendants, were safe for use by consumers.

199. DOLORES GOMEZ reasonably and in good faith relied upon the false and fraudulent representations, omissions and concealments made by The Defendants and CTFC regarding the hazards of talc and talcum powder products that contained asbestos and other carcinogens and was, therefore, deprived of an opportunity to make informed decisions concerning use of, exposure to and contact with said products.

200. CTFC was founded in 1894 as the Manufacturing Perfumers Association (MPA).

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MPA was established to coordinate industry opposition to legislation that would increase the tariff on imported raw materials, affecting the cost of producing toilet goods. In 1922, MPA changed its name to American Manufacturers of Toilet Articles (AMTA) extending its membership eligibility to companies beyond perfumers. By 1924, AMTA membership included 115 active members and 105 associate members, including many of The Defendants. In 1970, AMTA changed its name to CTFC. In 2007, CTFC changed its name to PCPC. Many of The Defendants were members of or otherwise contributed resources and/or financial support to the AMTA, CTFC and/or PCPC. PCPC's more than 600 member companies manufacture, distribute, and supply the vast majority of personal care products marketed in the United States.

201. As indicated above, asbestos has become a commercial and legal term, rather than a geological or scientific term, referring to six now-regulated magnesium silicate minerals that occur in fibrous form, including the serpentine mineral chrysotile, and the amphibole minerals actinolite, anthophyllite, tremolite, amosite and crocidolite. XRD determines the crystalline structure of minerals by measuring the diffraction angles of an X-ray beam that has passed through the mineral. While XRD can identify amphibole minerals, it cannot determine if the mineral identified is fibrous or not, and thus it alone is not reliable for asbestos identification. TEM is the most sensitive and reliable instrument for detection and identification of all asbestos types in all size ranges. Finally, an energy-dispersive X-ray detector (EDX) interfaced with a TEM yields elemental composition, confirming the asbestos fiber's identity. Only TEM can detect and identify the very thin asbestos fibers that are the greatest health hazard. As such, it is the necessary final step to confirm an absence of asbestos contamination. By the 1970's, TEM was already established as a reliable method for asbestos identification. McCrone Associates, the laboratory selected by several talc producers—including many of The Defendants—to analyze their products, was already using TEM for asbestos analysis.

202. An article by McCrone and Stewart from 1974 describes the advantages of TEM

for asbestos analysis and states that the TEM only recently installed in our laboratory will undoubtedly be the ideal instrument for the detection and identification of very fine asbestos fibers.

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

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

205. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. CTFC, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, including many of The Defendants herein, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers associated with cosmetic talcum powder products, such as The Defendants products. On September 3, 1973, the FDA sent CTFC a letter regarding various means of measuring asbestos in talc, stating that convention methods employing X-ray diffraction or differential thermal analysis are not sufficiently reliable to produce quantitative results of the desired precision. The FDA further advised CTFC that it has been exploring refractory optical microscopy as a means of measuring asbestos in talc. CFTC responded to the FDAs public notice on its proposed optical microscopy method on December 26, 1973. CTFC contended that the proposed method was not reliable for the detection of asbestos in talc, recommended a collaborative effort between FDA and industry to develop such a method, and urged deferment of the proposed rule. Minutes of CTFCs Talc Subcommittee meeting on March 15, 1976, indicate that the FDAs Dr. Shaffner suggested the possibility of having industry report periodically on the results of its analysis to the FDA. Dr. Estrin of CTFC responded that the subcommittee would give serious consideration to this suggestion.

206. CTFC Method J4-1, published on October 7, 1976, states that TEM-SAED offers greater sensitivity, but is not presented since it is unsuitable for normal quality control applications. The published method, rather, relies on XRD with the level of detection of amphibole by this method [being] 0.5% and above. CTFC met with and corresponded with The Defendants and third parties, to individually and collectively advocate to the FDA for the use of inadequate XRD testing on miniscule portions of the tons of talc obtained from the mining sources to be used in the consumer products, followed by fewer periodic tests by TEM. This voluntary method was developed by CTFC, The Defendants, and was advocated to the FDA by CTFC, The Defendants in lieu of regulations requiring labeling and warnings on talcum powder products, even though CTFC, The Defendants knew that the J4-1 method would not reveal the true level of

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

207. CTFC, as well as The Defendants and other entities in the talc industry and cosmetic industries, individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in The Defendants' and other CTFC members finished products as well as talc shipments from talc suppliers and other sources that were used to produce finished products. Instead, CTFC sent letters to the FDA stating that results of testing of talc used by them after 1972 had not revealed the presence of amphiboles or chrysotile, when in fact all of these entities had received or performed tests indicating the contrary by 1976, when such intentionally false misrepresentations were made. CTFC, The Defendants made and published such representations claiming that their testing method was adequate, they were ensuring that talcum powder products were safe, and that their testing of talc reaching consumers was safe, despite knowing the contrary. CTFC intentionally and knowingly did so to avoid FDA regulations that may have required The Defendants and others to place warnings regarding the presence of asbestos and other carcinogens in talc products, and thereby inform the public, including Plaintiff's, that talcum powder products contained asbestos and were, therefore, dangerous.

