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7 Attorneys for Intervenor GREAT
AMERICAN INSURANCE COMPANY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

12 YSIDRO LIMON, SR.,

13 Plaintiff,

14 v.

15 AMCORD, INC., et al.,

16 Defendants.

CASE No. CGC-15-276378

ANSWER-IN-INTERVENTION

Hon. Cynthia Ming-Mei Lee
Dept. 503

Action Filed: January 2, 2015
Trial Date: None

18
19 By leave of court, Intervenor GREAT AMERICAN INSURANCE COMPANY ("Great
20 American") on behalf of its insured, C.F. Bolster Company ("CF Bolster") and solely in its
21 capacity as insurer for CF Bolster, hereby intervenes in this action, and hereby demands adversely
22 to Plaintiff YSIDRO LIMON ("Plaintiff"), as follows:

23 1. This action was commenced by Plaintiff against CF Bolster and seeks recovery
24 under various causes of action arising from the alleged use of asbestos-containing products and/or
25 asbestos-related activities.

26 2. Great American is informed and believes and thereupon alleges that CF Bolster is a
27 California corporation which has been dissolved. Although CF Bolster is able to appear and
28 defend as a dissolved corporation, CF Bolster did not initially appear in this action, and a default

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

09/27/2021

Clerk of the Court

BY: ERNALYN BURA

Deputy Clerk

1 has been entered against it. Therefore, CF Bolster is unable to appear in the lawsuit.

2 3. Great American issued primary liability insurance to CF Bolster under policy no.
3 BP 3460472, with a policy period from January 1, 1974 to January 1, 1977, and policy no. BP
4 2031010, with a policy period from July 1, 1979 to July 1, 1982. Based thereon, Great American
5 has agreed to defend CF Bolster in this action, subject to a reservation of rights.

6 4. As a liability insurer of CF Bolster, Great American could be subject to a direct
7 action initiated by Plaintiff for collection of any judgment against CF Bolster, under California
8 Insurance Code section 11580(b)(2). As a result, Great American has a direct interest in this
9 litigation and the success of CF Bolster in this action. Adjudication of Great American's interests,
10 in its capacity as insurer for CF Bolster, will not delay or unduly expand the trial of this action.
11 Thus, intervention is proper under California Code of Civil Procedure section 387(a).

12 5. This intervention by Great American is limited to contesting CF Bolster's alleged
13 liability and the amount of damages, if any.

14 6. Great American specifically reserves its rights to deny coverage, in whole or part,
15 and by intervening in this action, Great American does not waive any right to assert all coverage
16 claims and defenses available under any policy of insurance, including but not limited to,
17 exclusions, conditions or provisions relating to the insured's failure to provide notice and/or
18 failure to cooperate. To the extent any coverage issues or defenses exist, they are reserved for a
19 future time and/or a subsequent action.

20 7. Great American, solely in its capacity as insurer for CF Bolster, pleads the
21 following General Denial and Affirmative Defenses to the Complaint filed by Plaintiff:

22 **GENERAL DENIAL**

23 Great American, solely in its capacity as an insurer for CF Bolster, generally denies each
24 and every allegation contained in the Complaint, as permitted by California Code of Civil
25 Procedure section 431.30(d), and further denies that Plaintiff has been damaged as alleged, or at
26 all, by reason of any act or omission on the part of CF Bolster or its agents, servants or employees.

27 **AFFIRMATIVE DEFENSES**

28 Great American, solely in its capacity as an insurer for CF Bolster, alleges the following

1 affirmative defenses to the Complaint:

2 **FIRST AFFIRMATIVE DEFENSE**

3 Plaintiff has failed to state facts sufficient to constitute a claim or causes of action upon
4 which relief may be granted as against CF Bolster.

5 **SECOND AFFIRMATIVE DEFENSE**

6 The entire Complaint, and each cause of action thereof, is barred by the limitations and
7 repose periods set forth in California Code of Civil Procedure §§337(1)-(3), 337.1(a)-(f),
8 337.15(a)-(g), 338(a)-(k), 338.1; 339(1)-(3), 340(a) (e), 340.2(a)-(c), 343, 353.1, 355, and 361, and
9 all other applicable limitations periods, including any limitations and/or repose periods of foreign
10 jurisdictions that may be determined during the course of discovery to be applicable.

11 **THIRD AFFIRMATIVE DEFENSE**

12 The entire Complaint, and each cause of action thereof, is barred because Plaintiff has
13 failed to comply with the provisions of California Code of Civil Procedure §411.35.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 Plaintiff has failed to join all proper parties necessary for a full and just adjudication of the
16 purported causes of action in the Complaint, or alternatively, have misjoined the parties to this
17 action.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 Plaintiff lacks standing to sue CF Bolster.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 Plaintiff was careless and negligent and acted unreasonably in or about the things alleged
22 in the Complaint, which conduct actually and proximately caused all or part of Plaintiff's claimed
23 injuries and damages, if any. Any damages which Plaintiff seeks to recover from CF Bolster must
24 be reduced or barred in proportion to the extent that Plaintiff's own negligence contributed to the
25 claimed injuries or damages.

