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SUPERIOR COURT—STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SHARON HOFMAISTER, Plaintiff, vs. JOHNSON & JOHNSON, et al., Defendants.	Case No. 23CV033743 DEFENDANT CHARLES B. CHRYSTAL COMPANY'S OPPOSITION TO PLAINTIFFS' MOTION FOR CONSOLIDATION OF CASES; DECLARATION OF CHLOE J. LOOMER Date: December 21, 2023 Time: 1:30 p.m. Reservation: 750073453538 Department: 18 Judge: Hon. Patrick R. McKinney Action Filed: May 18, 2023 Trial Date: January 29, 2024
SHELLEY THOMAS and THOMAS YERKES, Plaintiffs, vs. AVON PRODUCTS, INC., et al., Defendants.	Case No. 23CV032102 Date: December 21, 2023 Time: 1:30 p.m. Reservation: 722026407554 Department: 18 Judge: Hon. Patrick R. McKinney Action Filed: April 28, 2023 Trial Date: January 29, 2024

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

CBC is currently a defendant in both the *Yerkes* and *Hofmaister* matters. Consolidation should not be ordered because, under California law: (1) CBC's fundamental rights to due process and a fair trial are paramount over Plaintiffs' claims that consolidation will conserve resources, and (2) the differences between the cases predominate over common questions of fact or law, such that consolidation will be highly prejudicial to CBC. While Plaintiffs are represented by the same law firm, are approximately the same age, and have alleged exposure to talcum powders, that is where the similarities end. As demonstrated below, these cases involve different defendants, different products, different exposure periods, and different witnesses.

Here, Plaintiffs have filed an 11th hour motion to consolidate two cases which show very few similarities, and have failed to produce any convincing arguments as to why they should be consolidated. As set forth below, the distinctions predominate over commonalities, and the consolidation of these cases would greatly prejudice CBC. Therefore, Plaintiffs' motion must be denied.

II. LEGAL ARGUMENT

A. Courts Have Repeatedly Instructed That any Potential Economy Must Yield to the Interests of a Fair and Impartial Trial.

CBC is sensitive to the demands on the Alameda courts and the community of potential jurors. However, the rights of plaintiffs to a jury trial can never come at the expense of the rights of defendants to a fair trial. Any interest in potential economy either for the parties or the court cannot override the defendants' fundamental rights. The appellate courts have repeatedly ruled that trial courts must not sacrifice equity and justice to serve the interests of judicial economy. The Court in *In re E. & S. Dists. Asbestos Litigation* stressed that courts considering consolidation of cases must ***proceed with great caution***:

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> We are mindful of the dangers of a streamlined trial process in which testimony must be curtailed and jurors must assimilate vast amounts of information. ***The systemic urge to aggregate litigation must not be allowed to trump our dedication to individual justice***, and we must take care that each individual plaintiff's – and defendant's – cause not be lost in the shadow of a towering mass litigation.

(*In re E. & S. Dists. Asbestos Litig.* (Brooklyn Navy Yard) (E.&S.D.N.Y. 1992) 971 F.2d 831, 853 (emphasis added).) The Second Circuit continued: ***"[t]he benefits of efficiency can never be purchased at the cost of fairness."*** (*Id.*) *See*, Parker, J. & Hugo, E., *Fairness over Efficiency: Why We Overturned San Francisco's Sua Sponte Asbestos Consolidation Program*, HarrisMartin's COLUMNS, June 2008.

In deciding whether to grant a motion for consolidation, an important factor to consider is whether consolidation adversely affects the right of any party. (Weil & Brown, CAL. PRACTICE GUIDE: CIVIL PROCEDURE BEFORE Trial (The Rutter Group 2021) ¶12:362.) Prejudice to parties is a major consideration in determining whether cases should be consolidated. (Fisher v. Nash Building Company (1952) 113 Cal.App.2d 397, 402.) A common question does not mandate consolidation. (Id.) It is important to note the Second Circuit's admonition to trial courts when ruling on a motion to consolidate asbestos cases:

> The trial court has broad discretion to determine whether consolidation is appropriate. In the exercise of discretion, courts have taken the view that considerations of judicial economy favor consolidation. ***However, the discretion to consolidate is not unfettered. Considerations of convenience and economy must yield to a paramount concern for a fair and impartial trial.***

(*Johnson v. Celotex Corp.* (2nd Cir. 1990) 899 F.2d 1281, 1284-85, (emphasis added).)

Further to this point, courts have cautioned that "consolidation should not be ordered if it would prejudice defendant, for considerations of convenience and economy must yield to the interests of justice in a fair and impartial trial." (*Flintkote Co. v. Allis-Chalmers Corp.* (S.D.N.Y. 1977) 73 F.R.D. 463, 464-465 (emphasis added), citing *Garber v. Randell* (2nd Cir. 1973) 477 F.2d 711, 714; *DuPont v. Southern Pacific. Co.* (5th Cir.

1966) 366 F.2d 193; *Turner v. Transportacion Maritima Mexicana, S.A.* (E.D. Pa. 1968) 44 F.R.D. 412, 415.)

B. Plaintiffs Failed to Establish a Sufficient Nexus Between These Cases Under Code of Civil Procedure Section 1048(a) and the *Malcolm* Factors to Permit Consolidation.

Code of Civil Procedure section 1048(a), which governs consolidation motions, provides that "when actions involving a common question of law or fact are pending before the court," the court may order the actions consolidated to avoid unnecessary costs or delay. (Code Civ. Proc. § 1048(a).) Consolidation of unrelated cases is never mandatory; courts have discretion in deciding whether to consolidate the two actions pursuant to Section 1048(a). (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978-979.) In determining whether to exercise the discretion conferred by Section 1048(a), the Court must consider prejudice to any party. (*See* Weil & Brown, CAL. PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL (The Rutter Group 2021), § 12:362. Courts are concerned with the timeliness of the motion, ("*i.e.* whether granting consolidation would delay the trial of any of the cases involved, or whether discovery in one or more of the cases has proceeded without all parties present"); complexity ("*i.e.* whether joining the actions involved would make the trial too confusing or complex for a jury"), and prejudice ("*i.e.* whether consolidation would adversely affect the rights of any party"). (*Id.*) The Court's discretion is subject to all applicable legal principles governing consolidation of actions under Section 1048(a).

Section 1048(a) is derived from Rule 42 of the Federal Rules of Civil Procedure. As such, courts may look to cases decided under Rule 42 as persuasive authority. (*See Hypertouch, Inc. v. Superior Court* (2005) 128 Cal.App.4th 1527, 1544 (parties may look to federal rules for guidance when state law is virtually the same); Weil & Brown, CAL. PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL (The Rutter Group 2021), §12:348).) In ruling on a motion to consolidate, courts must determine "whether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues..." (*Hendrix v. Raybestos-Manhattan, Inc.* (11th Cir.

1985) 776 F. 2nd 1492, 1495.) As noted above, while considerations of judicial economy are a factor, "[c]onsiderations of convenience and economy must yield to the paramount concern for a fair and impartial trial." (*Johnson v. Celotex Corp.* (2nd Cir. 1990) 899 F.2d 1281, 1285.)

Plaintiffs have moved to consolidate *Hofmaister* and *Yerkes*, claiming that common issues of law and fact require consolidation, but their contentions are not supported by admissible evidence, ignore the vast differences between the cases, and fail to consider the significant prejudice to CBC and all defendants should the cases be consolidated for trial.

These cases are analogous to the matters in *Malcolm v. National Gypsum Co.* (2nd Cir. 1993) 995 F.2d 346. In *Malcolm*, the trial court consolidated a number of personal injury asbestos claims for trial. (*Malcolm*, *supra,* 995 F.2d at 349.) When the defendants appealed from the resulting adverse judgment, the Second Circuit reversed and remanded for a new trial, citing the various factual and legal differences of the cases, including different work sites, the multitude of asbestos-containing products involved, and the wide-ranging time frames, that were all likely to confuse the jury. (*Id.* at 354.) In so ruling, the *Malcolm* Court evaluated the following criteria: (1) common worksite, (2) similar occupation (3) similar time of exposure, (4) type of disease, (5) whether injured workers are living or deceased, (6) status of discovery in each case, (7) whether all plaintiffs are represented by the same counsel, and (8) type of cancer alleged. (*Id.* at 350-351.)

The *Malcolm* factors assist courts in determining whether the consolidation of claims is likely to prejudice or confuse the jury. In some cases, the likelihood that prejudice or confusion will result is readily apparent from an examination of a single factor. In other cases, the evidence is considered in the aggregate, and consolidation is denied when a party shows that the cumulative effect would result in an unacceptably high risk of prejudice or juror confusion. In the final analysis, the most critical of considerations in every consolidation is whether the trial will be fair and impartial to all

parties. (*See In Re Ethyl Corp.*, (Tex. 1998) 975 S.W.2d 606, 614.) Some factors, such as the status of discovery and whether the plaintiffs are represented by the same counsel, have been considered far less important than the other considerations identified in the *Malcolm* case. (*See In Re Repetitive Stress Injury Litig.*, (2nd Cir. 1993) 11 F.3d 368, 374.)

1. The Products at Issue and the Years of Exposure are Different.

Plaintiffs' motion neglects to mention all of the products at issue, and refer only generally to some of the defendants. Plaintiffs specifically focus on Hofmaister and Yerkes' shared use of Avon and Johnson & Johnson products because Plaintiffs know these are the only products at issue shared between both cases.

However, the *total* products at issue in the two cases are immensely different. Plaintiff Shelley Yerkes identified using Avon for personal use between the 1960s and the 1990s, including product lines Miss Lollipop, Unforgettable Beauty Dust, Lila and Lily of the Valley, Field of Flowers, Come Summer, Sweet Honesty, Fresh Cut Florals, Ultra, Tempo, Zany, and Skin So Soft. (**Exhibit "C"** to the Loomer Decl. at P24:L21-24.) She identified using Johnson and Johnson's baby powder as an infant in the 1960s and from the 1980's to the 2000's. (*Id*. at P2:L20; P24:L25-27.) In addition to those products, Ms. Yerkes also used Shower to Shower from the 1980's to the 1990's. (*Id*. at P25:L25-P26:L1.) She also used Jean Nate from the 1970's through the 1980's. (*Id*. at P25:L2-3.) Finally, she also used Coty Airspun from the 1990's to the 2000s. (*Id*. at P25:L4-5.) She used Ponds talcum powder from the 1960s throughout her life. (Id. at P25:L6.)

In contrast, Plaintiff Sharon Hofmaister was a makeup artist and hairdresser. (**Exhibit "D"** to the Loomer Decl. at P23:L14-16.) She identified using Avon talc products generally between the 1970's and 2000's. However, unlike Ms. Yerkes, Ms. Hofmaister failed identify any specific Avon product lines. (*Id*. at P23:L18-19.) In proving any case against CBC related to Avon products, it is essential that the specific products used by the Plaintiff be identified as not all, and, in fact, only a limited number, of Avon products potentially contained cosmetic talc supplied by CBC. In addition to her identification of Avon, albeit generally, Ms. Hofmaister identified using Johnson and Johnson's Baby

Powder on her clients from the 1990's until the 2000's. (*Id*. at P23:L14-16.) In addition to Avon and Johnson and Johnson's Baby Powder, Ms. Hofmaister also identified using Revlon and L'Oreal products between the 1970's and 2000's. (*Id*. at P23:L20-23.)

Only two products overlap between the plaintiffs: Johnson and Johnson and Avon. Even where those products overlap, the exposure is inherently different. Plaintiff Yerkes used Johnson and Johnson in the 1960's and 1980's through the 1990's, where Plaintiff Hofmaister used Johnson and Johnson from the 1990's to the 2000's. Plaintiff Yerkes used Avon from the 1960s to the 1990s and identified specific Avon product lines. Plaintiff Hofmaister used Avon from the 1970's to the 2000's and failed to identify any specific Avon product lines. Thus, the claimed product exposures are not similar enough to meet the burden for consolidation.