208. Minutes of CTFCs Talc Subcommittee from February 24, 1975, stated it was agreed, however, that chrysotile is never found in cosmetic talcs, based on numerous analyses by several investigators…When referring to the challenge of chrysotile detection, an article entitled Talc in the January/March 1976 CTFC Cosmetic Journal, states that "The only known backup method for a positive identification in this event, is [TEM] with selected area diffraction. However, despite many efforts, the committee had been unable to find a sample of cosmetic talc

containing naturally occurring asbestos…it was asked, why should we test for chrysotile if there isn't any." CTFC's Specification for Cosmetic Talc, revised on October 7, 1976, falsely represented that no fibrous asbestos was detected in cosmetic talc. Even after 1976, CTFC, The Defendants continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos and other carcinogens in the talc being used to manufacture cosmetic products. However, CTFC continued to represent that no asbestos was detected in cosmetic talc. This material representation adversely and directly impacted the FDAs attempt to adequately test consumer talc for asbestos and regulate cosmetics. The most sensitive method of identifying or detecting asbestos in cosmetic talc, TEM-SAED, was not used because CTFC represented that its ultra-sensitivity could be a problem and that it was too expensive to use. Instead, its J4-1 method relied on XRD alone for detection of asbestos at greater than 0.5%, a concentration that could allow more than a billion asbestos fibers per gram of talc to be passed off as asbestos-free.

209. The FDA, and ultimately DOLORES GOMEZ, directly and/or indirectly relied upon CTFC's false representations regarding the safety of cosmetic talc. In fact, a FDA letter dated January 11, 1979, states in cooperation with scientists from industry, our scientists have been making progress in the development of such regulatory methods. The continuing lack of FDA awareness regarding the CTFC, The Defendants misrepresentations was obvious seven years later. In a response to a citizen petition to require an asbestos warning label on cosmetic talc, a July 11, 1986, the FDA states that an analytical methodology was sufficiently developed to ensure that such talc [is] free of fibrous amphibole CTFCs J4-1 method has continued for the past four decades to be the cosmetic talc industry's method for ensuring asbestos-free talc. The use of TEM, recognized by the CTFC as offering greater sensitivity for asbestos, continued to increase over the following decades as its advantages were applied to more matrices. In 1990, Kremer and Millette published a TEM method for analysis of asbestos in talc with a theoretical detection limit of about 0.00005%. Despite such improvements in analytical techniques, the cosmetic talc industry continues, four decades later, to use and promote its antiquated and wholly inadequate

J4-1 method.

210. CTFC, The Defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, marketing, distribution and use of asbestos-containing talcum powder products, and controlled the level of knowledge and information available to the public regarding the hazards of exposure to asbestos and other carcinogens from talc and talc-containing products

211. CTFC, The Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including DOLORES GOMEZ and her family members, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos from their talc and talc-containing products.

212. CTFC, The Defendants, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder, and specifically talc and talcum powder used in the production of products to which DOLORES GOMEZ was exposed.

213. CTFC, The Defendants, through agreement and consciously parallel behavior, suppressed, altered, changed, destroyed and/or revised reports, data, tests, studies and other documents regarding the potential presence of asbestos and other carcinogens in talc and talc-containing products, including Talc Defendants and Talc Supplier Defendants' products to which DOLORES GOMEZ was exposed.

214. The Defendants, both acting individually and in concert with others, including the CTFC, violated the common law duty of care owed to Plaintiff's or otherwise engaged in intentionally culpable activity that caused Plaintiff to suffer severe injuries and damages.

215. The actions and inactions of The Defendants and CTFC, independently and collectively, constitute a pattern or practice of intentionally wrongful conduct and/or malice resulting in injuries to Plaintiff as described in this complaint.

216. By reason of the foregoing, The Defendants and the CTFC are jointly and severally liable to Plaintiff for the injuries and damages sustained by virtue of their fraudulent and intentionally deceptive actions and conspiracy to commit such actions.

JOINT AND SEVERAL LIABILITY

217. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below.

218. The limitations on liability set forth in CPLR 1601 do not apply because certain exceptions/exemptions apply.

219. Plaintiff sustained a "grave injury" as defined by NY Workers Compensation Law section 11. CPLR 1602(4).

220. Plaintiff alleges a cause of action requiring proof of intent. CPLR 1602(5).

221. Defendant acted with reckless disregard for the safety of others. CPLR §1602(7).

222. Defendant unlawfully released into the environment a substance hazardous to public health, safety or the environment, a substance acutely hazardous to public health, safety or the environment or a hazardous waste, as defined in articles 37 and 27 of NY Environmental Conservation Law and in violation of Article 71 of such law. CPLR 1602(9).

