

1 **V. DAMAGES**

2 As a direct and proximate result of the conduct described above, plaintiffs have
3 sustained the following damages:

4 **CLAIM ONE**
5 **STRICT LIABILITY (DESIGN DEFECT)**

6 Plaintiffs incorporate by reference each and every allegation set forth in the
7 preceding paragraphs as if fully stated herein.

8 Plaintiff brings this strict liability claim against Defendant City of Burlington for
9 approving a defective and unreasonably dangerous development.

10 At all times relevant to this litigation, Defendant City of Burlington engaged in the
11 business of developing, designing, marketing, and promoting the Tinas Coma development,
12 which was defective and unreasonably dangerous to consumers, including Plaintiffs, thereby
13 placing the development into the stream of commerce. These actions were under the ultimate
14 control and supervision of Defendant City of Burlington. At all times relevant to this
15 litigation, Defendant City of Burlington designed, researched, developed, produced, the
16 Tinas Coma plat that Plaintiffs were exposed to asbestos/talc.

17 At all times relevant to this litigation, Defendant City of Burlington's development
18 was designed, in an unsafe, defective, and inherently dangerous manner that is dangerous
19 for use by or exposure to the public, and, in particular, the Plaintiffs. The foreseeable risks
20 exceeded the alleged benefits associated with the design and formulation.

21 At all times relevant to this action, Defendant City of Burlington knew or had reason
22 to know that the Tinas Coma plat was defective and were inherently dangerous and unsafe
23 when used in the manner instructed and provided by Defendant. Consequently, dangerous
24 to an extent beyond that which an ordinary consumer would contemplate.

1 Defendant City of Burlington created and approved an unreasonably dangerous
2 environment in that it posed a grave risk of cancer and other serious illnesses when used in
3 the manner instructed and provided by Defendant.

4 Defendant City of Burlington knew or should have known its development could
5 result in cancer and other severe illnesses and injuries. Plaintiffs were exposed to
6 Defendants' development while living within the Defendant City of Burlington's
7 development, as described above, without knowledge of its dangerous characteristics.

8 Therefore, as a result of the unreasonably dangerous condition of its development
9 Defendant City of Burlington are strictly liable to Plaintiffs.

10 The defects in Defendant City of Burlington's development were substantial and
11 contributing factors in causing Plaintiffs injuries, and, but for Defendants misconduct and
12 omissions, Plaintiff would not have sustained their injuries.

13 Defendants conduct, as described above, was reckless. Defendant City of Burlington
14 risked the lives of persons working and living around the asbestos/talc within the Defendants
15 development, including Plaintiff, with knowledge of the safety problems associated with the
16 asbestos/talc, and suppressed this knowledge from the general public. Defendant City of
17 Burlington made conscious decisions not to redesign, warn or inform the unsuspecting
18 public. Defendants reckless conduct warrants an award of exemplary damages.

19 As a direct and proximate result of Defendant City of Burlington placing the Tinas
20 Coma development into the stream of commerce, Plaintiffs has suffered and continues to
21 suffer injuries, and will endured physical pain and discomfort, as well as economic hardship,
22 including considerable financial expenses.

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1 associated with asbestos/talc exposure. Defendant City of Burlington are held to the
2 knowledge of an expert in the field.

3 At the time the development was approved, Defendant City of Burlington could have
4 provided the warnings or instructions regarding the full and complete risks of building in
5 around the Tinas Coma development, because they knew or should have known of the
6 unreasonable risks of harm associated with asbestos/talc exposure.

7 At all times relevant to this litigation, Defendant City of Burlington failed to
8 investigate, study, test, or minimize the dangers to users and consumers of the dangerous
9 characteristics of the Tinas Coma development and specifically, the safety problems
10 associated with the asbestos/talc.

11 Despite the fact that Defendant City of Burlington knew or should have known that
12 asbestos /talc posed a grave risk of harm, they failed to exercise reasonable care to warn of
13 the dangerous risks associated with exposure. The dangerous propensities of the
14 carcinogenic characteristics of asbestos/talc, as described above, were known to Defendant
15 City of Burlington, or scientifically knowable to Defendant through appropriate research and
16 testing by known methods, at the time it developed Tinas Coma, and not known to end users
17 and consumers, such as Plaintiffs.

18 Defendant City of Burlington knew or should have known that the Tinas Coma
19 development created significant risks of serious bodily harm to consumers, as alleged herein,
20 and Defendant failed to adequately warn consumers and reasonably foreseeable users of the
21 risks of exposure to its development. Defendant City of Burlington have wrongfully
22 concealed information concerning the dangerous nature of asbestos/talc, and further made
23 false and/or misleading statements concerning the safety of asbestos/talc exposure.