26 **SEVENTH AFFIRMATIVE DEFENSE**

27 All or part of Plaintiff's injuries or damages, if any, were actually and proximately caused
28 by the conduct of third parties, and not CF Bolster.

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 The Complaint improperly attempts to assert liability under the theory of market share
3 liability as postulated by *Sindell v. Abbott Laboratories* (1980) 26 Cal.3d 588. However, market
4 share liability has been expressly rejected in asbestos cases under *Mullen v. Armstrong World*
5 *Industries* (1988) 200 Cal.App.3d 250, with the very limited exception in brake exposure cases
6 under *Wheeler v. Raybestos Manhattan* (1992) 8 Cal.App.4th 1152.

7 **NINTH AFFIRMATIVE DEFENSE**

8 At all times mentioned, Plaintiff had knowledge of the risks of the matters set forth in the
9 Complaint, as well as the magnitude of the risks, and thereafter, knowingly, willingly and
10 voluntarily assumed those risks.

11 **TENTH AFFIRMATIVE DEFENSE**

12 The entire Complaint, and each cause of action thereof, is barred as against CF Bolster by
13 the provisions of California Labor Code §§3600, et seq.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 The entire Complaint, and each cause of action thereof, is barred because the products and
16 materials, which Plaintiff alleges caused the alleged injuries and damages, conformed to
17 specifications and plans promulgated and approved by the United States government.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 The entire Complaint, and each cause of action thereof, fails to state a cause of action
20 against CF Bolster because the federal government has preempted the field of law applicable to
21 the products alleged to have caused Plaintiff's injuries, or the claims forming the basis for relief.
22 The granting of the relief prayed for in the Complaint would impede, impair, frustrate and/or
23 burden the effectiveness of federal law regulating the field and would violate the Supremacy
24 Clause contained in Article VI, Clause 2 of the United States Constitution.

25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 The entire Complaint, and each cause of action thereof, is barred because the products and
27 materials, which Plaintiff alleges caused the alleged injuries and damage, were manufactured,
28 installed, used or distributed in compliance with specifications provided by third parties to CF

1 Bolster and/or in compliance with all applicable health and safety statutes and regulations.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 The state of medical and scientific knowledge and published literature and materials
4 reflecting such state of medical and scientific knowledge, at all times pertinent hereto, was such
5 that CF Bolster neither knew, nor could have known, that the construction activities in issue
6 presented a foreseeable risk of harm to Plaintiff.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 The entire Complaint, and each cause of action thereof, is barred on the grounds the
9 products or materials referred to in the Complaint, if any, were not a substantial factor in bringing
10 about the injuries and damages alleged by Plaintiff.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 The entire Complaint, and each cause of action thereof, is barred as against CF Bolster by
13 the doctrine of waiver.

14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 Any defect or danger in or about the premises was trivial.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 CF Bolster alleges that Plaintiff's claims against it are barred by the holding of *Privette v.*
18 *Superior Court* (1993) 5 Cal.4th 689.

19 **NINETEENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's Complaint fails to state facts sufficient to entitle Plaintiff to an award of punitive
21 or exemplary damages against CF Bolster.

22 **TWENTIETH AFFIRMATIVE DEFENSE**

23 Plaintiff is not entitled to an award of punitive or exemplary damages in this action. Such
24 an award would be unconstitutional unless CF Bolster is accorded the safeguards provided under
25 the Constitution of the State of California and the Fourth, Fifth, Sixth, Eighth and Fourteenth
26 Amendments to the United States Constitution.

27 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

28 Plaintiff unreasonably delayed in bringing this action, without good cause, and thereby has

1 prejudiced CF Bolster as a direct and proximate result of such delay; accordingly, Plaintiff's
2 action is barred by laches.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 Any loss, injury or damage suffered or incurred by Plaintiff was proximately caused by the
5 negligent or willful acts or omissions of parties whom CF Bolster neither controlled nor had the
6 right to control, and was not proximately caused by any acts, omissions or other conduct of CF
7 Bolster.

8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

9 Plaintiff failed to exercise due diligence to mitigate Plaintiff's loss, injury or damages;
10 accordingly, the amount of damages to which Plaintiff is entitled, if any, should be reduced by the
11 amount of damages which would have otherwise been mitigated.