223. Plaintiff brings a products liability claim, the manufacturer of the product is not a party to the action and jurisdiction over the manufacturer could not with due diligence be obtained and that if the manufacturer were a party to the action, liability for claimant's injury would have been imposed upon said manufacturer by reason of the doctrine of strict liability, to the extent of the equitable share of such manufacturer. CPLR 1602(10).

224. Defendants acted knowingly or intentionally, and in concert, to cause the acts or failures upon which liability is based. CPLR 1602(11).

225. Defendants have construed the article to create or enlarge actions for contribution or indemnity barred because of the applicability of the workers' compensation law of this state, any other state or the federal government, or NY General Obligations Law section 18-201.

PUNITIVE DAMAGES

226. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully set forth herein.

227. Plaintiff is entitled to punitive damages because Defendants' wrongful acts and/or omissions were wanton or in conscious disregard of the rights of others. Defendants misled both the medical community and the public at large, including Plaintiff, by making false representations about the safety and utility of the PRODUCTS and by failing to provide adequate instructions concerning their use.

228. Defendants acted maliciously, wantonly and recklessly, and demonstrated a conscious indifference and utter disregard of the health, safety and rights of others, by acting with an improper motive or vindictiveness and with outrageous or oppressively intentional misconduct, such actions representing a high degree of immorality and showing wanton dishonesty as to imply a criminal indifference to civil obligations, thereby warranting an award of punitive damages.

229. The Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

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

b. Despite their knowledge of the high risk of Mesothelioma associated with the PRODUCTS, The Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling;

c. Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of the PRODUCTS and the Plaintiff's. Defendants' conduct, as described herein, knowing the dangers and risks of the PRODUCTS, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference

to the safety of users of the PRODUCTS.

230. All of the Defendants have been aware for nearly forty (40) years of independent scientific studies linking the use of their PRODUCTS to the increased risk of cancer in women and to the deleterious effects of Asbestos since the early 1900's. Despite this overwhelming body of evidence all of the Defendants have failed to inform their consumers of this known hazard. As such, all of the Defendants should be liable for punitive damages to the Plaintiff.

231. As a direct and proximate result of the willful, wanton, evilly motivated and/or reckless conduct of the Defendants, the Plaintiff has sustained damages as set forth above.

PRAYER FOR RELEIF

WHEREFORE, Plaintiff prays for relief on the entire Complaint as follows:

1. Awarding compensatory damages to Plaintiff for past and future damages, including but not limited to pain and suffering for severe and permanent personal injuries sustained by the Plaintiff, health care costs, medical monitoring, together with interest and costs as provided by law.

2. Punitive and/or exemplary damages for the wanton, willful, fraudulent, reckless acts of the Defendants who demonstrated a complete disregard and reckless indifference for the safety and welfare of the general public and to the Plaintiff in an amount sufficient to punish Defendants and deter future similar conduct;

3. Awarding Plaintiff reasonable attorneys' fees;

4. Awarding Plaintiff the costs of these proceedings; and

5. Such other and further relief as this Court deems just and proper.

Dated: May 20, 2020

By: //s// Jason Weiner

Jason Weiner, Esq.
WEITZ & LUXENBERG, P.C.
Attorney for Plaintiff
700 Broadway
New York, New York 10003
(212) 558-5500

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The undersigned, an attorney admitted to practice in the Courts of the State of New York, shows:

Deponent is an associate of Weitz & Luxenberg, P.C., counsel for Plaintiffs in the within action; deponent has read the foregoing Amended Complaint and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes same to be true. This verification is made by deponent and not by Plaintiffs because Plaintiffs reside outside of the County of New York where deponent maintains her office.

Dated: May 20, 2020
New York, New York

//s// Jason Weiner
Jason Weiner, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE: NEW YORK CITY ASBESTOS LITIGATION

Index No.:

THIS DOCUMENT RELATES TO:

DOLORES GOMEZ,

Plaintiffs,

-against-

CHANEL, INC., *et al.*,

Defendants.

VERIFICATION

Jason Weiner, Esq., an attorney duly admitted to practice before the Courts of the State of New York, hereby certifies in accordance with 22 NYCRR Part 130-1.1-a of the Rules of the Chief Administrator that to the best of my knowledge, information and belief, which was formed after a reasonable inquiry under the circumstances, the presentation of the foregoing Amended Summons and Verified Complaint and their contents are not frivolous, as the term is defined in Part 130.

Dated: May 20, 2020
New York, New York

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By: //s//*Jason Weiner*
Jason Weiner, Esq.