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1 At all times relevant to this litigation, Defendant City of Burlington’s development
2 reached the intended consumers, handlers, and users or other persons coming into contact
3 with the asbestos/talc, including Plaintiffs, without substantial change in their condition as
4 designed, labeled, marketed by the Defendant.

5 Plaintiffs were exposed to asbestos /talc, as described above, without knowledge of
6 their dangerous characteristics.

7 At all times relevant to this litigation, Plaintiffs were exposed to the use of
8 Defendants development in its intended or reasonably foreseeable manner without
9 knowledge of its dangerous characteristics.

10 Plaintiffs could not have reasonably discovered the defects and risks associated with
11 the Tinas Coma asbestos/talc prior to or at the time of Plaintiffs exposure. Plaintiffs relied
12 upon the skill, superior knowledge, and judgment of Defendants.

13 Defendant City of Burlington knew or should have known that the minimal warnings
14 with the Tinas Coma asbestos/talc may have been adequate but failed to communicate
15 adequate information on the dangers and safe use/exposure.

16 Defendant City of Burlington should have provided or communicated relevant
17 warnings, hazards, and precautions that would have enabled those exposed such as Plaintiffs
18 to utilize safe and adequate protection. Instead, Defendant City of Burlington disseminated
19 information that was inaccurate, false, and misleading and which failed to communicate
20 accurately or adequately the comparative severity, duration, and extent of the risk of injuries
21 with use of and/or exposure to the Tinas Coma asbestos/talc; continued to aggressively
22 promote the efficacies of its development, even after it knew or should have known of the
23 unreasonable risks from use or exposure; and concealed, downplayed, or otherwise

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1 suppressed, through aggressive marketing and promotion, any information or research about
2 the risks and dangers of exposure to this day, Defendant City of Burlington have failed to
3 adequately and accurately warn of the true risks of Plaintiffs injuries associated with the
4 exposure to the developments asbestos/talc, a probable carcinogen.

5 As a result of their inadequate warnings, Defendant City of Burlington's defective
6 and unreasonably dangerous development, exposed the Plaintiffs to the Tinas Coma
7 asbestos /talc.

8 Defendant City of Burlington are liable to Plaintiffs for injuries caused their willful
9 failure, as described above, to provide adequate warnings or other clinically relevant
10 information and data regarding the appropriate use of its development and the risks
11 associated with the use of or exposure to the Tinas Coma asbestos /talc.

12 The defects in the Defendants development were substantial and contributing factors
13 in causing Plaintiffs injuries, and, but for Defendants misconduct and omissions, Plaintiffs
14 would not have sustained their injuries.

15 Had Defendant City of Burlington provided adequate warnings and instructions and
16 properly disclosed and disseminated the risks associated with the Defendants development,
17 Plaintiffs could have avoided the risk of developing injuries as alleged herein.

18 As a direct and proximate result of Defendant City of Burlington placing defective
19 its development into the stream of commerce and exposing Plaintiffs to them, Plaintiffs has
20 suffered and continues to suffer severe injuries, and has endured physical pain and
21 discomfort, as well as economic hardship, including considerable financial expenses for
22 future medical care and treatment. Plaintiffs will continue to incur these expenses in the
23 future.

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1 Accordingly, at all times relevant to this litigation, Defendant City of Burlington
2 knew or, in the exercise of reasonable care, should have known that use of or exposure to
3 asbestos/talc could cause or be associated with Plaintiffs injuries and thus created a
4 dangerous and unreasonable risk of injury to the users of the Defendants development,
5 including Plaintiffs.

6 Defendant City of Burlington also knew or, in the exercise of reasonable care, should
7 have known that users and consumers of the Defendants development were unaware of the
8 risks and the magnitude of the risks associated with use of and/or exposure to asbestos/talc.

9 As such, Defendant City of Burlington breached their duty of reasonable care and
10 failed to exercise ordinary care in the design, research, development, testing, promotion,
11 advertisement, of its development, in that Defendant City of Burlington knew or had reason
12 to know of the defects inherent in its development, knew or had reason to know that a user's
13 or consumer's exposure to asbestos/talc created a significant risk of harm and unreasonably
14 dangerous harm, and failed to prevent or adequately warn of these risks and injuries.

15 Despite ability and means to investigate, study, and test products and to provide
16 adequate warnings, Defendant have failed to do so. Indeed, Defendant City of Burlington
17 wrongfully concealed information and has further made false and/or misleading statements
18 concerning the safety and/or exposure to its development's asbestos/talc.