2. The Defendants are Different.

Plaintiffs claim that the two cases involve "numerous overlapping defendants." (See Motion, P4:L5.) Plaintiffs are only looking at the defendants *remaining* in the cases, and even those lists are, as Plaintiffs conceded, different. Even if the lists were the same, an important factor that Plaintiffs fail to acknowledge is that the totality of each Plaintiffs' exposures must be addressed at trial. Even if Plaintiffs may seek to limit their affirmative presentations to these overlapping defendants, said defendants are entitled to present evidence of all of Plaintiffs' exposures so that jury may carefully consider the evidence when apportioning fault. Accordingly, the totality of the defendants that Plaintiffs sued in their Complaints and their products to which each Plaintiff claims exposure must be considered. (*See e.g. Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863 (An attorney must, after reasonable investigation and industrious search of legal authority, have probable cause to initiate an action against a defendant).)

3. The Witnesses are Different.

In *Yerkes*, the witnesses are Shelly and Thomas Yerkes, as well as Defendants' unnamed Persons Most Qualified. In contrast, the witnesses in *Hofmaister*, the witnesses

are Sharon Hofmaister and her treating physicians. The two cases share no common laywitnesses.

C. CBC, and Other Defendants, Will Be Severely Prejudiced If the Cases Are Consolidated.

The jury will find it challenging to fairly and separately evaluate the claims of each of the plaintiffs in the two separate cases, as each will feature not just vastly different damage claims. As a practical matter, jurors will not be able to decipher and separate all of these exposures, defendants, work histories, medical histories, state of the art evidence, and defenses involved in these two cases. This is particularly so considering Ms. Yerkes named specific Avon product lines while Ms. Hofmaister failed to do so. As all Avon products did not potentially implicate CBC supplied cosmetic talc, this will result in jury confusion of the separate Avon claims. CBC will not receive a fair trial in either case under these circumstances.

Further, the consolidation of cases for trial substantially limits the jury pool. Consolidated cases take longer to try. This has an adverse effect on the potential jury pool, since certain types of jurors cannot afford to sit for a trial that could last for several months. The lengthening of a trial estimate decreases the number of potential jurors, particularly those with a higher degree of responsibility at work, college and graduate students, and the unemployed. Even if a consolidated trial group ends up with a single plaintiff, the jury pool will still be limited, given the potential jurors would have initially been advised that the trial may take several months. This is prejudicial to CBC because the jury would not truly represent the entire population of Alameda County, from the unemployed to corporate officers.

1. A Consolidated Trial Would Take an Extreme Amount of Time.

Plaintiffs claim that they will be using the same expert witnesses in *Yerkes* and *Hofmaister*, though no experts have been formally disclosed. Even if true as to Plaintiffs, as outlined above, given the vast differences in product exposures, Plaintiffs' experts will likely have to provide separate opinions regarding each Plaintiff. And given the different

products at issue against the parties and former parties, the Defendants may have different experts. Not only will there be no time saved, but the potential for confusion with respect to the expert testimony not just as to the vastly different diseases, but as to the characteristics of the different products at issue in these cases will not save time.

2. Studies Show Consolidation Confuses Juries and Unduly Prejudices Defendants

Studies considering joint trials with multiple plaintiffs' claims show that the jury is more likely to find against the defendant. Studies also show that joint trials increase the amount of each plaintiff's damages award. This results in a patently unfair trial process that is essentially rigged against the defendants from the start. Horowitz & Bordens (2000) conducted a study with 135 jury eligible adults and found that the defendant was more likely to be found liable as the number of plaintiffs involved in the case increased. The degree of fault assigned to plaintiffs went down as the number of plaintiffs increased, while defendant liability scores rose steadily. Damage awards also rose with the number of plaintiffs. This study also showed that when the number of plaintiffs reached four, "the ability of individuals to consider each alternative on its merits [was] compromised" because there "appears to be a limitation on the number of hypotheses or alternatives that people can maintain and operate on at one time." (*Id.* at 917).

3. Consolidation Would Violates CBC's Due Process Rights.

Consolidation violates CBC's due process rights under the United States Constitution since it prevents CBC from having a fair trial. In light of this indisputable evidence, CBC will be unduly prejudiced if the Court grants Plaintiffs' consolidation motion. The Fourteenth Amendment of the United States Constitution requires that no person be deprived "of life, liberty, or property, without due process of law." (U.S. CONST. Amend. XIV, § 1.) The Fourteenth Amendment provides litigants with the right to a "fair trial," which is a fundamental liberty secured by the due process clause. (*Id.* See also, *Rucker v. Workers' Compensation Appeals Bd.* (2000) 82 Cal.App.4th 151, 158.) Consolidating these dissimilar cases will cause jury confusion since the Plaintiffs have

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different years and exposure, different product exposures, different defendants, and different expert opinions.

III. CONCLUSION

Based on the foregoing, Defendant Charles B. Chrystal Company, Inc. respectfully requests that the Court recognize the prejudicial effect that consolidation would have on it and deny Plaintiffs' Motion to Consolidate.

Date: December 8, 2023

HUGO PARKER LLP

/s/ Chloe J. Loomer

Edward R. Hugo
Chloe J. Loomer
Attorneys for Defendant
CHARLES B. CHRYSTAL COMPANY

DECLARATION OF CHLOE J. LOOMER

I, CHLOE J. LOOMER, declare as follows:

1. I am an attorney at law, licensed to practice before all the courts of the State of California, and am an associate with Hugo Parker, LLP, counsel of record for defendant CHARLES B. CHRYSTAL COMPANY ("CBC") in this matter. I have personal knowledge of the facts stated herein and if called, would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of Horowitz, I. A. & Bordens, K. S. (2000) The consolidation of plaintiffs: The effects of number of plaintiffs on jurors' liability decisions, damage awards, and cognitive processing of evidence. (Journal of Applied Psychology.)

3. Attached hereto as Exhibit B is a true and correct copy of Parker, J. & Hugo, E., *Fairness over Efficiency: Why We Overturned San Francisco's Sua Sponte Asbestos Consolidation Program*, HarrisMartin's COLUMNS, June 2008.

4. Plaintiff Shelly Yerkes served her Responses to Standard Interrogatories on May 31, 2023. Attached hereto as Exhibit C is a true and correct copy of relevant portions of Plaintiff Shelly Yerkes' Responses to Standard Interrogatories.

5. Plaintiff Sharon Hofmaister served her Responses to Standard Interrogatories on June 26, 2023. Attached hereto as Exhibit D is a true and correct copy of relevant portions of Plaintiff Sharon Hofmaister's Responses to Standard Interrogatories.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and accurate and that this declaration was executed on December 8, 2023, at San Francisco, California.

C. Loomer

Chloe J. Loomer

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Exhibit A

Journal of Applied Psychology
2000, Vol. 85, No. 6, 909-918

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The Consolidation of Plaintiffs: The Effects of Number of Plaintiffs on Jurors' Liability Decisions, Damage Awards, and Cognitive Processing of Evidence

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In this study, 135 jury-eligible adults were randomly assigned to 1 of 5 aggregations of plaintiffs involving 1, 2, 4, 6, and 10 claimants. Jurors were shown a 5- to 6-hr trial involving claims of differential repetitive stress injuries by each plaintiff. Measures concerning liability, damages, and various cognitive and attributional factors were collected. The defendant was more likely to be judged as liable as the number of plaintiffs increased. Awards reached a zenith at 4 plaintiffs and then began to decrease. Increases in the number of plaintiffs who were aggregated degraded information processing. Limits of juror competence in complex trials and juror aids were discussed.

Although much of American law is now made in civil courts, the study of civil jury decision making is relatively underdeveloped. Hastie, and Payne (1998) have suggested, however, that what is incontrovertible is that in a number of cases, civil juries have rendered especially harsh antidefendant judgments and set dramatically large awards. Virtually all of these awards were reduced or reversed by appellate courts, which suggests that the trial juries rendered verdicts that were inconsistent with legal principles (Hastie et al., 1998). However, these cases may be the exception rather than the rule, and competence of the civil jury to render fair outcomes is a matter of some contention for both legal and behavioral scholars (Vidmar, 1998).

The Competence of the Civil Jury and the Complexity Issue: Field Studies

Although many commentators have suggested that a civil jury often faces a difficult and complex task, there is currently no formally accepted definition of complex litigation. Kramer and Kerr (1989) have noted that definitions of trial complexity are elusive. Complexity may take many forms: Legal issues may be multiple, overlapping, and abstruse, evidence may be quite technical, and the sheer volume of facts may tax a juror's power of comprehension and assimilation. Complex tasks appear to affect the ability of individuals to process information in a systematic manner. Bodenhausen and Lichtenstein (1987) demonstrated that even modestly complex evidence evoked less effortful processing, as reflected by an increasing reliance on stereotypes to guide decision making. Nevertheless, a number of field studies have judged the jury to be quite competent.

Kalven and Zeisel (1966), in their study of judges' perceptions of jury competence, reported that judges agreed with civil (and criminal) verdicts 78% of the time. The study also revealed that judge–jury disagreements were rarely caused by the complexity of the evidence. Similarly, as Vidmar (1998) has observed, recent studies appear to support Kalven and Zeisel's original findings. For example, Heuer and Penrod (1994) asked judges in 67 civil trials to evaluate the performance of juries in cases of varying complexity. Again, judges and juries were in general agreement as to the appropriate verdict, and complexity of the trial did not differentiate between judges' and juries' preferred outcomes. Heuer and Penrod (1994) argued that jury decision making was not adversely affected by trial complexity. Hans, Hannaford, and Munsterman (1999) reported that judges had quite favorable views of juries' performance in 153 civil trials, and once again judges did not think that complexity adversely affected jury performance. The findings from these studies indicate that in the vast majority of cases, judges and juries are likely to agree on the verdict. When they have differed, disagreement has appeared to be attributable to something other than the complexity of the evidence.

Another avenue of investigation into the competence of civil juries is to compare them with experienced professionals other than judges (Vidmar, 1998). Vidmar and Rice (1993) compared veteran arbitrators, some of whom had been judges, with jurors who were awaiting jury service in a mock medical malpractice trial. The jurors and the professionals (judges or arbitrators) gave similar awards. Other research suggests that, if anything, compared with legal or medical professionals, juries award less money than is warranted (Daniels & Martin, 1995).

However, jurors in the Vidmar and Rice (1993) study were more variable in their awards than judges were. Other research has also

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shown that jurors tend to be more unpredictable than judges are (Goodman, Greene, & Loftus, 1989). This is not surprising, as judges probably differ less on decision-making tactics than do juries, which include a much wider sample of the population. Judges also have in place a scale derived from experience with many other similar cases. Jurors have no such access and must map their awards on an unbounded magnitude scale; hence, unpredictability of jurors' awards may not be a marker of lack of competence. Juries do exhibit a great deal of variability when assigning punitive damages, which are the ultimate "black box" (Kahneman, Schkade, & Sunstein, 1998). Although juries show a remarkable agreement on the "outrage" a tortious act deserves, the conversion to a monetary assessment of that outrage appears to be unpredictable (Kahneman et al., 1998).

Although a direct manipulation of complexity was not possible in these field studies, Heuer and Penrod (1994) found that jurors perceived that increasing the quantity of information decreased their ability to understand the issues and their confidence in the verdict. However, jurors also reported that they believed they were better informed about the trial as information increased. These findings, derived from self-reports of jurors, generally conform to Jacoby, Speller, and Berning's (1974) report that an increase in quantity of information resulted in poorer performance but produced greater satisfaction.

In general, then, these field studies of the civil jury suggest that concerns about jury competence are unwarranted. However, the experimental, laboratory-based jury or juror analogue research offers a somewhat different perspective.

