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

Coordination Proceeding
Special Title (Rule 3.550)

JOHNSON & JOHNSON TALCUM POWDER CASES

This document relates to:

Charmaine Lloyd, et al., v. Johnson & Johnson, et al., Los Angeles County Superior Court, Case No. BC628228

Plaintiff Eva Echeverria ONLY

Case No. BC628228
JCCP NO. 4872

DEFENDANT JOHNSON & JOHNSON'S MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Judge: Hon. Maren E. Nelson
Dept.: 307

Hearing: October 12, 2017 @ 10:00 a.m.

NOTICE OF MOTION AND MOTION

TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on October 12, 2017, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 307 of the above-referenced court, located at 600 Commonwealth Ave., Los Angeles, CA 90005, Defendant Johnson & Johnson, by and through its counsel of record, will and hereby does move this Court for an Order setting aside the judgment entered against it and in favor of Plaintiff Eva Echeverria on August 21, 2017, and entering judgment in favor of Defendant notwithstanding the verdict, pursuant to Code of Civil Procedure section 629.

The motion is based on the grounds that there is no substantial evidence to support the verdict on liability, including that there is no substantial evidence that Johnson & Johnson was responsible for the manufacture, sale, or labeling of the products at issue at any relevant times, as well as insufficient evidence of causation and/or to support a duty to warn. In the alternative, Defendant seeks partial judgment notwithstanding the verdict as to liability for punitive damages because there was no clear and convincing evidence of malice by a director, officer, or managing agent acting on behalf of Defendant.

The motion is based upon this Notice of Motion and Motion; Defendant's previously filed "Notice of Motion and Motion for Judgment Notwithstanding the Verdict"; the evidence presented at trial; all pleadings, papers, files, and records in this action; the minutes of the Court; the Memorandum of Points and Authorities attached hereto; the Declaration of Bart H. Williams submitted herewith and the exhibits thereto; the Compendium of Trial Transcript Excerpts submitted herewith; and any such further evidence and argument that may properly come before the Court at the hearing to be set by the Court pursuant to Code of Civil Procedure sections 660 and 661.

Where, as here, a party moves for both new trial and JNOV as alternative remedies, the Court must rule on both motions at the same time. Civ. Proc. Code § 629. The Court's power to grant these motions expires 60 days after service of notice of entry of judgment, which took place

on August 21, 2017. Accordingly, the last day for the Court to rule on the Motions will be October 20, 2017.

DATED: September 15, 2017

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INTRODUCTION

The jury's astounding $417 million verdict is, if anything, even more flawed and unsupported when considered as to Defendant Johnson & Johnson. It is undisputed that Defendant Johnson & Johnson Consumer Inc. ("JJCI"), not Johnson & Johnson, has been the sole entity responsible for the marketing, sale, and labeling of Johnson's Baby Powder and Shower to Shower since well before the first study investigating a purported association between talc use and ovarian cancer was published in 1982. Johnson & Johnson is simply the parent holding company, and there was no evidence at trial that it ever sold talc products—to Ms. Echeverria or anyone else. Nonetheless, the jury imposed $408 million in compensatory and punitive damages, or 98% of the total, against Johnson & Johnson. The jury's patently irrational allocation, on top of its flawed and unsupported findings of liability, confirm that the verdict must be set aside and JNOV entered.

Plaintiff invited the jury to speculate that Johnson & Johnson must have sold the products itself before JJCI was organized in 1967, but even if true, that would mean that the verdict against Johnson & Johnson could be upheld only if Plaintiff has presented substantial evidence that (1) Johnson & Johnson had a duty to warn as of 1967; and (2) Plaintiff's talc use from 1964-1967 was a substantial factor in causing Plaintiff's ovarian cancer. Plaintiff wholly failed to do so. Plaintiff's entire case against Johnson & Johnson, the parent, hinges on a single document from 1964 that does not mention ovarian cancer and that was written decades before scientists even conceived of a possible association between vaginal talc use and ovarian cancer. That document as a matter of law cannot constitute the "substantial evidence" necessary to support a conclusion that Johnson & Johnson had a duty to warn. Nor did Plaintiff present substantial evidence to show that she purchased talc from Johnson & Johnson (the parent), much less that any such purchases were a substantial factor in her ovarian cancer.