12 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

13 At the time of the injuries alleged in the Complaint, Plaintiff was employed and entitled to
14 receive workers' compensation benefits from his employers; that Plaintiff's employers, other than
15 CF Bolster, may have been negligent in and about the matters referred to in said Complaint, and
16 that such negligence on the part of said employers proximately and concurrently contributed to the
17 happening of the accident and to the loss or damage complained of by Plaintiff, if any there were;
18 and that by reason thereof CF Bolster is entitled to set off any such benefits received or to be
19 received by Plaintiff against any judgment which may be rendered in favor of Plaintiff.

20 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

21 At the time of the injuries alleged in the Complaint, parties other than CF Bolster were
22 negligent in and about the matters referred to in the Complaint, and such negligence on the part of
23 third parties proximately and concurrently contributed to any loss or damage, including non-
24 economic damages, if any. CF Bolster is not liable for any third parties' proportionate share of
25 Plaintiff's non-economic damages.

26 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

27 The Complaint, and every purported cause of action against CF Bolster, is barred by the
28 "sophisticated user" doctrine recognized in *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th

1 56. Plaintiff and his employers were sophisticated users of asbestos-containing products and knew
2 or should have known of the risk, harm, or danger, if any, posed by CF Bolster's activities, or the
3 use of its products, at issue in this case.

4 **TWENTY- SEVENTH AFFIRMATIVE DEFENSE**

5 To the extent Plaintiff has received workers' compensation benefits from CF Bolster under
6 the California Labor Code as a consequence of the alleged industrial injury referred to in the
7 Complaint, and in the event CF Bolster is held liable to Plaintiff, any award against CF Bolster
8 must be reduced by the amount of all such benefits received.

9 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

10 To the extent Plaintiff has received workers' compensation benefits from CF Bolster under
11 the California Labor Code as a consequence of the alleged industrial injury referred to in the
12 Complaint, and in the event Plaintiff is awarded damages against CF Bolster, CF Bolster claims a
13 credit against such award to the extent CF Bolster is barred from enforcing its rights to
14 reimbursement against workers' compensation benefits that Plaintiff has received.

15 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

16 To the extent Plaintiff has received workers' compensation benefits from CF Bolster under
17 the California Labor Code as a consequence of the alleged industrial injury referred to in the
18 Complaint, CF Bolster demands repayment of any such workers' compensation benefits in the
19 event that Plaintiff recovers tort damages as a result of the industrial injury allegedly involved
20 here. Although CF Bolster denies the validity of Plaintiff's claims, in the event those claims are
21 held valid and not barred by the statute of limitations or otherwise, CF Bolster asserts that cross-
22 demands for money have existed between Plaintiff and CF Bolster and the demands are
23 compensated, so far as they equal each other, pursuant to California Code of Civil Procedure
24 §431.70.

25 **THIRTIETH AFFIRMATIVE DEFENSE**

26 At all times and places mentioned in the Complaint, Plaintiff was not in privity of contract
27 with CF Bolster. Therefore, a may not rely upon the theory of any alleged breach of express or
28 implied warranty, and all claims predicated on any theory of warranty are barred.

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THIRTY-FIRST AFFIRMATIVE DEFENSE

This court lacks subject matter jurisdiction over the entire Complaint and the causes of action alleged in the Complaint, or alternatively that the Court lacks jurisdiction due to insufficiency of process or the service and/or improper venue.

THIRTY-SECOND AFFIRMATIVE DEFENSE

As a result of Plaintiff's unreasonable delay in bringing this action, without good cause, in addition to his other unreasonable acts and omissions, Plaintiff has waived some or all of the claims stated or purportedly stated in the Complaint.

THIRTY-THIRD AFFIRMATIVE DEFENSE

The activity alleged in the Complaint, to the extent it was engaged in by CF Bolster, if at all, was not ultra-hazardous under California law.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

California Civil Code §§1431.1– 1431.5, known as the Fair Responsibility Act of 1986, are applicable to the present action and to certain claims therein, and based upon the principle of comparative fault, the liability, if any, of CF Bolster, shall be several only and shall not be joint. CF Bolster, if liable at all, shall be liable as to certain claims only for the amount of non-economic damages allocated to CF Bolster in direct proportion to CF Bolster's percentage of fault, if any, and a separate and several judgment shall be rendered against CF Bolster for non-economic damages, if any.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff cannot prove any facts showing that the conduct of CF Bolster was the cause in fact of any injuries or damages suffered by Plaintiff as alleged in the Complaint.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff cannot prove any facts showing that the conduct of CF Bolster was the proximate cause of any alleged injuries or damages suffered by Plaintiff as alleged in the Complaint.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

If Plaintiff was injured as alleged in the Complaint, those injuries were proximately caused by allergies, sensitivities and idiosyncrasies particular to Plaintiff not found in the general public

1 and unknown and unknowable to CF Bolster. Such injuries, if any, were not reasonably
2 foreseeable to CF Bolster.