Complexity of the Evidence and Juror and Jury Competence in Jury Analogue Studies

Although field studies support the notion that juries are at least as competent as any other legal decision maker, these studies have drawbacks. What we know from the field studies is that judges, as observers, perceive that the jury is generally competent. However, there is no way to determine the conditions under which juror competence is affected by complexity, because the degree of complexity juries confronted was uncontrolled and unmeasurable in the field studies.

A more complete evaluation of the role of complexity in juror decision making can be made by experimental research. The experimental studies of juror competence in complex trials reviewed in this section provide a more mixed picture of jury performance. Of course, the jury analogue procedure has its own infirmities, and those have been catalogued thoroughly elsewhere (Bornstein, 1999; Diamond, 1997). However, one advantage of jury analogue studies is the potential to directly manipulate the various dimensions of complexity to determine how each may affect the jury's decision and the juror's cognitive processing of the trial evidence.

There are two dimensions of complexity that are immediately relevant to the jurors' task. The first, *decision difficulty,* involves both the intricacy of the legal principles and the juror's ability to apply those principles to the details of the trial. The second factor, *evidence comprehensibility,* can be conceptualized in terms of three dimensions: (a) the volume of evidence to be processed within a given period (*information load*); information-load producing factors include the number of witnesses and the number of plaintiffs or defendants who are party to the lawsuit, the number of injuries or illnesses alleged by the plaintiffs, and the similarity of those injuries (Helgeson & Ursic, 1993); (b) the clarity of the evidence; that is, whether the evidence clearly favors one side or is ambiguous (*implicational clarity*); and, (c) the *technicality* of the evidence; that is, the intricacy and specialization of the language (MacCoun, 1989).

Early research concerning the effects of information-load factors on decision making in several contexts have yielded equivocal results (Helgeson and Ursic, 1993). For example, Jacoby et al. (1974) concluded that decision makers tended to feel more confident (as contrasted with Heuer and Penrod's, 1994, field results), more satisfied, and less confused when information load was high, as compared with when it was low. However, this sense of hedonic well-being resulted in suboptimal decision making.

More recently, Horowitz, ForsterLee, and Brolly (1996) have shown that higher information loads, defined by an increase in the number of plaintiffs in the trial, degraded jurors' ability to recall probative evidence. Jurors in the high-information-load trial attributed greater blameworthiness to the plaintiffs, a result that was unexpected and counter to the calibration of the evidence, which clearly favored the plaintiff. Jurors were less able to effectively distinguish among differentially liable plaintiffs under high (four target plaintiffs) load, as compared with low load.

Research has indicated that different dimensions of complexity may have differential effects on jurors' ability to evaluate and process trial information. Horowitz et al. (1996) found that the technicality of the language did not affect overall liability assessments but did impact the ability of jurors to compensate differentially injured plaintiffs. Less technical language allowed jurors to appropriately distinguish among plaintiffs claiming injuries of varying severity. However, information load appears to have been crucial in the liability portion of the trial, in which attributions of blameworthiness are paramount. Finally, Horowitz, Bordens, Victor, Bourgeois, and ForsterLee (1999) reported that higher information load resulted in fewer coherent narrative constructions of the evidence. One might expect that more information would create the opportunity for testing more than one theory or story construction that would explain the evidence. These results, however, indicate that higher loads tend to elicit simpler decision strategies.

Vidmar (1998) observed that the experimental studies do not support the notion that jurors are gullible. However, the work does show how complexity can interfere with information processing. Perhaps the most crucial issue is that in complex trials, jurors are not able or willing to separate judgments of liability from compensatory decisions, as is required by judicial instructions. Studies that report a negative relationship between the severity of plaintiffs' injuries and jurors' evaluations of liability suggest that jurors do not view the liability and compensation decisions as orthogonal, judicial instructions notwithstanding. Landsman, Diamond, Dimitropoulos, and Saks (1998), in a study of procedural complexity, suggested that jurors who hear the trial evidence in a unitary (i.e., causation, liability, and damages), as contrasted with a bifurcated trial in which issues are considered separately, tend to use the evidence holistically rather than deciding issues separately, as required. These results fit well within a broader conception of decision makers that posits that jurors often reason holistically

rather than by fitting the discrete pieces of evidence to discrete legal judgments (Feigenson, 1995).

Landsman et al. (1998) reported that unitary trial jurors tend to assign awards that are inappropriate. However, Cather, Greene, and Durham (1996) reported that mock jurors in a series of three different trials generally used legally relevant information and ignored irrelevant factors. For example, jurors' assessments of punitive awards were influenced appropriately by the reprehensibility of the defendants' actions, as required by legal doctrine. Jurors appropriately ignored the reprehensibility of the defendant's conduct when assigning compensatory awards. Wissler, Evans, Hart, Morry, and Saks (1997), in research aimed at determining how jurors assign compensatory awards, found that jurors followed legal rules and rationally based their awards on the plaintiff's injury rather than on the defendant's responsibility for that injury. However, other reports have shown that the moral culpability of the defendant (an extralegal factor), as distinct from legal blameworthiness, significantly affected juror judgments (Alicke, 1992). In addition, jurors apparently have difficulty assigning appropriate awards to differentially worthy plaintiffs, a finding has been reported by other researchers, as well (Cather et al., 1996).

The Consolidation Issue

In this brief overview[1] of the experimental research on juror competence, we found that there were limits to jurors' ability to handle complexity. The evidence is mixed, but it seems probable that an increase in information load is the one dimension of evidence complexity that most undermines jury competence. From the courts' point of view, the number of plaintiffs who are aggregated for trial is the most important expression of information load. With the advent of the modern mass tort trial, the value of individualized justice for plaintiffs (and defendants) has been in competition with the value of judicial efficiency.

Rosenberg (1996) argued that objective reasonableness tends to get lost in the heat of individualized litigations and that "collectivization" (i.e., consolidation) gives impetus to settlement on the basis of objective tort standards such as negligence, failure to warn, and strict liability. Rosenberg contended that although procedural values relating to individual justice needs and control over one's own fate serve important values, they are significantly outweighed when, because of collective treatment, individuals gain access to the courts that they would not have otherwise been able to have. Of course, consolidation may put increased pressure on the defendants by posing the specter of the "aggregate average loss attributable to its tortious conduct" (Rosenberg, 1996, pp. 239–240). Rosenberg is certainly not alone among legal scholars who support aggregation of multiple plaintiffs (Vairo, 1997).

Although much research on the effects of plaintiff aggregation has dealt with the fate of differentially worthy plaintiffs, plaintiffs' cases are usually combined because of their basic similarities (Marcus, 1995). There is good reason for courts to try to homogenize the plaintiff aggregation. The presence of a severely injured plaintiff, an outlier, increases the awards to all of the aggregated plaintiffs. However, the research also indicates that the outlier, the strongest claimant, suffers a lesser award when aggregated with plaintiffs who have less severe injuries (Horowitz & Bordens, 1988). Legal scholars quite rightly worry that there is something of a shift to the mean that leaves the strongest claimants less complete compensation than those with lesser claims receive, and the empirical research undergirds that concern (Marcus, 1995).

In our previous research, we found that when jurors confronted four plaintiffs, they were unable to assign awards that were consonant with the plaintiffs' injuries (ForsterLee & Horowitz, 1997; Horowitz & Bordens, 1988; Horowitz et al., 1996). In addition, when judging four plaintiffs (as compared with a single plaintiff drawn from the four), jurors not only tend to lump or blend differentially worthy plaintiffs but also appear to use fewer probative trial facts, as compared with when either fewer plaintiffs or fewer witnesses presented testimony (Horowitz et al., 1996). Experimental research on decision making in nonlegal contexts suggests that when the number of options reaches four, the ability of individuals to consider each alternative on its merits is compromised. There appears to be a limitation on the number of hypotheses or alternatives that people can maintain and operate on at one time (Helgeson & Ursic, 1993). According to some reports, when alternatives increase, there are insufficient attentional resources to update even two alternatives at once (Mynatt, Doherty, & Dragan, 1993).

The present research investigates the effects of one aspect of evidence comprehensibility, information load as defined by the number of consolidated plaintiffs, on juror performance. The only variable in this research was the number of plaintiffs. All jurors heard the same evidence regarding the occurrence of each plaintiff's injuries. The language, strength of evidence, and level of technicality were the same for all plaintiffs, as were all other aspects of the trial. In this study, we used a typical consolidation metric and aggregated in a series of combinations of 2 to 10 plaintiffs, all of whom had relatively similar injuries. We were interested primarily in the fate of several plaintiffs who were aggregated for trial in various combinations with other plaintiffs. That is, we were able to determine how consolidation affects the fate of plaintiffs who were aggregated with 1, 3, 5, and 9 other claimants. Trials involving single plaintiffs were included in the design.

Method

Participants

We recruited 135 individuals from jury rolls. There were 61 men and 74 women. The participants ranged in age from 20 to 67 years and were paid $25 for their participation.

Materials

The materials for this experiment included a videotaped civil trial involving plaintiffs suing a railroad company for repetitive motion injuries allegedly sustained on the job, an informed consent form, and several dependent measures. The dependent measures were distributed across two booklets.

The trial. The trial, produced on videotape, involved claims by railroad workers of repetitive stress injuries, specifically carpal tunnel syndrome (CTS), allegedly caused by repetitive actions across a number of different tasks. CTS refers to a variety of conditions, including pain and weakness in the arms and hands, limited range of motion, swelling, and feelings of

[1] For a complete review of jury competence in civil trials, see Vidmar (1998).

Table 1
Design of the Experiment

No. of plaintiffs	No. of participants	Plaintiff									
		BW1	JS2	AG3	BD4	WS5	GJ6	LS7	RA8	BC9	AC10
10	21	X	X	X	X	X	X	X	X	X	X
6	19	X	X				X	X	X		X
4	19	X	X		X			X			
2	30	X	X			X		X			
1	46	X	X			X		X			

Note. Plaintiffs were labeled by initials and number. When two plaintiffs were consolidated the combinations were as follows: Plaintiffs 1 and 2, 1 and 5, 2 and 5, and 5 and 7.

cold, numbing, or tingling. CTS usually appears in the hands and wrists. Many people who complain of CTS have jobs that require them to perform repetitive motions or hold their bodies for extended periods of time in static positions. CTS is but one example of the repetition strain injuries (RSIs) that have come to account for approximately $13 billion in workers' compensation costs each year and is an emerging mass tort category (National Institute for Occupational Safety and Health, 1997).

The trial had several versions. In the base version, 10 plaintiffs were aggregated for trial. Each plaintiff claimed CTS, but the plaintiffs performed few job tasks in common. For example, two plaintiffs used a "huck gun," a device that is used to insert rivets into railway cars. Another removed spikes from railway tracks. The plaintiffs all had similar claims but lived and worked in geographically disparate parts of the "Big Mountain" Railway network, which ranges from the Deep South to the Middle West. All of the tasks involved some repetitive motion, and all plaintiffs had been examined and tested for CTS. All plaintiffs claimed that Big Mountain Railroad had been negligent in not adequately providing for worker safety and not warning the workers that their jobs entailed the risk of CTS.

In addition to the 10-plaintiff version, there were four other versions of the trial in which 6 of the original 10 plaintiffs, 4 of the original 10, and 2 of the original 10 were consolidated for trial in four different combinations, as shown in Table 1. Finally, 4 of the original 10 plaintiffs were given individual trials. The single-plaintiff version ran for 4 hr and 22 min. The 10-plaintiff version ran for 5 hr and 58 min. The design is illustrated in Table 1.

We pretested the strength of the evidence for each plaintiff, and 35 third-year law students did not find any plaintiff's case to be any more or less meritorious than any other was. Each plaintiff and his supervisor testified as to the nature of the complaints and the job requirements. All plaintiffs were cross-examined. The cross-examination focused primarily on the amount of actual work the complainant did each day. Typically, when travel to and from the work site and break time were accounted for, workers averaged something less than 5 hr per day. In addition to tasks demanding repetitive motions, the claimants also did jobs during their work shift that were not repetitive. Defendants' counsel also required each plaintiff to testify as to nonwork-related afflictions that could have either caused or contributed to their complaints. Smoking, alcohol consumption, and diabetes or previous injuries were most prevalent.