In sum, the judgment against Johnson & Johnson must be set aside because there was no substantial evidence at trial that the parent company was directly or vicariously responsible for the manufacture, sale, or labeling of the products at issue at any time. At a minimum, the $340 million punitive damages award must be vacated, and the Court should enter JNOV on the issue of liability for punitive damages, because there is no substantial evidence of malice by a director, officer, or

managing agent of Johnson & Johnson acting on behalf of the company. Finally, even if liability could extend to Johnson & Johnson, the company would still be entitled to JNOV for the same reasons as Defendant JJCI: there was no substantial evidence of causation or a duty to warn.

LEGAL STANDARDS

A motion for JNOV challenges the legal sufficiency of the evidence and may be granted even when motions for nonsuit or a directed verdict have been previously denied. *See* Civ. Proc. § 629; *Beavers v. Allstate Ins. Co.*, 225 Cal. App. 3d 310, 328, 333 (1990). Although in conducting its review the Court must view the evidence and resolve conflicts in favor of the prevailing party, it "may not consider only supporting evidence in isolation, disregarding all contradictory evidence." *Rivard v. Bd. of Pension Comm'rs*, 164 Cal. App. 3d 405, 412 (1985). Rather, the requisite "substantial evidence" review "must be based on the whole record," *id.*, including all relevant, uncontradicted evidence that supports the position of the moving party, *Osborn v. Irwin Mem'l Blood Bank*, 5 Cal. App. 4th 234, 275 (1992). To be sure, "[s]ubstantial evidence is not synonymous with 'any' evidence. To constitute sufficient substantiality to support the verdict, the evidence must be reasonable in nature, credible, and of solid value; it must actually be substantial proof of the essentials which the law requires in a particular case." *Id.* at 284 (quotation omitted). And "[w]hile substantial evidence may consist of inferences, such inferences must be a product of logic and reason and must rest on the evidence; inferences that are the result of mere speculation or conjecture cannot support a finding." *Kasparian v. Cnty. of Los Angeles*, 38 Cal. App. 4th 242, 260 (2007) (quotation omitted).

ARGUMENT

I. There Is No Substantial Evidence That Johnson & Johnson, the Parent Company, May Be Held Directly or Vicariously Liable Under Plaintiff's Failure-to-Warn Claim.

A parent corporation generally is not liable for the acts of its subsidiary, because parents are separate legal entities from their subsidiaries. 6 Witkin, *Summary of Cal. Law Corporations* § 11; *Sonora Diamond Co. v. Super. Ct.*, 83 Cal. App. 4th 523, 538 (2000). To avoid that rule, a plaintiff must show direct tortious conduct by the parent corporation itself or some basis for holding the parent vicariously liable under an alter ego or agency theory. There was no such evidence.

A. Defendant JJCI Has Been Responsible for the Manufacture, Sale, and Labeling of the Talc Products at Issue Ever Since the Scientific Community Started Investigating an Association with Ovarian Cancer.

Establishing liability for a duty to warn requires showing that the defendant knew or should have known that its product was dangerous or likely to be dangerous—an inquiry that requires evaluating the prevailing scientific knowledge at the time the defendant manufactured and distributed the product. CACI 1222(2); *Valentine v. Baxter Healthcare Corp.*, 68 Cal. App. 4th 1467, 1483-84 (1999) (citing *Anderson v. Owens-Corning Fiberglas Corp.*, 53 Cal. 3d 987, 1002-03 (1993)); *Rosa v. Taser Int'l*, 684 F.3d 941, 946-48 (9th Cir. 2012).