19 Defendant City of Burlington's conscious decisions included:

20 a. Approving, producing, promoting, formulating, creating, developing,
21 designing, selling, its development without thorough and adequate pre-and post-market test
22 for asbestos/talc;

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1 b. Approving, producing, promoting, formulating, creating, developing, designing,
2 selling, its development while negligently and/or intentionally concealing and failing to
3 disclose the risk of serious harm associated with human use of and exposure to asbestos/talc;

4 c. Failing to undertake sufficient studies and conduct necessary tests to determine
5 whether or not its developments asbestos/talc is safe for its intended use;

6 d. Failing to use reasonable and prudent care in the design, research, and
7 development of its development so as to avoid the risk of serious harm associated with
8 exposure to asbestos/talc;

9 e. Failing to design its development so as to ensure they were at least as safe and
10 effective as other developments on the market;

11 f. Failing to provide adequate instructions, guidelines, and safety precautions to those
12 persons who Defendant City of Burlington could reasonably foresee would use its
13 development and be exposed to its asbestos/talc;

14 g. Failing to disclose to Plaintiffs, users/consumers, and the general public that use
15 of and exposure to its development presented severe risks of cancer and other grave illnesses;

16 h. Failing to warn Plaintiffs, consumers, and the general public that its developments
17 risk of harm was unreasonable and that there were safer and effective alternative available
18 to Plaintiffs and other consumers;

19 i. Systematically suppressing or downplaying contrary evidence about the risks,
20 incident, and prevalence of the side effects of exposure asbestos/talc;

21 j. Representing that its development is safe for their intended use when, in fact
22 Defendants knew or should have known that its development is not safe for its intended
23 purpose;

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1 k. Declining to make or propose any changes to its development that would alert the
2 consumers and the general public of the risks of asbestos/talc exposure;

3 l. Advertising, marketing, and commending its development, while concealing and
4 failing to disclose or warn of the dangers known by Defendants to be associated with or
5 caused by the use of or exposure to asbestos/talc;

6 m. Continuing to disseminate information to its consumers, which indicate or imply
7 that Defendants' development is not unsafe for its intended use; and

8 n. Continuing promoting its development with the knowledge that the development
9 is unreasonably unsafe and dangerous.

10 Defendant City of Burlington knew and/or should have known that it was foreseeable
11 that consumers such as Plaintiffs would suffer injuries as a result of Defendants failure to
12 exercise ordinary care in approving, marketing, and sale of its development.

13 Plaintiffs did not know the nature and extent of the injuries that could result from the
14 intended use of and/or exposure to asbestos/talc. The Defendant City of Burlington was the
15 proximate cause of the injuries, harm, and economic losses that Plaintiffs suffered, and will
16 continue to suffer, as described herein.

17 Defendant City of Burlington's conduct, as described above, was reckless.
18 Defendant city of Burlington regularly risk the lives of consumers and users of its
19 development, including Plaintiff, with full knowledge of the dangers of development.
20 Defendant City of Burlington made conscious decisions not to redesign, warn, or inform the
21 unsuspecting public, including Plaintiffs. Defendants reckless conduct therefore warrants an
22 award of exemplary damages.

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1 Defendant City of Burlington, however, failed to disclose that its development has
2 dangerous propensities when used as intended and that the use of and/or exposure to
3 asbestos/talc carries an increased risk of developing severe injuries.

4 Plaintiffs reasonably relied upon the skill, superior knowledge and judgment of
5 Defendants and upon their implied warranties that its development was of merchantable
6 quality and fit for their intended purpose or use.

7 Upon information and belief, Plaintiffs was at all relevant times in privity with
8 Defendants.

9 Plaintiffs are beneficiaries of implied warranties made by Defendant City of
10 Burlington's to the purchasers of its development, and as such Plaintiffs are entitled to assert
11 this claim.

12 Defendant City of Burlington's development was expected to reach and did in fact
13 reach consumers and users, including Plaintiffs, without substantial change in the condition
14 in which was approved by Defendant.

15 At all times relevant to this litigation, Defendant City of Burlington were aware that
16 consumers and users of its development, including Plaintiffs, which is to say that Plaintiffs
17 were a foreseeable user.

18 Defendant City of Burlington intended that the development be used in the manner
19 in which Plaintiffs exposed themselves to the development's asbestos/talc, and Defendants
20 impliedly warranted to be of merchantable quality, safe, fit for this use, despite the fact that
21 the development was not adequately tested or researched.

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1 In reliance upon Defendants implied warranty, Plaintiffs used or was exposed to the
2 developments asbestos/talc as instructed and in the foreseeable manner intended,
3 recommended, and promoted by Defendants.