However, the bulk of the testimony came from four expert witnesses, two for each side. The defendant and the plaintiffs each presented an ergonomic expert and a medical expert. In summary, each side contradicted the other. The major issue was whether the scientific research, which was relatively sparse, provided evidence that CTS was causally related to the kinds of job tasks carried out by the plaintiffs. The defendant's scientific expert argued that the research showed lack of scientific support for a causal link between occasional repetitive movements on the shift and claims of RSI. The plaintiffs' experts countered by focusing on the medical testimony that catalogued the infirmities suffered by the claimants and disputing the defendant's interpretation of the science involved. Our pre-experimental measures, in which law school students evaluated the evidence, indicated that the case did not clearly favor one side or the other. After the testimony and closing statements were concluded, jurors were provided with written instructions from the judge, a procedure that is not uncommon in this type of trial.

In summary, mock jurors saw a trial in which the only variable was the number of plaintiffs consolidated for trial. All other complexity factors (e.g., strength of evidence, technicality of the language) were constant for all plaintiffs.

Informed consent form. Each participant was provided with an informed consent form. The consent form included a description of the experiment and the requirements for participation. Participants were informed that they were free to withdraw from the experiment at any time without prejudice but that their payment would be prorated for the amount of time they participated.[2] Participants were also informed that all answers would be anonymous and that all data were to be analyzed in group form.

Dependent measures. Participants evaluated the trial on several measures, which were included in two booklets and an evidence recognition sheet. The first booklet, the juror questionnaire, included several rating scales on which participants judged various aspects of the case on 7-point scales. The first cluster of items determined how easy or difficult it was for a juror to perform a given cognitive task; ratings ranged from 1 (*very difficult*) to 7 (*very easy*). These measures were designed to determine (in order of presentation) how easy or difficult it was to understand the evidence, how easy or difficult it was to understand the expert testimony, and how easy or difficult it was to understand the judge's instructions.

The next set of items asked participants to rate the credibility of the various witnesses presented in the trial; ratings ranged from 1 (*not credible*) to 7 (*very credible*). Participants rated the credibility of the plaintiff's medical expert, the defendant's medical expert, the plaintiff's ergonomic expert, and the defendant's ergonomic expert.

Participants also evaluated the degree to which the evidence favored awarding the plaintiffs some monetary damages; ratings ranged from 1 (*evidence strongly favored awarding the plaintiff(s) something*) to 7 (*evidence strongly favored awarding the plaintiff(s) nothing*). Additionally, participants were asked to indicate the number of times they changed their mind during the trial.

The second booklet was the "verdict form," and it included items that assessed whether Big Mountain Railway was liable for the injuries alleged (rated on a yes or no basis) and, if so, the amount of compensatory damages to be awarded. Jurors were also asked whether the plaintiff was negligent and what the proportion of liability assigned to the plaintiff for his injuries should be. The second booklet also included a recognition measure, which

[2] Four individuals did retire from the experiment. Two were in the 10-plaintiff condition, and one each were from the 4- and 6-plaintiff conditions.

consisted of 12 items. The questions concerned the medical treatment the plaintiff received and whether the claimant had performed a variety of tasks that might be implicated in RSI. For example, jurors were asked whether the plaintiff in question had undergone surgery or had used any one of a number of implements on the job.

Procedure

Mock jurors participated in the experiment in small groups ranging from 3 to 10 participants. Participants were instructed to report to a designated room for the experiment. After all of the participants had arrived, each one was provided with a copy of the informed consent form. After all participants read and signed the form, the experiment began.

The experimenter delivered preliminary instructions that included a statement concerning the length of the trial participants would view. Participants were informed that the videotaped trial they were to view was long and would take about 6 hr of their time and that food and coffee would be provided during a break. The break was given to jurors approximately 120 min into the trial.

Participants were instructed that they would watch the videotaped trial and then make individual decisions regarding it. They were told that they would not be able to rely on other jurors and as a consequence they should concentrate as much as they could on the evidence and the issues presented in the trial.

At the conclusion of the videotaped trial, participants were presented with the first booklet of measures. These measures, as described previously, asked participants to rate the trial and its participants along several dimensions. After completing all of the measures in the first booklet, participants were provided with the recognition task and completed it. Finally, participants received a written copy of the judge's final instructions and then completed the verdict form.

Results

Data Coding

The data from all of the yes–no responses were dummy coded (1 = yes, 2 = no). Additionally, the compensatory damage awards were coded onto an 11-point scale (0 = no award, 10 = $1,000,000). Our previous research has shown that coding the damage awards is a more effective way to summarize and analyze these data than is using the raw numbers provided by participants. The recognition measures were scored to yield a percentage of items correctly recognized.

Analysis Strategy

The data from the multiple dependent measures were analyzed with two-factor (Number of Plaintiffs in the Trial × Plaintiff) multivariate analyses of variance (MANOVA). There were three plaintiffs for whom data were collected for all levels of number of plaintiffs. These plaintiffs were the focus of the analyses. Data from the liability measure were dummy coded so that they could be included in the MANOVA. Specifically, a *yes* vote on liability was coded as 1, and a *no* vote was coded as 2. For all analyses, an alpha level of $p < .05$ was adopted to establish statistical significance.

Preliminary Analysis

We conducted a preliminary MANOVA to determine whether the plaintiffs in the single-plaintiff trial differed from one another on any of the dependent measures. The results, using Wilks's lamda as the criterion, showed that there were no significant differences among the single-plaintiff trials on any of the measures.

Damage Awards and Liability Measures

The MANOVA, using Wilks's lambda, that we performed on the damage award data showed significant main effects for the number of plaintiffs in the trial, $\Lambda = .495$, $F(12, 535) = 13.57$, $p < .01$ ($\eta^2 = .209$), and plaintiff number, $\Lambda = .932$, $F(6, 406) = 2.41$, $p < .05$ ($\eta^2 = .034$).

Univariate analyses of variance (ANOVAs) showed that the significant multivariate effect for number of plaintiffs was related to univariate main effects on the damage award measure, $F(4, 204) = 20.85$, $p < .01$ ($\eta^2 = .29$), the liability measure, $F(4, 204) = 11.71$, $p < .01$ ($\eta^2 = .187$), and the measure of the degree to which the plaintiff was liable for injuries sustained, $F(4, 193) = 18.63$, $p < .01$ ($\eta^2 = .268$). The significant main effect of plaintiff was related to a significant univariate main effect on the defendant liability measure, $F(2, 193) = 3.76$, $p < .05$ ($\eta^2 = .036$). Table 2 presents the means and standard deviations for all compensatory awards, liability verdicts, and attributions of liability for all five aggregation conditions.

Table 2
Means and Standard Deviations for the Damage Award, Liability, and Plaintiff Liability Measures

No. of plaintiffs	Damage award		Liability		Plaintiff liability	
	M	*SD*	*M*	*SD*	*M*	*SD*
1	0.96_a	0.96	1.39_{ab}	0.57	0.60_a	0.27
2	1.21_a	1.20	1.41_a	0.50	0.51_a	0.25
4	3.54_b	2.14	1.19_{bc}	0.40	0.36_b	0.17
6	3.00_{bc}	1.64	1.09_c	0.27	0.34_b	0.11
10	2.32_c	1.12	1.00_c	0.00	0.27_b	0.12

Note. For liability scores, higher numbers denote lower defendant liability. For damage awards, higher numbers indicate higher awards. Plaintiff liability scores denote proportion of liability assigned to the plaintiff. Means with different subscripts in the same column differ significantly by a Tukey test. Damage awards of 1 resulted in compensation of $10,000, awards of 2 resulted in compensation of $10,001–50,000, and awards of 3 resulted in compensation of $100,000–200,000.

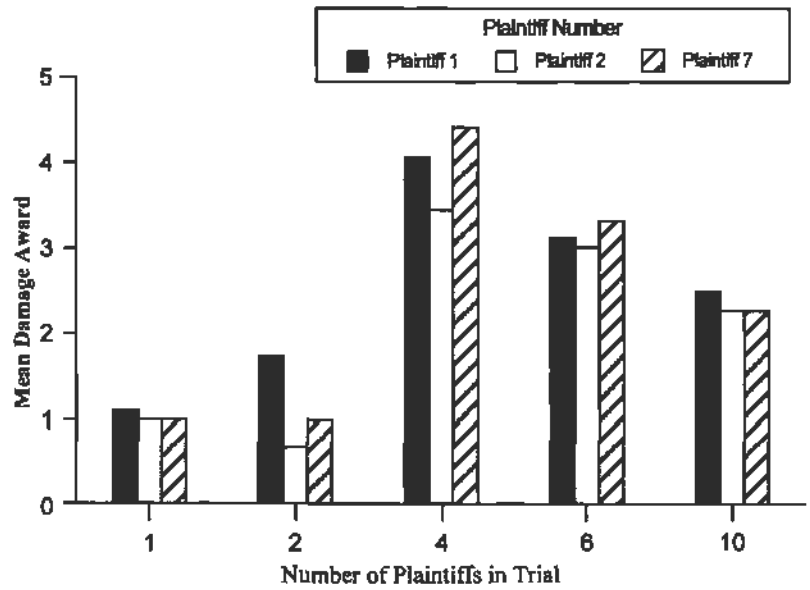

Figure 1. The fate of the three focus plaintiffs across all conditions.

Damage awards. The first column of Table 2 shows the means and standard deviations for the damage award assigned. It is important to note that the higher the scores, the greater the assigned award. Follow-up analyses using a Tukey test, as shown in Table 2, revealed that the 1- and 2-plaintiff trials did not differ significantly. The 1-plaintiff trial differed significantly from the 4-plaintiff ($p < .01$), 6-plaintiff ($p < .01$), and 10-plaintiff ($p < .01$) trials. Likewise, the 2-plaintiff trial differed significantly from the 4- ($p < .01$), 6- ($p < .01$), and 10-plaintiff ($p < .01$) trials. The 4-plaintiff trial differed significantly from the 10-plaintiff ($p < .01$) but not the 6-plaintiff trial. The 6-plaintiff and 10-plaintiff trials did not differ significantly. It is important to note that, as Table 2 shows, higher awards were assigned in the 4-plaintiff condition than in the 10-plaintiff condition. The general trend of the damage awards suggest that awards peaked at the 4-plaintiff condition. Figure 1 presents the fate of plaintiffs 1, 2, and 7 in all five conditions.

Liability. Column 2 of Table 2 presents liability scores. It is important to note that higher liability scores indicate less defendant liability. As shown in the second column of Table 2, Tukey tests performed on the liability measure showed that the 1-plaintiff trial differed significantly from the 6-plaintiff ($p < .05$) and 10-plaintiff ($p < .01$) trials. The 1-plaintiff trial did not differ significantly from the 2- or 4-plaintiff trials. Additionally, the 2-plaintiff trial differed significantly from the 4-plaintiff ($p < .05$), 6-plaintiff ($p < .01$), and 10-plaintiff trials ($p < .01$). No other significant differences were found. The general trend is that as the number of plaintiffs increased, more liability adhered to the defendant, beginning with four plaintiffs.

Proportion of liability attributed to the plaintiffs. The third column of Table 2 shows the means and standard deviations for the proportion of liability attributed to the plaintiffs. Higher proportions indicate that greater fault was attached to the plaintiff. The Tukey test showed that there was no significant difference between the 1-plaintiff and 2-plaintiff trials. The 1-plaintiff trial differed significantly from the 4-plaintiff ($p < .01$), 6-plaintiff ($p < .01$), and 10-plaintiff trials ($p < .01$). The 2-plaintiff trial differed from the 4-plaintiff ($p < .01$), 6-plaintiff ($p < .01$), and 10-plaintiff ($p < .01$) trials. No other significant differences were found. In summary, the 1- and 2-plaintiff configurations elicited judgments of less liability than the 4-, 6-, and 10-plaintiff versions did.