The first study to find a statistically significant, positive association between talc use and ovarian cancer came out in 1982. Tr.2347:1-7. JJCI's Motion for JNOV shows there has never been sufficient scientific evidence to trigger a duty to warn. The critical point here, however, is that since well before the scientific community even conceived of investigating a potential association between genital talc use and ovarian cancer, JJCI was the sole entity responsible for manufacturing, selling, and labeling Johnson's Baby Powder and Shower to Shower.

According to Interrogatories read into the record at trial, JJCI is a wholly owned subsidiary of Johnson & Johnson incorporated in 1967 and previously known as Johnson & Johnson Consumer Companies, Inc. ("JJCC"). Tr.3111:2-3112:10. The only company representative testimony introduced at trial for Defendants was that of Lorena Telofski (*see generally* Tr.799-982), who identified herself expressly as an employee of JJCC/JJCI, not Johnson & Johnson. (Tr.802:3-4). Ms. Telofski's deposition testimony—the only, and therefore undisputed, testimony on this subject contained in the trial record—reflects that Johnson's Baby Powder and Shower to Shower have been marketed by JJCC/JJCI and that JJCC/JJCI has been solely responsible for the internal procedures and safety assessments for its products. *See, e.g.*, Tr.811:8-14 ("[I]t is our normal process that our Johnson & Johnson Consumer Companies Inc. follows all regulations that are relevant to our product category areas, ingredient areas, in those markets where we market our products."); Tr.812:27-813:23 ("Johnson & Johnson Consumer Companies has internal procedures that it will follow on—for all of its products. I mean, talc-based baby powders or body powders would fall under the same scenario . . . . In other words, people at Johnson & Johnson Consumer

Companies who are involved in clinical or involved in making safety assessment[s] . . . .") (emphases added); *see also* 852:18-853:1, 861:27-862:10.

Ms. Telofski made clear throughout her deposition that JJCC/JJCI alone was the legal entity responsible for Johnson's Baby Powder and Shower to Shower. When asked whether "Johnson & Johnson should provide appropriate use limitations when called for on its products," Ms. Telofski clarified: "[F]or the category that we are talking about here today, Johnson & Johnson Consumer Companies . . . has a very strict and comprehensive and rigorous process internally for assessing safety for the intended use." Tr.860:5-22 (also referencing directions for use on the label). When Plaintiff's counsel continued to ask questions referring to "Johnson & Johnson," Ms. Telofski corrected him: "And, again, Johnson & Johnson Consumer Companies, Inc., please. . . . And here we are talking about the cosmetic category of products." Tr.863:18-22. That correction appeared to have no effect on counsel, who continued stubbornly to refer in his questioning to "Johnson & Johnson." But no foundation was ever laid that questions about "Johnson & Johnson" referred only to Johnson & Johnson, the parent company, as opposed to both Defendants collectively, or the J&J corporate family. In fact, just the opposite is true: it is clear from his deposition inquiry that Plaintiff's counsel was using the name "Johnson & Johnson" imprecisely to refer to both Johnson & Johnson and JJCI. For example, he noted in a question the supposed fact that an individual was "at Johnson & Johnson" even after Ms. Telofski had identified that person as "an R&D employee at Johnson & Johnson Consumer Inc." *See, e.g.*, Tr.931:6-932:20 (emphasis added).

The exhibits introduced at trial confirm that JJCI had been the sole entity responsible for Johnson's Baby Powder and Shower to Shower for nearly two decades by the time the scientific community began exploring a possible link to ovarian cancer. The packaging of Johnson's Baby Powder and Shower to Shower identifies JJCC/JJCI as the distributor of the products. *See* Ex. N (P-49, P-50). P-20 is a 1997 letter that Plaintiff cites to show notice of the scientific studies finding a statistically significant association; it is addressed to Michael R. Chudkowski, Manager of Preclinical Toxicology for J&J Consumer Products, Inc. Ex. H. P-263 is an email chain from 2005 involving Steven Mann, Director of Toxicology for "Johnson & Johnson Consumer &

Personal Products Worldwide." Ex. U. P-710 is a 2016 letter to FDA from JJCC/JJCI and refers to talc as a JJCC/JJCI product. Ex. Y.