4 Plaintiffs could not have reasonably discovered or known of the risks of serious
5 injury associated with exposure to the Tinas Coma asbestos/talc.

6 Defendant City of Burlington breached their implied warranty to Plaintiffs in that
7 exposure to the Tinas Coma asbestos/talc was not of merchantable quality, safe, or fit for the
8 intended use, or adequately tested. Asbestos/talc has dangerous propensities when used as
9 Defendant City of Burlington intended and can cause serious injuries, including those
10 injuries complained of herein.

11 The harm caused by exposure to the Tinas Coma asbestos/talc far outweighed their
12 benefit, rendering the development more dangerous than an ordinary consumer or user would
13 expect and more dangerous than alternative developments.

14 As a direct and proximate result of Defendants wrongful acts and omissions Plaintiff
15 has suffered severe and permanent physical and emotional injuries. Plaintiffs has endured
16 pain and suffering, has suffered economic loss (including significant expenses for future
17 medical care and treatment) and will continue to incur these expenses in the future.

18 WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in
19 Plaintiff's favor for compensatory and exemplary damages, together with interest, costs
20 herein incurred, attorneys' fees, and all such other and further relief as this Court deems just
21 and proper. Plaintiffs also demands a jury trial on the issues contained herein.

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1 **VI. EXEMPLARY DAMAGES**

2 Plaintiffs repeats and reiterates the allegations previously set forth herein.

3 At all times material hereto, the Defendant City of Burlington knew or should have
4 known that the subject development was inherently dangerous with respect to its health risks.

5 At all times material hereto, the Defendants attempted to misrepresent and did
6 misrepresent facts concerning the safety of the subject development.

7 Defendant City of Burlington’s misrepresentations included knowingly withholding
8 material information from the public, including the Plaintiffs herein, concerning the safety
9 of exposure to the Tinas Coma asbestos/talc.

10 At all times material hereto, the Defendant City of Burlington knew and recklessly
11 disregarded the fact that human exposure to asbestos/talc can and does cause health hazard,
12 pleural mesothelioma associated with non-Hodgkin’s lymphoma, immunologic
13 abnormalities, cancer or death.

14 Notwithstanding the foregoing, the Defendant City of Burlington continued to
15 aggressively market and apply the subject development without disclosing the aforesaid
16 risks.

17 Defendant City of Burlington knew of the unreasonably dangerous nature of the
18 developments asbestos/talc, as set forth herein, but continued to design, develop, market,
19 and apply it so as to maximize sales and profits at the expense of the health and safety of the
20 public, including the Plaintiffs herein, in conscious and/or negligent disregard of the
21 foreseeable harm caused by exposure to the Tinas Coma asbestos/talc.

1 Defendant City of Burlington intentionally concealed and/or recklessly failed to
2 disclose to the public, including the Plaintiffs herein, the potentially life-threatening hazards
3 of exposure to the Tinas Coma asbestos/talc.

4 Defendant City of Burlington's intentional and/or reckless failure to disclose
5 information deprived the Plaintiffs of necessary information to enable Plaintiffs to weigh the
6 true risks of using or being exposed to the subject development against its benefits.

7 As a direct and proximate result of the Defendant City of Burlington's conscious and
8 deliberate disregard for the rights and safety of consumers such as the Plaintiffs, Plaintiffs
9 suffered severe and permanent physical injuries. The Plaintiffs have endured substantial
10 pain and suffering and has undergone extensive medical and surgical procedures. Plaintiffs
11 will incur significant expenses for medical care and treatment in the future. The Plaintiffs
12 have lost past earnings and has suffered a loss of earning capacity. The Plaintiffs have
13 suffered and will continue to suffer economic loss, and has otherwise been physically,
14 emotionally and economically injured. The Plaintiff's injuries and damages are permanent
15 and will continue into the future.

16 The aforesaid conduct of the Defendant City of Burlington was committed with
17 knowing, conscious, and deliberate disregard for the rights and safety of consumers,
18 including the Plaintiffs herein, thereby entitling the Plaintiffs to exemplary damages in an
19 amount appropriate to punish the Defendant City of Burlington and deter them from similar
20 conduct in the future.

21 WHEREFORE, Plaintiffs demands judgment against Defendant City of Burlington
22 for compensatory, treble and exemplary damages, together with interest, costs of suit,
23 attorneys' fees, and all such other relief as the Court deems proper.

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VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that the court enter judgment in their favor and against Defendant the City of Burlington, awarding as follows:

- A. compensatory damages in an amount to be proven at trial;
- B. exemplary damages;
- C. costs including reasonable attorneys' fees, court costs, and other
Litigation expenses; and
- D. any other relief the court may deem just and proper.