Cognitive Measures

The cognitive measures (listed in Table 3) were also analyzed with a 1-factor (number of plaintiffs) MANOVA. The results showed a significant main effect of number of plaintiffs in the trial, $\Lambda = .159$, $F(4, 434) = 6.10$, $p < .01$ ($\eta^2 = .368$). ANOVAs related to this main effect showed univariate main effects on all of the cognitive measures included in the analysis. Table 3 summarizes the results of the ANOVAs.

Evaluation of the evidence. Table 4 shows the means and standard deviations for each of the cognitive measures analyzed, as well as the results from post hoc Tukey tests. As Table 4 suggests,

Table 3
Analysis of Variance Results for the Cognitive Measures

Measure	F	$p <$	η^2
How many times mind changed	4.14	.01	.119
Closeness of the evidence	6.87	.01	.183
Credibility of defense medical expert	17.38	.01	.361
Credibility of defense ergonomic expert	5.17	.01	.153
Credibility of plaintiff ergonomic expert	3.71	.01	.108
Credibility of plaintiff medical expert	2.92	.05	.087
Ability to keep plaintiffs separate	4.54	.05	.129
Ability to understand the evidence	24.49	.01	.443
Ability to understand expert testimony	4.25	.01	.121
Evidence items correctly recalled	11.83	.01	.278

Note. Degrees of freedom for all comparisons are 4 and 123.

Table 4
Means and Standard Deviations for the Cognitive Measures

Measure	No. of plaintiffs									
	1		2		4		6		10	
	M	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*
How many times mind changed	2.21_{a}	1.33	2.00_{a}	0.52	1.05_{b}	0.98	1.21_{ab}	0.83	0.90_{b}	1.60
Judgment of evidence	4.02_{a}	0.83	3.92_{a}	0.74	3.26_{b}	0.73	3.31_{b}	0.82	3.10_{b}	1.04
Understand evidence	4.30_{a}	1.31	4.00_{a}	0.94	2.37_{b}	0.95	2.63_{b}	0.76	2.14_{b}	0.85
Understand experts	3.58_{a}	0.87	3.85_{a}	0.88	2.47_{b}	0.77	2.63_{b}	0.60	2.38_{b}	0.97
Credibility: def medical	3.09_{a}	0.87	3.35_{a}	0.89	4.47_{b}	1.02	4.47_{b}	1.02	4.57_{b}	0.75
Credibility: pl medical	3.88_{a}	1.27	4.31_{ab}	1.04	4.84_{b}	1.21	4.47_{ab}	0.91	4.38_{ab}	0.59
Credibility: def ergon	3.34_{ab}	1.42	3.96_{a}	0.99	3.15_{ab}	1.01	2.89_{c}	1.02	2.47_{bc}	0.87
Credibility: pl ergon	3.26_{a}	1.00	3.53_{a}	0.81	3.84_{ab}	0.89	4.16_{b}	0.76	3.42_{ab}	1.02
Evidence recognized	2.09_{a}	1.77	2.61_{a}	1.44	0.79_{b}	0.85	1.05_{b}	1.03	0.38_{b}	0.67

Note. Higher scores denote evidence that favored the defendant or had less credibility or indicate that the jurors had more ability to understand the evidence and the experts. Means with different subscripts in the same row differ significantly by a Tukey test. Credibility: def medical = credibility of the defendant's medical expert; Credibility: pl medical = credibility of the plaintiff's medical expert; Credibility: def ergon = credibility of the defendant's ergonomics expert; Credibility: pl ergon = credibility of the plaintiff's ergonomics expert.

the only significant differences to emerge in the number of times a juror changed his or her mind occurred between the 1-plaintiff trial and the 4-plaintiff trial ($p < .05$) and between the 1-plaintiff trial and the 10-plaintiff trial ($p < .02$). Jurors tended to change their minds more often in the 1-plaintiff trial than in the 4- or 10-plaintiff trials.

On the scale rating the closeness of the evidence, significant differences were found between the 1-plaintiff and 2-plaintiff conditions and the 4-, 6-, and 10-plaintiff conditions ($p < .05$). 1- and 2-plaintiff trials did not differ from each other, nor did the 4-, 6-, and 10-plaintiff trials differ. It is important to note first that jurors found the evidence to be "close." However, the significant differences between the 1- and 2-plaintiff configuration and the 4-, 6-, and 10-plaintiff configurations are due to the tendency for the 1- and 2-plaintiff jurors to find that the evidence favored the defendant more than it favored the plaintiffs.

Jurors' ability to understand the evidence was significantly affected by the number of plaintiffs in the trial in the following way. The 1- and 2-plaintiff trials did not differ significantly. (It is important to note that higher scores indicate greater difficulty in understanding the evidence). However, the 1-plaintiff trial differed significantly from the 4- ($p < .01$), 6- ($p < .01$), and 10-plaintiff ($p < .01$) trials. Similarly, the 2-plaintiff trial differed from the 4- ($p < .01$), 6- ($p < .01$), and 10-plaintiff trials. The 4-, 6-, and 10-plaintiff trials did not significantly differ from one another. Inspection of the means in Table 4 shows that jurors found it easier to understand the evidence in the 1- and 2-plaintiff trials, as compared with the 4-, 6-, and 10-plaintiff trials.

The same pattern emerged on the ratings of the ability to understand the experts. Once again, the 1- and 2-plaintiff trials did not differ significantly. However, both the 1- and 2-plaintiff trials differed significantly from the 4- ($p < .01$ for both comparisons), 6- ($p < .01$ for both comparisons), and 10-plaintiff ($p < .01$ for both comparisons) trials. It was easier to understand the expert testimony in the 1- and 2-plaintiff trials than in the 4-, 6-, and 10-plaintiff trials.

Credibility of witnesses. Analysis of the measure of the credibility of the defense medical expert showed that the 1- and 2-plaintiff trials did not differ significantly. However, the 1-plaintiff trial differed significantly from the 4-plaintiff ($p < .01$), 6-plaintiff ($p < .01$), and 10-plaintiff ($p < .01$) trials. Additionally, the 2-plaintiff trial differed significantly from the 4-plaintiff trial ($p < .01$), the 6-plaintiff trial ($p < .01$), and the 10-plaintiff trial ($p < .01$). Inspection of the means in Table 4 shows that the credibility of the defense medical expert was rated as lower in the 1- and 2-plaintiff trials, as compared with the 4-, 6-, and 10-plaintiff trials. The only significant difference on the credibility of the defense medical expert measure was between the 1- and 4-plaintiff trials ($p < .05$). The plaintiff's medical expert was rated as less credible in the 1-plaintiff than in the 4-plaintiff trial.

On the measure of the credibility of the defense ergonomic expert, there were significant differences between the 1-plaintiff and 6-plaintiff trials ($p < .01$) and between the 2- and 6-plaintiff ($p < .02$) and the 2- and 10-plaintiff ($p < .01$) trials. The plaintiff's ergonomic expert was rated as less credible in the 6-plaintiff trial than in the 1-plaintiff trial. Similarly, the defense ergonomic expert was rated as less credible in the 2-plaintiff than in the 6- or 10-plaintiff trials. The only difference that was significant on the measure of the plaintiff's ergonomic expert measure was between the 1-plaintiff and 6-plaintiff trials ($p < .01$).

Recognition measure. The number of items of evidence correctly recognized shows a pattern of results similar to the ability to understand the evidence. Here the 1- and 2-plaintiff trials did not differ significantly. The 1-plaintiff trial differed significantly from the 4-plaintiff trial ($p < .01$), the 6-plaintiff trial ($p < .05$), and the 10-plaintiff trial ($p < .01$). The 4-, 6-, and 10-plaintiff trials did not differ significantly. The same pattern emerged when the 2-plaintiff trial was compared with the 4-plaintiff ($p < .01$), 6-plaintiff ($p < .01$), and 10-plaintiff ($p < .01$) trials. As shown in Table 4, correct recognition was higher in the 1- and 2-plaintiff trials, as compared with the 4-, 6-, and 10-plaintiff trials.

Path Analysis

Several path models were posited to reflect the hypothesized linkages between the study's exogenous and endogenous variables.

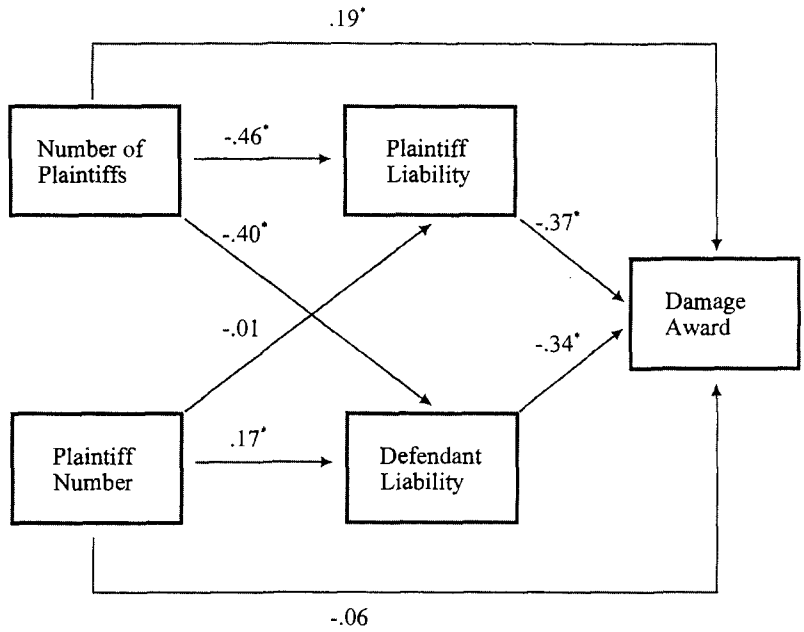

Figure 2. Path analysis for the award model. * $p < .05$.

We used the number of plaintiffs (1, 2, 4, 6, 10) and the individual plaintiffs (1–10) as exogenous predictor variables, the cognitive factors as mediating variables, and plaintiff and defendant liability as two criteria variables. Damage awards were the ultimate dependent variable. Figure 2 displays the most parsimonious rendering of the data and presents the standardized parameter estimates for the model. Starred numbers are significant according to the critical ratio test (Bentler, 1990).

As Figure 2 suggests, jurors' attributions about liability were crucial in the assignment of awards. Also, the size of the plaintiff aggregations was significantly related to the awards, both directly and indirectly.

Discussion

The results of this study on the effects of number of plaintiffs on liability and awards suggest that within the context of a close trial involving repetitive stress injuries, an increase in information load had a significant impact on verdicts and information processing. With respect to liability verdicts, 1 or 2 plaintiffs were less likely to prevail than when the plaintiffs were aggregated in a 4-, 6-, or 10-plaintiff group.

Compensatory awards followed a somewhat different pattern. The fulcrum in this study was the 4-plaintiff aggregation. Lower awards were assigned in the 1- and 2-plaintiff conditions, and awards appeared to reach their zenith in the 4-plaintiff condition and then begin to show decrements in the 6- and 10-plaintiff configurations. There is little in the results of the cognitive measures that illuminates this finding. Research from a number of venues suggests that 4 plaintiffs (alternatives, products, etc.) are perceived as a group, and even when jurors say they can distinguish among the members of the group, this "chunking" of individuals results in similar awards for all members of the group (Selvin & Picus, 1987). The recognition data collected in this study suggest that when the number reaches 4, jurors have difficulty distinguishing among various plaintiffs. Although it is true that the injuries and general work environments for the plaintiffs were quite similar, we have found that even when plaintiffs present quite distinctive and distinguishable claims, 4 plaintiffs are treated as a group with respect to compensation and damages (Horowitz et al., 1996).