B. There Is No Substantial Evidence to Support the Direct Liability of Johnson & Johnson, the Parent.

In her opposition to Defendants' nonsuit motion, Plaintiff asserted direct liability against Johnson & Johnson based on a 1964 memorandum (Ex. W, P-343) that pre-dates JJCI's formation and that, according to Plaintiff, shows Johnson & Johnson knew and should have warned about the risks of ovarian cancer. The document shows nothing of the sort and falls far from constituting the "substantial evidence" required to support the jury's verdict in excess of $400 million.

There was no testimony or documentary evidence indicating that Johnson & Johnson, the parent, sold Johnson's Baby Powder directly to consumers before JJCC/JJCI's formation in 1967. The 1964 memorandum does not change that; indeed, it does not even address the subject of what entity sold Johnson's Baby Powder prior to the formation of JJCI.

Nor is the memorandum substantial evidence of liability on Plaintiff's failure-to-warn claim. The memorandum states that an additive called "Dry Flo" had replaced talc "as a condom lubricant . . . because it was found to be absorbed safely in the vagina whereas, of course, talc was not." Ex. W, at 3. On its face, this language does not refer to ovarian cancer and nothing in the evidentiary record suggests otherwise. Given that the first study exploring a purported association between genital talc use and ovarian cancer was not published until 1982, and that there is no evidence of unpublished studies or research work on talc and ovarian cancer prior to that date, the only logical inference to be drawn is that P-343 cannot have been referring to ovarian cancer. Put differently, P-343 cannot have been referencing the existence of an association of which epidemiologists had not yet even conceived, much less studied. That talc may have been viewed as "unsafe" in some unrelated way cannot establish liability against Johnson & Johnson for failure to warn of ovarian cancer. A plaintiff cannot base her failure-to-warn claim on risks unrelated to the injury she suffered. *See, e.g., Novak v. U.S.*, 865 F.2d 718, 725-26 (6th Cir. 1989).[1]

[1] There is also no substantial evidence to establish medical causation based on Johnson & Johnson's conduct prior to JJCI's formation. The theory of Plaintiff's experts is that Plaintiff's lifetime vaginal applications of talc allegedly caused her cancer. Plaintiff testified that she started using talc in her vaginal area at age 11, in 1965, Tr.2980:6-2982:3, two years before JJCI was

(cont'd)

Plaintiff also lacks evidence of any actionable conduct by the parent corporation subsequent to 1964. In opposition to nonsuit, the only other overt act Plaintiff alleged as a basis for her claim of direct liability against Johnson & Johnson was that the company in 1994 signed an agreement guaranteeing its support of an industry trade group, the Cosmetic, Toiletry, and Fragrance Association. Ex. P (P-57); Tr.922:23-924:25. As a matter of law, however—and as the Court expressly instructed the jury—supporting a trade organization to engage in protected First Amendment activity cannot support a finding of liability. Tr.3933:13-21.

C. There Is No Substantial Evidence to Establish Vicarious Liability on an Alter Ego or Agency Theory.

To hold a parent corporation liable for the conduct of its subsidiary, a plaintiff must establish either agency liability or pierce the corporate veil based on the alter ego doctrine. *See Sonora Diamond*, 83 Cal. App. 4th 538-40; *Inst. of Veterinary Pathology, Inc. v. Cal. Health Labs., Inc.*, 116 Cal. App. 3d 111, 118-21 (1981). Neither theory was submitted to the jury because both were unsupported by any substantial evidence, as the Court found in rejecting Plaintiff's request for jury instructions regarding agency. *See* Tr.3879:13-17.