3 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

4 At all times relevant, CF Bolster's acts and omissions were in conformity with all
5 government statutes and regulations and all industry standards based upon the state of knowledge
6 existing at the time of the acts or omissions.

7 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

8 Plaintiff directed, ordered, approved and/or ratified CF Bolster's conduct. Therefore,
9 Plaintiff is estopped from asserting the claims alleged in the Complaint which result from
10 Plaintiff's own acts, conduct or omissions.

11 **FORTIETH AFFIRMATIVE DEFENSE**

12 CF Bolster refers to and incorporates herein by reference each and every affirmative
13 defense pleaded by the other parties to this action the extent that such defenses are not inconsistent
14 with the matters stated herein.

15 **FORTY-FIRST AFFIRMATIVE DEFENSE**

16 Plaintiff's Complaint and each and every cause of action therein based upon warranty or
17 breach thereof, is barred as a result of failure of Plaintiff to give notice required under Commercial
18 Code §2607(3)(a).

19 **FORTY-SECOND AFFIRMATIVE DEFENSE**

20 To the extent Plaintiff claim(s), or may claim, injury or damage caused by work performed
21 by CF Bolster for, or under the direction and control of, the United States Government, Plaintiff's
22 claims are barred by the "government contractor defense" as articulated in *Boyle v. United Techs,*
23 *Inc.* (1988) 487 U.S. 500 as CF Bolster, in performing such work, did so in conformity with
24 detailed specifications which were created or approved by the United States Government and as
25 the United States Government was, at all relevant times, independently aware of health hazards
26 potentially associated with certain asbestos exposures.

27 **FORTY-THIRD AFFIRMATIVE DEFENSE**

28 Plaintiff's instant action is barred and discharged, pursuant to Title 11 U.S.C. section

1 1141(d), and that Plaintiff's action violates the pending injunction against such claims that exists,
2 by operation of law, pursuant to Title 11 U.S.C. section 524(a)(2).

3 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

4 CF Bolster alleges that Plaintiff's entire Complaint, is barred by the Statute of Frauds to
5 the extent that any such causes of action are based on alleged oral agreements.

6 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

7 CF Bolster's alleged actions, which are the subject of the Complaint, were lawful and/or
8 justified.

9 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

10 CF Bolster alleges that any danger or defect on the premises was obvious or could have
11 been observed by Plaintiff's exercise of reasonable care.

12 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

13 CF Bolster alleges that Plaintiff's complaint, and each and every cause of action therein, is
14 barred by the applicable statute of limitations, including but not limited to California Code of Civil
15 Procedure section 335.1, 340.2(a)(1) 340.2(a)(2), 340.2(c)(1) and 340.2(c)(2).

16 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

17 CF Bolster alleges that Plaintiff has improperly split their causes of action and seek to
18 maintain a duplicative lawsuit based on the same facts and circumstances as a lawsuit previously
19 filed.

20 **FORTY-NINTH AFFIRMATIVE DEFENSE**

21 CF Bolster has insufficient knowledge or information on which to form a belief as to
22 whether it may have additional, as yet unstated, defenses available. CF Bolster expressly reserves
23 the right to assert additional defenses.

24 WHEREFORE, CF Bolster prays for judgment as follows:

- 25 1. That Plaintiff take nothing by way of its Complaint or any cause of action thereof
26 against CF Bolster;
27 2. That the Court award judgment in favor of CF Bolster;
28 3. For reasonable attorneys' fees;

- 1 4. For costs of suit and disbursements; and
2 5. For such other and further relief as the Court may deem proper.
3

4 DATED: September 27, 2021

BERKES CRANE ROBINSON & SEAL LLP

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7 By: 

VIIU SPANGLER KHARE
NARINE LEVONYAN
TAYLOR M. MATSUMOTO
Attorneys for Intervenor GREAT
AMERICAN INSURANCE COMPANY

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and not a party to this action. I am
4 employed in the County of Los Angeles, State of California. My business address is 515 South
Figueroa Street, Suite 1500, Los Angeles, CA 90071.

5 On September 27, 2021, I served true copies of the following document(s) described as
6 **ANSWER-IN-INTERVENTION** on the interested parties in this action as follows:

7 **PER MASTER SERVICE LIST (VIA FILE & SERVE XPRESS)**

8 **BY ELECTRONIC SERVICE:** I electronically served the document(s) described above
9 via File & ServeXpress, on the recipients designated on the Transaction Receipt located on the
File & ServeXpress website (<https://secure.fileandservexpress.com>) pursuant to the Court Order
establishing the case website and authorizing service of documents.

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

12 Executed on September 27, 2021, at Los Angeles, California.

13 

14 Rosario M. Castellanos