It may be that the process of assigning awards to a small group (4 plaintiffs) differs from that of assigning awards to members of a larger group (10 plaintiffs).[3] We theorize that jurors in the 10-plaintiff condition, because they are attending to a larger aggregation, may use 1 or 2 modal plaintiffs as anchors and assign awards on that basis. We suspect that had we elongated the plaintiff matrix to perhaps 15 or 20, the awards might have matched those given in the 1- or 2-plaintiff conditions. That is, we speculate that an inverted U-shaped curve might emerge if we extended the aggregation variable beyond 10 or 15 individuals. This inverted-U prediction may be applicable only to aggregations in which the injuries are relatively similar, as in our study, and when those injuries are not extreme. Jurors may focus on those plaintiffs with modest injuries and apply that metric to the entire group.

In addition, the fact that we used individual jurors who did not deliberate must be taken into account. There is evidence to suggest that group awards (juries) become less predictable than those rendered by individuals (Schkade, Sunstein, & Kahneman, 2000). That is, deliberation tends to result in more extreme awards, because of group polarization. Schkade et al. (2000) presented evidence that suggests that juries that initially favored a small award produced even smaller ones after deliberations, whereas

[3] We thank Kevin Murphy for this interpretation of the data.

juries tending toward large awards rendered even larger ones after deliberations.

The results of the present study also clearly show that judgment of liability is directly related to the amount of compensation awarded to the plaintiffs. Compensatory awards, of course, are to be calculated on the extent of the plaintiff's injuries rather than according to the defendant's conduct. The path analysis suggests that the degree of adjudged defendant liability and the size of the plaintiff aggregation were strongly related to awards. As numbers of plaintiffs increased, the amount of responsibility attributed to the defendant also increased significantly. The crucial judgment, then—and this finding does not surprise us—was the degree of responsibility attributed to the defendant and the plaintiffs.

The mock jurors' self-reported cognitive responses provide some insight into how increases in plaintiff aggregation affected information processing. First, jurors were less likely to entertain alternative constructions of the evidence as the number of plaintiffs increased. This follows previous findings that indicate that increasing levels of information load lead to simplified strategies (Helgeson & Ursic, 1993; Horowitz et al., 1999).

Jurors who faced an increasing number of plaintiffs (four and above) reported, unexpectedly, that the evidence was judged to be "closer" than jurors who considered only one or two plaintiffs thought it was. The inability to decide who the evidence favored could very well have been related to the jurors' report that they found the evidence more difficult to comprehend when greater numbers of plaintiffs (four and above) were aggregated. In addition, greater numbers of plaintiffs degraded the jurors' ability to understand the expert witnesses and to correctly recognize what work task the plaintiffs performed and how they differed from other plaintiffs. It is not surprising that a blending effect occurred as the aggregated number reached four and higher.

How do the present results inform the issue of juror competence in complex civil trials? With respect to the impact of consolidation, the fate of the three "focus" plaintiffs differed substantially when they were part of different configurations of plaintiffs. Clearly then, jurors were not judging the evidence pertaining to these plaintiffs on merits alone. Furthermore, there is no gainsaying the finding that jurors reasoned holistically, using evidence pertaining to liability to decide damage awards. Although some research suggests that jurors do not always reason in this manner, much of the relevant work confirms the present finding (Landsman et al., 1998).

However, in mitigation, we must note that our mock jurors had very little help in their task. The trial was extraordinarily dense and packed into roughly 6 hr. It is quite likely that similar evidence in an actual trial would have been presented over perhaps 2 or 3 days, giving the jurors time to consolidate the information and consider it more fully. Furthermore, the jurors' task was made more demanding by evidence that was not clear cut, particularly the scientific evidence concerning causality, which was crucial to the outcome. If experts disagree on causality, one can hardly expect jurors to resolve the issue.

We focused on individual jurors in this research because we were concerned with the cognitive abilities of jurors to process evidence in a multiple-plaintiff trial. Therefore, this was a juror analogue study, and the jurors in the study did not have the benefit of group deliberations. It may well be that deliberations would have aided comprehension of the evidence and differentiation of plaintiffs, although there is some evidence to the contrary (Bordens & Horowitz, 1989).

Many of the mock jurors spontaneously expressed the hope or made a request during the trial that they be allowed to take notes. Although the research on the efficacy of note-taking is somewhat mixed (ForsterLee & Horowitz, 1997; Heuer & Penrod, 1988), we argue that it ought to be mandatory in complex trials. It would have permitted our jurors to keep better track of the individual plaintiffs, if nothing else. Rosenhan, Eisner, and Robinson (1994) reported that note-taking enhanced the performance of their mock jurors, and further support for note-taking in civil litigation was produced by ForsterLee, Horowitz, and Bourgeois (1994), who found that note-taking significantly improved juror cognition at the encoding stage of memory. Jurors who were allowed to take notes made a distinction between differentially worthy plaintiffs and assigned appropriate compensatory damage awards, as compared with those not allowed to take notes. Note-taking also improved the jurors' ability to recall more trial facts, especially when they were allowed access to their notes (ForsterLee et al., 1994). Jurists are concerned that proficient note-takers may exert too much influence on the outcome, but then, any juror may exert influence, whether notes are allowed or not. In addition, a notebook with photographs of each plaintiff and containing the relevant work and medical information would be a valuable aid.

Finally, generalization is circumscribed by the fact that all jury analogue studies have their limitations, and this is no exception. The fact that the jurors did not deliberate limits the heuristic value; the jury's collective and transactive memory may be of some help in decision making. We did, however, use a representative sample of real-world jurors, and the trial was as realistic as one can hope for using a videotaped presentation.

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Exhibit B

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PERSPECTIVES

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Fairness over Efficiency:
Why We Overturned San Francisco's *Sua Sponte* Asbestos Consolidation Program

By James C. Parker and Edward R. Hugo
of Brydon Hugo & Parker in San Francisco

Author Bios on Page 5.

In August 2007, the San Francisco Superior Court began to routinely consolidate groups of asbestos plaintiffs for trial. The consolidation order was based solely upon the identity of plaintiffs' counsel and the alleged disease and was made without any formal notice, motion, or consideration of evidence.

Consolidation is intended to promote judicial efficiency by uniting separate lawsuits that involve *common* questions of law or fact. (Code Civ. Proc., § 1048(a); see also *Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391, 1396.) Although it is a matter subject to the sound discretion of the court, the decision is to be made "in accordance with the spirit of the law and with a view to subserving, rather than defeating the ends of…justice." (*Slack v. Murray* (1959) 175 Cal. App. 2d 558, 565.)

The rush to judicial efficiency can have many unintended and unfair consequences. Consolidations have been found to increase plaintiffs' likelihood of receiving both compensatory and punitive damages. Defendants are faced with long trial estimates, the introduction of irrelevant, and often prejudicial, evidence and potentially dissimilar and even conflicting defenses. Plaintiffs' counsel gain tremendous efficiency in their ability to prosecute multiple cases with a single lawyer, recycled expert witnesses and an unstated "where there is smoke there is fire" theme. In the end, well-intentioned efforts to achieve judicial efficiency can turn a court of law into a claims facility which only serves to invite more new filings. Some states, including Mississippi, Ohio, Michigan, Georgia, Kansas and Texas, have essentially banned consolidation of asbestos cases – and seen their case load drop.

In San Francisco, matters came to a head in the fall of 2007, when one trial judge found herself simultaneously assigned two completely different asbestos cases for trial – one a wrongful death mesothelioma and the other, a living kidney cancer. Rather than trail one case, she chose to consolidate both for trial before the same jury – even though the only connection between the two cases was that the plaintiffs were represented by the same law firm, and some of the defendants, including one of our clients, were in both cases.

We filed an emergency petition with the First District Court of Appeal. Although appellate courts rarely intervene in trials, and almost never over procedural matters, a shocked First District promptly halted the trial and unanimously overturned the consolidation order, finding it fundamentally unjust to force our client to defend itself against two such different claims in front of the same jury. In response to that ruling, plaintiff's counsel dismissed our client from the second case.

The First District relied on *Malcolm v. National Gypsum Co.* (2d Cir. 1993) 995 F.2d 346, in which the Second Circuit found that the following factors should be considered when consolidating asbestos cases:

(1) Did the plaintiffs or decedents have a common worksite;
(2) Did they have similar occupations;
(3) Did they have similar times of exposure;
(4) What types of disease are involved;
(5) Are the injured workers living or deceased;
(6) What is the status of discovery in each case;
(7) Are the plaintiffs or decedents represented by the same counsel; and
(8) What type of cancer is alleged regarding each plaintiff or decedent. (*Malcolm v. National Gypsum Co.* (2nd Cir. 1993) 995 F.2d 346, 350-351.)

We would urge the Court to add two more factors to the *Malcolm* analysis:

(9) "The type of asbestos-containing product to which the worker was exposed" (North Am. Refractory Co. v. Easter (Tex. App.-Corpus Christi 1999) 988 S.W.2d 904, 917; see also *In re Ethyl Corp.* (Tex. 1988) 975 S.W.2d 606, 616-617); and

(10) Whether the law applicable to all plaintiffs is the same (*In re Welding Rod Fume Prods. Liab. Litig.* (MDL 1535) (N.D. Ohio), 2006 WL 2869548, *3 (slip copy)).

After our initial success, we next challenged San Francisco's entire program of *sua sponte* consolidations. After a series of hearings, the Superior Court overruled our objections, claiming that its large numbers of asbestos cases – the court is currently handling over 1,600 asbestos cases – made it infeasible to handle such cases one at a time. Indeed, the San Francisco bench handles 75 percent of California's asbestos filings — five times those of Los Angeles County, with a population ten times larger than the Bay Area.

We again petitioned the Court of Appeal, which signaled its dismay with the San Francisco trial courts by promptly ordering briefing. The day the briefing was due, the trial court held a hearing and stated that it would "cause unnecessary costs and delay" to require the plaintiffs to "make a motion for consolidation under 1048(a), or otherwise undertaking a further analysis and groupings of the cases based on factors such as are listed in *Malcolm vs. National Gypsum Company.*"

Just one week later, in a highly unusual step, the trial court retained its own counsel to file an appellate brief to state it had changed its mind and would vacate all *sua sponte* consolidation orders. The trial court further agreed that future consolidations would proceed by formal motions, either pre-trial or at the time of assignment to a courtroom.

Sua sponte consolidations deprive defendants of their procedural and substantive rights to a fair hearing and trial, and will only lead to more filings. We are pleased that the San Francisco Superior Court halted its process of *sua sponte* consolidations, and we will continue to fight for our clients' right to a fair trial.

Editor's Note:
A news story on the developments referred to in this commentary appears in the Courtroom News section of this issue.

About the Authors

Edward R. Hugo is a principal member of Brydon Hugo & Parker. He specializes in products and premises liability; environmental litigation (including State, Federal, Traditional, CERCLA and Proposition 65 claims); asbestos personal injury, wrongful death and property damage actions; construction law (including defect claims); and insurance coverage, bad faith, subrogation and defense. He is designated trial counsel for several corporations in defense of products liability toxic tort claims and has successfully tried to verdict scores of asbestos personal injury and wrongful death lawsuits. Mr. Hugo presently serves as a Superior Court Judge, pro tempore, a member of the Bench/Bar Settlement Program, and an advanced instructor for the National Institute of Trial Advocacy. He lectures in the areas of mass tort, environmental and products liability, and trial and deposition skills. Mr. Hugo earned his J.D. degree from the University of California, Hastings College of the Law in 1986. He is admitted to the California, Colorado, and Hawaii bars.