As explained in *Sonora Diamond*, it is normal for a parent/subsidiary relationship to have "such common characteristics as interlocking directors and officers, consolidated reporting, and shared professional services." 83 Cal. App. 4th at 541. To establish an "agency" relationship, however, a plaintiff must show more, *viz*:

> The nature of the control exercised by the parent over the subsidiary necessary to put the subsidiary in an agency relationship with the parent must be over and above that to be expected as an incident of the parent's ownership of the subsidiary and must reflect the parent's purposeful disregard of the subsidiary's independent corporate existence. . . . As a practical matter, the parent must be shown to have moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy.

(cont'd from previous page)
formed in 1967, Tr.3111:2-3112:10. There was no evidence that the amount of Plaintiff's talc exposure during the limited period in which she speculates Johnson & Johnson sold Baby Powder had any material health effect so as to constitute a "substantial factor" of her disease.

Id. at 542 (citations and quotations omitted) (emphasis added); *see also, e.g.*, *Laird v. Capital Cities/ABC, Inc.*, 68 Cal. App. 4th 727, 741 (1998) ("[T]o establish a parent corporation's liability for acts or omissions of its subsidiary on an agency theory, a plaintiff must show more than mere representation of the parent by the subsidiary in dealings with third persons. The showing required is that a parent corporation so controls the subsidiary as to cause the subsidiary to become merely the agent or instrumentality of the parent."); *Inst. of Veterinary Pathology*, 116 Cal. App. 3d at 121 (affirming directed verdict on punitive damages, and then JNOV as to all liability, for parent company based on insufficient evidence of agency).

The Court specifically rejected instructing the jury on an agency theory of liability because the evidence said to support it was effectively non-existent, showing only "two corporations, one of which is a subsidiary of the other" and no more. Tr.3879:13-17. Plaintiff failed to present any evidence that Johnson & Johnson exercised control over JJCI's day-to-day operations or that it engaged in conduct beyond what would typically be expected of a parent-subsidiary relationship.

Establishing alter ego liability requires an even higher showing than the existence of agency. The plaintiff must prove that "(1) there is such a unity of interest that the separate personalities of the corporations no longer exist; and (2) inequitable results will follow if the corporate separateness is respected." *Zoran Corp. v. Chen*, 185 Cal App. 4th 799, 811 (2010); *see also Sonora Diamond*, 83 Cal. App. 4th at 539 (describing factors for unity of interest, including use of the subsidiary as a mere shell, inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers). Plaintiff did not present any evidence at all respecting Defendants' corporate separateness, and JJCI's $1.5 billion net worth demonstrates unequivocally that it is neither undercapitalized nor unable to pay its debts—including any damages awarded it in this case.

Even if Johnson & Johnson could somehow be held responsible for the sale and labeling of the products at issue—a proposition the evidence will not support, no matter how liberally it may be interpreted—JJCI's Motion for JNOV sets forth in detail the reasons why there is no substantial evidence to support a verdict against either Defendant: there is not sufficient evidence that genital talc use caused Plaintiff's cancer or that a duty to warn arose at any time prior to 2007. Those

reasons independently compel JNOV for Johnson & Johnson, the parent, even if the evidence at trial would permit Plaintiff to pursue a theory of direct or vicarious liability.

II. At a Minimum, Johnson & Johnson Is Entitled to JNOV as to Punitive Damages.

Punitive damages "are not a favorite of the law and the granting of them should be done with the greatest of caution." *Troensegaard v. Silvercrest Indus. Inc.*, 175 Cal. App. 3d 218, 227 (1985). By statute, California law narrowly defines the circumstances under which punitive damages are available and it requires that a plaintiff prove those requirements by "clear and convincing evidence." Civ. Code § 3294(a). This burden of proof is a demanding one that "requires a finding of high probability . . . 'so clear as to leave no substantial doubt'; 'sufficiently strong to command the unhesitating assent of every reasonable mind.'" *Lackner v. North,* 135 Cal. App. 4th 1188, 1211-12 (2006) (citation omitted). That heightened standard should be taken into account, meaning that the Court "must inquire whether the record contains 'substantial evidence to support a determination by clear and convincing evidence.'" *Shade Foods, Inc. v. Innovative Prods. Sales & Mktg., Inc.*, 78 Cal. App. 4th 847, 891 (2000) (emphasis added).