James C. Parker (left) and Edward R. Hugo (right). Photo by Marc Hugo

James C. Parker is a principal member of Brydon Hugo & Parker. Mr. Parker graduated *cum laude* from Loyola School of Law in 1982. A seasoned litigator with 21 years of trial experience, his practice focuses on the defense of professional negligence actions (with particular focus on dental and medical malpractice), real estate and construction litigation, asbestos defense, products liability law and civil appeals. In his 21 years of practice, Mr. Parker has also had substantial experience in banking law and business litigation. Mr. Parker served as Editor of Orange County Lawyer, the official publication of the Orange County Bar association. He has also published articles in Orange County Magazine, The Oakland Tribune and Contra Costa County Lawyer. Mr. Parker has served as Judge Pro Tem in Superior Court and for Small Claims disputes. He is an Arbitrator of Attorney-Client disputes and serves as a Bar Association of San Francisco Mediation/Settlement Judge. He is an active member of the American Bar Association, the Bar Association of San Francisco, and the Contra Costa, Los Angeles and Orange County Bar Associations.

Exhibit C

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Kristine Harrison
kharrison@kazanlaw.com

May 31, 2023

Via Process Server

Bohdan Prybyla
89 Coachlight Circle
Prospect, CT 06712

Re: ***Shelly E. Yerkes and Thomas F. Yerkes v. Avon Products, Inc., et al.***
Alameda County Superior Court Case No. 23CV032102

Dear Mr. Prybyla:

Enclosed are copies of the following documents in the above referenced matter for service of process on **CHARLES B. CHRYSTAL COMPANY, INC.**

(1) Plaintiff's Responses To Joint Defense Interrogatories

(2) Plaintiff's Responses To Defendant's Standard Interrogatories (Loss Of Consortium)

The summons and complaint packet was served on May 14, 2023.

Very truly yours,

/s/ Kristine Harrison
Kristine Harrison
Legal Secretary

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SHELLY YERKES and THOMAS YERKES, Plaintiffs, vs. AVON PRODUCTS, INC., et al., Defendants.	Case No. 23CV032102 Assigned for all Pre-Trial Purposes to Judge Jo-Lynne Lee, Department 18 **PLAINTIFF'S RESPONSES TO JOINT DEFENSE INTERROGATORIES** Action Filed: April 28, 2022

PROPOUNDING PARTY: Designated Defense Counsel – SPANOS-PRZETAK

RESPONDING PARTY: Plaintiff, Shelly Yerkes

SET NUMBER: One (1)

INTERROGATORY NO. 1:

(a) Name;

(b) Date of Birth;

(c) Place of Birth;

(d) Address;

(e) Height/Weight;

(f) Social Security Number;

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(g) Kaiser Number;

(h) Government Serial Number;

(i) Military Serial Number;

(j) Driver's License Number & State;

(k) All of the names by which YOU have been known;

(l) Highest grade level completed;

(m) Current Spouse's Name;

(n) Spouse's Date of Birth;

(o) Date of Current Marriage;

(p) Spouse's Current Address;

(q) Spouse's Occupation/Employer;

(r) Name of any Former Spouse;

(s) Date of any Former Marriage;

(t) Place, date and circumstances under which any marriage(s) was (were) dissolved or terminated.

RESPONSE TO INTERROGATORY NO. 1:

Based on a reasonable and good faith effort to obtain information under Code of Civil Procedure ("C.C.P.") section 2030.220(c), Plaintiff responds:

(a) Shelly Evans Yerkes;

(b) December 2, 1964;

(c) San Diego, California;

(d) 330 Durham Court, Danville, CA 94526;

(e) 5'11; 155 lbs;

(f) Plaintiff objects that this subpart is an invasion of privacy and not reasonably calculated to lead to the discovery of admissible evidence [*Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13];

(g) 11015745531;

(h) Not applicable;

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(i) Not applicable;

(j) California U0122559;

(k) Shelly Marie Evans; Shelly Yerkes;

(l) Master's Degree;

(m) Thomas F. Yerkes;

(n) December 23, 1961;

(o) February 9, 2002;

(p) 330 Durham Court, Danville, CA 94526;

(q) Plaintiff has been on disability since December, 2022;

(r-t) Not applicable.

INTERROGATORY NO. 2:

For each child of any marriage (either natural or adopted), state:

RESPONSE TO INTERROGATORY NO. 2:

Based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds:

Name and Address	Date of Birth	Occupation
Vivienne F. Yerkes 330 Durham Court Danville, CA 94526	August 22, 2003	Student
Jonathan F. Yerkes 23852 Humiston Way Ramona, CA 92065	March 26, 1994	Sales
Kristin F. Reis 135 Cedar Mtn Drive Tracy, CA 95376	March 20, 1995	Stay at home mother

INTERROGATORY NO. 3:

Are either of YOUR natural parents alive? If YOUR answers is "yes", please state for each parent: (a) Current age(s); (b) Any history of cancer or respiratory disease.

Employer Name and Address	Approximate Dates of Employment	Job Title/Duties
Irvine, California Oakland, California	12/2022	management

INTERROGATORY NO. 30:

For each employment in which you claim YOU were exposed to asbestos, please list:

(a) The date of YOUR claimed exposure to asbestos;

(b) The manner and duration of exposure;

(c) Whether YOUR duties included the installation of asbestos-containing materials;

(d) Whether YOUR duties included the tearing out or removal of asbestos-containing materials;

(e) The type of asbestos-containing materials to which YOU were exposed;

(f) The location of each job site, including the name of each plant, state and city where located, along with the beginning and ending date of each job;

(g) If YOU have at any time worked in a shipyard, please IDENTIFY the names of all ships upon which YOU worked;

(h) For each such job identified in response to subparts (f) and/or (g), please state the name and last known address of YOUR immediate supervisor or job superintendent on such job;

(i) For each such job identified in response to subparts (f) and/or (g), please state:

(1) The names and last known addresses of all persons with whom YOU worked regularly on such job;

(2) The job site where YOU worked with each person;

(3) The inclusive dates during which YOU worked with each person.

(j) Any other persons YOU are aware of that have any information regarding the supply, use or distribution of products containing asbestos to which YOU may have been exposed. For each such person, please state:

(1) The person's name;

(2) The person's place of employment;

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(3) The inclusive dates of said employment; and

(4) The current address and phone number of the person.

RESPONSE TO INTERROGATORY NO. 30:

Based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds: Not applicable. Plaintiff does not claim she was exposed to asbestos through her employment.

INTERROGATORY NO. 31:

Were YOU ever exposed to asbestos products outside of YOUR work environment? If so, please state:

(a) Date and place of such exposure;

(b) The circumstances surrounding each exposure; and

(c) The manner and duration of exposure.

RESPONSE TO INTERROGATORY NO. 31:

Plaintiff objects on the grounds and to the extent that this interrogatory seeks information protected by attorney-client privilege and/or the attorney work-product doctrine. Also, Defendants and their agents never advised Plaintiff that Defendants' talc products contained asbestos, asbestiform fibers and/or asbestiform talc. Certain Defendants have now produced extensive documentation demonstrating that asbestos was historically found in their products and talc mines. Subject to and without waiving these objections, and based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds: Yes.

Plaintiff's grandmother was an Avon Lady starting in the 1960s through at least the 1990s. Plaintiff recalls using lines such as Miss Lollipop, Unforgettable Beauty Dust, Lila and Lily of the Valley, Field of Flowers Come Summer, Sweet Honesty, Fresh Cut Florals, Ultra, Tempo and Zany perfumed talc, Skin So Soft powder, as well as blush compacts and deluxe compacts.

Plaintiff's mother also used Johnson and Johnson's Baby Powder on Plaintiff as an infant. From approximately the 1980s through the 2000s, Plaintiff used Johnson's Baby Powder on a regular basis for herself.

Plaintiff also used Shower to Shower on a regular basis from approximately the 1980s

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through the 1990s.

From approximately the 1970s through the 1980s, Plaintiff used Jean Nate on herself on a regular basis.

From approximately the 1990s through the 2000s, Plaintiff used Coty Airspun loose face on a daily basis.

Plaintiff further recalls using Ponds talcum powder throughout her life.

INTERROGATORY NO. 32:

For each type of asbestos material and/or asbestos-containing product for which YOU claim exposure, please state:

(a) The employer, job site and dates where contact with each such asbestos material or product occurred;

(b) The name of the manufacturer of that asbestos material or product;

(c) The trade name of that material or product;

(d) Any name used by yourself or other workers in referring to that material or product, such as nickname or slang term of that material or product;

(e) A description of the box or container or wrapping that contained that product, including size, color and all writing on that box, including size and color or writing; and

(f) A description of any labels, tags or warnings on the box, container or wrapping advising of possible health hazards or advising of methods of use or precautions to be taken.

RESPONSE TO INTERROGATORY NO. 32:

Plaintiff objects on the grounds and to the extent that this Interrogatory seeks information protected by attorney-client privilege and/or the attorney work-product doctrine. Subject to and without waiving these objections, and based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds:

(a) Plaintiff refers to and incorporates her Response to Interrogatory No. 31.

(b) Plaintiff refers Defendants to her Response to Interrogatory No. 31. Plaintiff's counsel herein is informed and believes that based on Plaintiff's exposure and the years of exposure that the manufacturers include all Defendants named herein.

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(c) Plaintiff refers Defendants to her objections and Response to Interrogatory No. 31.

d) Plaintiff referred to asbestos as "asbestos"; Plaintiff refers defendant to her objection and Response to Interrogatory No. 31;

e) Plaintiff objects that this interrogatory is oppressive and burdensome as defendants are in a better position than plaintiff concerning the appearance of packaging of defendants' products, and thus the information is equally and more readily available to defendants than to plaintiff. [Code Civ. Proc. § 2030.220(c); *Bunnell v. Superior Court* (1967) 254 Cal.App.2d 720, 723]; and

f) Plaintiff does not recall seeing any warnings on the box, container, or wrapping of products. Nor does plaintiff recall receiving any health hazard warning. Defendants never provided any warnings to Mrs. Yerkes about asbestos or asbestiform talc could cause cancer. No tags, labels or warnings regarding the cancer risk accompanied the product. Plaintiff further refers defendant to her objection and Response to Interrogatory No. 31.

INTERROGATORY NO. 33:

At any location where YOU claim exposure to asbestos, were any cartons, containers or wrappings bearing the name, the trade name or any other identification of any of the defendants in this lawsuit? If so, please state separately for each defendant:

(a) Each location, the inclusive dates and the frequency that these cartons, containers or wrappings were present;

(b) The identity of each person who can testify that such cartons, containers or wrappings were present;

(c) The identity of each document that indicates that such cartons, containers or wrappings were present;

(d) All evidence known to YOU that these cartons, containers or wrappings contained asbestos material and/or asbestos-containing products; and

(e) The type of asbestos material and/or asbestos-containing products which were contained in each carton, container or wrapping.

and employment records which have been produced to defendants or made available to through executed authorizations provided to Designated Defense Counsel.

INTERROGATORY NO. 66:

Have YOU or anyone on YOUR behalf requested from the Social Security office a listing of all past employers and dates of employment? If so, please either attach a copy or give the employer's name, address, date and quarterly Social Security credit for each employer listed.

RESPONSE TO INTERROGATORY NO. 66:

Based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds: Yes. Plaintiff will provide as soon as they are available.

INTERROGATORY NO. 67:

Please state the name, address and telephone number of every person who assisted YOU in any way in answering these interrogatories.

RESPONSE TO INTERROGATORY NO. 67:

Plaintiff identifies her attorneys of record, Kazan, McClain, Satterley & Greenwood, A Professional Law Corporation, 55 Harrison Street, Suite 400, Oakland, CA 94607; (510) 302-1000.

DATED: May 30, 2023

KAZAN, McCLAIN, SATTERLEY & GREENWOOD
A Professional Law Corporation

By: _____
Michael Reid

Attorneys for Plaintiff

Kazan, McClain, Satterley & Greenwood
A Professional Law Corporation
Jack London Market • 55 Harrison Street, Suite 400 • Oakland, California 94607
(510) 302-1000 • Fax: (510) 835 4913 • www.kazanlaw.com

VERIFICATION

Shelly E. Yerkes and Thomas F. Yerkes v. Avon Products, Inc., et al.
Alameda County Superior Court Case No. 23CV032102

I have read the following and know its contents.