The only basis for punitive damages submitted to the jury in this case was malice, which the Legislature defines as "[1] conduct which is intended by the defendant to cause injury to the plaintiff or [2] despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." Civ. Code § 3294(c)(1) (emphases added); *see also* Tr.3936:4-3936:28. Because Plaintiff has not even contended, much less presented evidence that would establish, that either Defendant had any intention to cause her injury, she cannot show Defendants' "despicable conduct"—that is, conduct "'so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people,'" *Lackner*, 135 Cal. App. 4th at 1210 (citation omitted), with "the character of outrage frequently associated with crime.'" *Am. Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton*, 96 Cal. App. 4th 1017, 1050-51 (2002) (citation omitted); *see also College Hosp. Inc. v. Super. Ct.*, 8 Cal. 4th 704, 725 (1994) ("[A]bsent an intent to injure the plaintiff . . . 'despicable conduct' must be found."). *See* JJCI Mot. for JNOV at 18-20.

As explained above, there is no basis to impose punitive damages on Johnson & Johnson by imputing to it the conduct of JJCI on an agency or alter ego theory. *See supra* at 6-7; *see also Inst. of Veterinary Pathology*, 116 Cal. App. 3d at 118-21 (affirming directed verdict in favor of parent corporation on punitive damages based on insufficient evidence of agency and alter ego).[2] Nor can the 1964 memo—Plaintiff's sole purported evidence to show direct liability of Johnson & Johnson prior to JJCI's formation—constitute clear and convincing evidence of malice and despicable conduct by a managing agent of Johnson & Johnson acting on behalf of the company.

As noted, the memo does not refer to ovarian cancer at all. Studies exploring a possible link between talc use and ovarian cancer would not be published until nearly twenty years later, by which time only JJCI was responsible for the manufacture, marketing, and sale of Johnson's Baby Powder and Shower to Shower. Even if the 1964 document were probative of negligence, it is not substantial evidence of malice. A document citing an "absorption" concern arising from talc-covered condoms cannot establish that anyone at that time engaged in "despicable conduct" in "willful and conscious disregard" of an ovarian cancer risk from a woman's external application of baby powder on sanitary napkins or in the genital area. *See GD Searle & Co. v. Super. Court*, 49 Cal. App. 3d 22, 30-32 (1977) (holding that demurrer to punitive damages for failure-to-warn claim should have been sustained where complaint pleaded only that defendant knew or should have known the product was "of the type" that could cause injury).

Plaintiff also failed at trial to lay a foundation of any malicious conduct specifically by a director, officer, or managing agent of Johnson & Johnson acting on behalf of the company. "An employee is a 'managing agent' if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy." CACI 3945; *White v. Ultramar, Inc.*, 21 Cal. 4th 563, 572 (1999). The 1964 document was authored by William Ashton. Ex. W. The only testimony through which Plaintiff sought to establish Mr. Ashton's official position proceeded as follows:

Question: Is Mr. Ashton still at Johnson & Johnson?

[2] Even if the conduct of JJCI were imputed to Johnson & Johnson, there is no substantial evidence to support punitive damages for the reasons set forth in JJCI's Motion for JNOV at 18-20.

> Answer: He is deceased.
>
> Question: When did he pass away?
>
> Answer: Gee, I don't know. A number of years ago.
>
> Question: When he passed away—did he retire from Johnson & Johnson before the time he passed away?
>
> Answer: He retired but then worked as a consultant and then passed away.
>
> Question: Do you recall what his position was at the time when he left the company in an official employment context?
>
> Answer: He was in research and development. I'm not sure if he was a manager level or director level. I really just don't know. He was a scientist, basically.

Tr.930:10-931:2.