PLAINTIFF'S RESPONSES TO JOINT DEFENSE INTERROGATORIES

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July 20, 2023, at Danville, California.

Shelly Yerkes
Print Name of Signatory

Signature

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Exhibit D

Joseph D. Satterley, Esq. (C.S.B. #286890)
jsatterley@kazanlaw.com
Michael Reid, Esq. (C.S.B. #317740)
mreid@kazanlaw.com
KAZAN, McCLAIN, SATTERLEY & GREENWOOD
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SHARON HOFMAISTER, Plaintiff, vs. JOHNSON & JOHNSON, et al.,, Defendants.	Case No. 23CV033743 ASSIGNED FOR ALL PRE-TRIAL PURPOSES TO: HON. RICHARD SEABOLT DEPARTMENT 18 **PLAINTIFF'S RESPONSES TO JOINT DEFENSE INTERROGATORIES** Action Filed: May 18, 2023

PROPOUNDING PARTY: Designated Defense Counsel – SPANOS-PRZETAK

RESPONDING PARTY: Plaintiff,

SET NUMBER: One (1)

INTERROGATORY NO. 1:

(a) Name;

(b) Date of Birth;

(c) Place of Birth;

(d) Address;

(e) Height/Weight;

(f) Social Security Number;

(g) Kaiser Number;

(h) Government Serial Number;

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(i) Military Serial Number;

(j) Driver's License Number & State;

(k) All of the names by which YOU have been known;

(l) Highest grade level completed;

(m) Current Spouse's Name;

(n) Spouse's Date of Birth;

(o) Date of Current Marriage;

(p) Spouse's Current Address;

(q) Spouse's Occupation/Employer;

(r) Name of any Former Spouse;

(s) Date of any Former Marriage;

(t) Place, date and circumstances under which any marriage(s) was (were) dissolved or terminated.

RESPONSE TO INTERROGATORY NO. 1:

Based on a reasonable and good faith effort to obtain information under Code of Civil Procedure ("C.C.P.") section 2030.220(c), Plaintiff responds:

(a) Sharon Irene Hofmaister;

(b) December 14, 1952;

(c) San Bernardino, California;

(d) 2145 Paris Avenue, Redding, California 96001;

(e) 5'3, 128;

(f) Plaintiff objects that this subpart is an invasion of privacy and not reasonably calculated to lead to the discovery of admissible evidence [*Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13];

(g) Not applicable;

(h) Not applicable;

(i) Not applicable;

(j) CA DL AO151258;

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(k) Sharon I. Espinosa; Sharon I. Hofmaister;

(l) Masters Degree;

(m-q) Not applicable;

(r) Edward Espinosa;

(s) 1975;

(t) 1978; Divorce; Shasta County.

INTERROGATORY NO. 2:

For each child of any marriage (either natural or adopted), state:

RESPONSE TO INTERROGATORY NO. 2:

Based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds:

Name and Address	Date of Birth	Occupation
Jereme Espinosa	May 17, 1976	Retired

INTERROGATORY NO. 3:

Are either of YOUR natural parents alive? If YOUR answers is "yes", please state for each parent: (a) Current age(s); (b) Any history of cancer or respiratory disease.

RESPONSE TO INTERROGATORY NO. 3:

No.

INTERROGATORY NO. 4:

If either of YOUR natural parents are deceased, please state for each parent:

(a) Name of deceased parent(s)

(b) Age at death;

(c) Date of death;

(d) Place where the deceased parent(s)'s death certificate is filed.

RESPONSE TO INTERROGATORY NO. 4:

Based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds:

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(e) The type of asbestos-containing materials to which YOU were exposed;

(f) The location of each job site, including the name of each plant, state and city where located, along with the beginning and ending date of each job;

(g) If YOU have at any time worked in a shipyard, please IDENTIFY the names of all ships upon which YOU worked;

(h) For each such job identified in response to subparts (f) and/or (g), please state the name and last known address of YOUR immediate supervisor or job superintendent on such job;

(i) For each such job identified in response to subparts (f) and/or (g), please state:

(1) The names and last known addresses of all persons with whom YOU worked regularly on such job;

(2) The job site where YOU worked with each person;

(3) The inclusive dates during which YOU worked with each person.

(j) Any other persons YOU are aware of that have any information regarding the supply, use or distribution of products containing asbestos to which YOU may have been exposed. For each such person, please state:

(1) The person's name;

(2) The person's place of employment;

(3) The inclusive dates of said employment; and

(4) The current address and phone number of the person.

RESPONSE TO INTERROGATORY NO. 30:

Plaintiff objects on the grounds and to the extent that this interrogatory seeks information protected by attorney-client privilege and/or the attorney work-product doctrine. Plaintiff further objects that this question assumes exposure to asbestos in some work environment. Based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), plaintiff responds: Plaintiff refers to her response to Interrogatory No. 29.

INTERROGATORY NO. 31:

Were YOU ever exposed to asbestos products outside of YOUR work environment? If so, please state:

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(a) Date and place of such exposure;

(b) The circumstances surrounding each exposure; and

(c) The manner and duration of exposure.

RESPONSE TO INTERROGATORY NO. 31:

Plaintiff objects on the grounds and to the extent that this interrogatory seeks information protected by attorney-client privilege and/or the attorney work-product doctrine. Plaintiff further objects that this question assumes exposure to asbestos in some work environment. In fact, Plaintiff was never exposed to asbestos in any work environment. Also, Defendants and their agents never advised Plaintiff that Defendants' talc products contained asbestos, asbestiform fibers and/or asbestiform talc. Certain Defendants have now produced extensive documentation demonstrating that asbestos was historically found in their product and in the talc mines. Subject to and without waiving these objections, and based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds: Yes.

Plaintiff used Johnson's Baby Powder on herself beginning at an early age. Plaintiff further used Johnson's Baby Powder on clients' necks while working as a hairdresser from approximately the early 1990s until the 2000s. When working as a make-up artist during the same time period, Plaintiff also used Johnson's Baby Powder on her clients' faces to help set their make-up.

From the 1970s through the 2000s, Plaintiff also personally used Avon talc-based products.

From the 1970s through the 2000s, Plaintiff also personally used Revlon talc-based products.

From the 1970s through the 2000s, Plaintiff also personally used L'Oreal talc-based products.

INTERROGATORY NO. 32:

For each type of asbestos material and/or asbestos-containing product for which YOU claim exposure, please state:

(a) The employer, job site and dates where contact with each such asbestos material or product occurred;

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(b) The name of the manufacturer of that asbestos material or product;

(c) The trade name of that material or product;

(d) Any name used by yourself or other workers in referring to that material or product, such as nickname or slang term of that material or product;

(e) A description of the box or container or wrapping that contained that product, including size, color and all writing on that box, including size and color or writing; and

(f) A description of any labels, tags or warnings on the box, container or wrapping advising of possible health hazards or advising of methods of use or precautions to be taken.

RESPONSE TO INTERROGATORY NO. 32:

Plaintiff objects on the grounds and to the extent that this Interrogatory seeks information protected by attorney-client privilege and/or the attorney work-product doctrine. Subject to and without waiving these objections, and based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds:

(a) Plaintiff refers to and incorporates her Response to Interrogatory No. 31.

(b) Plaintiff refers Defendants to her Response to Interrogatory No. 31. Plaintiff's counsel herein is informed and believes that based on Plaintiff's exposure and the years of exposure that the manufacturers include all Defendants named herein.

(c) Plaintiff refers Defendants to her objections and Response to Interrogatory No. 31.

d) Plaintiff referred to asbestos as "asbestos"; Plaintiff refers defendant to her objection and Response to Interrogatory No. 31;

e) Plaintiff objects that this interrogatory is oppressive and burdensome as defendants are in a better position than plaintiff concerning the appearance of packaging of defendants' products, and thus the information is equally and more readily available to defendants than to plaintiff. [Code Civ. Proc. § 2030.220(c); *Bunnell v. Superior Court* (1967) 254 Cal.App.2d 720, 723]; and

f) Plaintiff does not recall seeing any warnings on the box, container, or wrapping of products. Nor does plaintiff recall receiving any health hazard warning. Defendants never provided any warnings to Ms. Hofmaister about asbestos or asbestiform talc could cause cancer.

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INTERROGATORY NO. 65:

Please IDENTIFY any work diaries, photographs, calendars, company brochures, medical bills, invoices, business cards and physical objects (e.g., asbestos pipe), which are in YOUR personal care, custody and control, relevant to the subject matter of this lawsuit.

RESPONSE TO INTERROGATORY NO. 65:

Plaintiff objects to this interrogatory to the extent that it violates the attorney-client privilege and/or the attorney work-product doctrine. Based on a reasonable and good faith effort to obtain responsive information under C.C.P. § 2030.220(c), and without waiving these objections, Plaintiff responds: Plaintiff does not have any such items other than family photographs. Also, Plaintiffs have relevant medical and employment records that have been or will be produced to Defendants or made available to through executed authorizations provided to Designated Defense Counsel.

INTERROGATORY NO. 66:

Have YOU or anyone on YOUR behalf requested from the Social Security office a listing of all past employers and dates of employment? If so, please either attach a copy or give the employer's name, address, date and quarterly Social Security credit for each employer listed.

RESPONSE TO INTERROGATORY NO. 66:

Based on a reasonable and good faith effort to obtain information under C.C.P. § 2030.220(c), Plaintiff responds: Yes. Plaintiff's Social Security records will be provided when they become available.

INTERROGATORY NO. 67:

Please state the name, address and telephone number of every person who assisted YOU in any way in answering these interrogatories.

RESPONSE TO INTERROGATORY NO. 67:

Plaintiff identifies his attorneys of record, Kazan, McClain, Satterley & Greenwood, A Professional Law Corporation, 55 Harrison Street, Suite 400, Oakland, CA 94607; (510) 302-1000.

DATED: June 26, 2023

KAZAN, McCLAIN, SATTERLEY & GREENWOOD
A Professional Law Corporation

By: 
Michael Reid

Attorneys for Plaintiff

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PROOF OF SERVICE

Sharon Hofmaister v. Johnson & Johnson, et al.
Alameda County Superior Court Case No. 23CV033743

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is Jack London Market, 55 Harrison Street, Suite 400, Oakland, CA 94607.

On June 26, 2023, I served true copies of the following document(s) described as:

PLAINTIFF'S RESPONSES TO JOINT DEFENSE INTERROGATORIES

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address bleal@kazanlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on June 26, 2023, at Oakland, California.

/s/ Brenda Leal Alvarez
Brenda Leal Alvarez

VERIFICATION

Sharon Hofmaister v. Avon Products, Inc., et al.
Alameda County Superior Court Case No. 23CV033743

I have read the following and know its contents.

PLAINTIFF'S RESPONSES TO JOINT DEFENSE INTERROGATORIES

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July 27, 2023, at San Bernardino, California.

Sharon Hofmaister
Print Name of Signatory

Signature

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PROOF OF SERVICE

Sharon Hofmaister v. Johnson & Johnson et al.
Alameda County Superior Court Case No. 23CV033743

I am a resident of the State of California, over the age of 18 years, and not a party to the within action. My electronic notification address is service@hugoparker.com and my business address is 240 Stockton Street, 8th Floor, San Francisco, California 94108. On the date below, I served

DEFENDANT CHARLES B. CHRYSTAL COMPANY'S OPPOSITION TO PLAINTIFFS' MOTION FOR CONSOLIDATION OF CASES; DECLARATION OF CHLOE J. LOOMER

on all counsel of record, by electronic transmission, pursuant to CCP § 1010.6 and CCR 2.251.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 8, 2023, at San Francisco, California.

R. Hallsey

Robert Hallsey

4525-0053