This testimony—in which the witness admits not knowing whether Mr. Ashton was a manager or director—is the only evidence Plaintiff cited in her opposition to nonsuit to suggest that Mr. Ashton was a "director and manager." *See* Pl's. Opp. to Mot. for Partial Nonsuit, filed Aug. 12, 2017, at 1. That confirms Plaintiff's wholesale failure to prove Mr. Ashton was a managing agent of Johnson & Johnson (the parent) who was acting on the company's behalf at any time, much less 1964. *See, e.g., Gelfo v. Lockheed Martin Corp.*, 140 Cal. App. 4th 34, 63 (2006) (affirming ordering granting directed verdict "on the ground Gelfo failed to present sufficiently clear and convincing evidence" of wrongdoing by a managing agent where the testimony identified the alleged wrongdoer as a "Lockheed vice-president" but no evidence established "his position in the corporate hierarchy" or the scope of his specific duties and authority).[3]

CONCLUSION

For all of the foregoing reasons, Defendant Johnson & Johnson respectfully requests that the Court grant its Motion for JNOV.

[3] Plaintiff also introduced P-55, a 1975 letter on Johnson & Johnson letterhead from Gavin Hildick-Smith. *See* Ex.O. Like P-343, P-55 does not on its face refer to ovarian cancer, and there is no evidence in the trial record that would permit the contrary inference. The evidence at trial never identified Gavin Hildick-Smith as a director, officer, or managing director of Johnson & Johnson, but merely as someone "in the research group in Johnson & Johnson in a scientific affairs-type capacity." Tr.882:26-883:26.

Respectfully submitted,

DATED: September 15, 2017

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PROOF OF SERVICE

Johnson & Johnson Talcum Powder Cases
Los Angeles County Superior Court, Case No. JCCP No. 4872

Charmaine Lloyd, et al., v. Johnson & Johnson, et. al.
Los Angeles County Superior Court, Case No. BC628228
Plaintiff Eva Echeverria ONLY

I am employed in the County of Los Angeles. I am over the age of eighteen years and not a party to the within entitled action. My business address is 515 South Flower Street, Forty Second Floor Los Angeles, CA 90071.

On **September 15, 2017**, I served the foregoing document(s) described as: **DEFENDANT JOHNSON & JOHNSON'S MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested party(ies) in this action through Case Anywhere. I caused the foregoing document to be transmitted to Case Anywhere for electronic service in the following manner:

(X) **BY ELECTRONIC SERVICE**: I provided the document(s) listed above electronically through the Case Anywhere website pursuant to the instructions on that website. [The document will be deemed served on the date that it was uploaded to the website as indicated by the Case Anywhere system.]

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

Executed on **September 15, 2017**, at Los Angeles, California.

Stella S. Villegas

Lam, Priscilla S. (SHB)

From: service@caseanywhere.com
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The following documents have been uploaded in **Johnson & Johnson Talcum Powder Cases**, Case No. JCCP 4872:

Documents Uploaded By: Tucker Ellis LLP
Number of Documents in Transaction: 5
Representing: Johnson & Johnson; Johnson & Johnson Consumer Inc.
Upload Date: 9/15/17
Time of Upload: 4:02 PM (PST)
Document Title: Defendant Johnson & Johnson's Motion for Judgment Notwithstanding Verdict; Memorandum of Points and Authorities in Support Thereof
Page Range: 11 - 30
Document Title: [Proposed] Order Granting Defendant Johnson & Johnson's Motion for Judgment Notwithstanding Verdict
Page Range: 1 - 10
Document Title: Defendant Johnson & Johnson Consumer Inc.'s Motion for Judgment Notwithstanding Verdict; Memorandum of Points and Authorities in Support Thereof
Page Range: 31 - 99
Document Title: [Proposed] Order Granting Johnson & Johnson Consumer Inc.'s Motion for Judgment Notwithstanding Verdict
Page Range: 1 - 10
Document Title: Defendants' Motions for New Trial; Combined Memorandum of Points and Authorities In Support Thereof
Page Range: 31 - 99

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