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AMCORD, INC.  
6

ELECTRONICALLY

**FILED**

*Superior Court of California,  
County of San Francisco*

**FEB 20 2015**

Clerk of the Court

BY: ROMY RISK

Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 CITY AND COUNTY OF SAN FRANCISCO

11 YSIDRO LIMON, SR.,

12 Plaintiff,

13 vs.

14 AMCORD, INC., et al.,

15 Defendants.

No. CGC15-276378

**ANSWER OF DEFENDANT AMCORD,  
INC. TO COMPLAINT FOR  
PERSONAL INJURY - ASBESTOS**

Complaint filed January 2, 2015

17  
18 **I. INTRODUCTION**

19 AMCORD, INC. hereby provides the following Answer to Plaintiff's Complaint:

20 **II. DEFINITION**

21 Whenever "Plaintiff" or "Plaintiffs" are used in this Answer, its reference embraces each  
22 Plaintiff named in any Complaint in response to which some or all of this Answer has been adopted,  
23 individually and collectively, plus the words, " and each of them," as well as the Decedent, when  
24 relevant.  
25

26 **III. GENERAL DENIAL**

27 Pursuant to California Code of Civil Procedure Section 431.30, this responding Defendant  
28 files its general denial to said Complaint, and denies generally and specifically, each and every

1 allegation and cause of action in said Complaint, and in this connection, this Defendant denies that  
2 Plaintiff has been injured or damaged in the sums set forth, or in any other sums, or in any manner  
3 whatsoever by reason of any alleged product of, any product allegedly sold by, carelessness,  
4 negligence and/or any alleged act, conduct or omission on the part of this responding Defendant.

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6 **IV. AFFIRMATIVE DEFENSES**

7 AMCORD, INC. hereby pleads and sets forth separately and distinctly the following  
8 affirmative defenses to each and every allegation and cause of action of Plaintiff's complaint:

9  
10 **FIRST AFFIRMATIVE DEFENSE**

11 **Failure to State Cause of Action**  
12 **Alleged Against Plaintiff**

13 This responding Defendant states that neither the Complaint nor any alleged cause of action  
14 therein states facts sufficient to constitute a cause of action against this responding Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **Violation of Statute of Limitations**  
17 **Alleged Against Plaintiff**

18 This responding Defendant states that the Complaint and any alleged cause of action therein,  
19 is barred by the applicable statute of limitations stated in the California Code of Civil Procedure,  
20 including but not limited to Sections 338(a), 338(d), 338.1, 339(1), 340(a), (b), and (c), 340(3), 340.2  
21 (a)(1)(2), (b), (c)(1)(2), 350, 353, 357, 360.5 and California Commercial Code Section 2725.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **Laches**  
24 **Alleged Against Plaintiff**

25 This responding Defendant states that the Complaint and any alleged cause of action therein is  
26 barred by laches due to Plaintiff's unreasonable delay in commencing said action without any good  
27 cause therefore, and further, as a direct and proximate result of such delay, this responding Defendant  
28 has been prejudiced.

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**FOURTH AFFIRMATIVE DEFENSE**  
**Denial of Successor/Predecessor Liability**  
**Alleged Against Plaintiff**

This responding Defendant denies any and all liability as a successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, "alter ego," subsidiary, wholly or partially owned, by or the whole or partial owner of or member in any entity researching, studying, manufacturing, fabricating, designing, labeling, assembling, distributing, leasing, buying, offering for sale, selling, inspecting, servicing, installing, contracting or installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising a certain substance, the generic name of which is asbestos.

**FIFTH AFFIRMATIVE DEFENSE**  
**Lack of Legal Capacity**  
**Alleged Against Plaintiff**

This responding Defendant states that Plaintiff lacks legal capacity to sue, is not a real party in interest, and is thereby precluded from any recovery whatsoever as prayed for herein.

**SIXTH AFFIRMATIVE DEFENSE**  
**Failure to Join Adequate Defendants**  
**Alleged Against Plaintiff**

This responding Defendant states that the Complaint, and each cause of action thereof, is barred by the California Code of Civil Procedure, Section 389, in that Plaintiff has failed to join in this action a party or parties in whose absence complete relief cannot be accorded among defendants herein, causing this responding Defendant exposure to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

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**SEVENTH AFFIRMATIVE DEFENSE**

**Lack of Privity  
Alleged Against Plaintiff**

This responding Defendant states that at all times and places alleged in the Complaint, Plaintiff was not in privity of contract with this responding Defendant, and said lack of privity bars recovery herein upon any theory of warranty.

**EIGHTH AFFIRMATIVE DEFENSE**

**Contribution of Plaintiff's Negligence  
Alleged Against Plaintiff**

Plaintiff was negligent in and about the matters alleged in the Complaint and each and every alleged cause of action therein. Such negligence proximately caused and contributed to, in whole or in part, the incidents, injuries, losses and damages alleged. In the event Plaintiff is awarded any damages, the amount of such should be reduced by the comparative fault of Plaintiff and any person whose negligent acts or omissions are imputed to Plaintiff.

**NINTH AFFIRMATIVE DEFENSE**

**Consent of Plaintiff  
Alleged Against Plaintiff**

Plaintiff acknowledged, ratified, consented to and acquiesced in the alleged acts or omissions, if any, of this responding Defendant, thus barring Plaintiff from any relief as prayed for herein.

**TENTH AFFIRMATIVE DEFENSE**

**Failure to Mitigate  
Alleged Against Plaintiff**

Plaintiff failed to exercise due diligence to mitigate the loss, injury or damages alleged herein. Accordingly, the amount of damages to which Plaintiff is entitled, if any, should be reduced by the amount of damages which would have otherwise been mitigated and Plaintiff is barred from any recovery of any injury or damages suffered thereby.

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**ELEVENTH AFFIRMATIVE DEFENSE**

**Plaintiff's Knowledge of Hazard**

**Alleged Against Plaintiff**

Plaintiff was advised, informed, and warned of any purported hazards and/or dangers, if any, associated with the normal or foreseeable use, handling, and storage of the products, substances, and equipment described in the Complaint. Plaintiff knew, or in the exercise or ordinary care should have known, of the purported risks and hazards involved in the undertaking alleged, but nevertheless freely, voluntarily and unreasonably consented to assume such purported risks and hazards incident to said undertaking and conduct, at the time and place alleged in said Complaint, all of which proximately caused and contributed to any loss, injury or damages alleged.

**TWELFTH AFFIRMATIVE DEFENSE**

**Injury Caused by Actions of Others Outside**

**Control of Defendant**

**Alleged Against Plaintiff**

Any alleged loss, injury or damage incurred by Plaintiff was proximately caused by the negligent or willful acts or omissions of parties or others whom Defendant neither controlled nor had the right to control, and was not proximately or legally caused by any acts, omissions or other conduct of AMCORD, INC.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**Negligence of Other Entities Caused Injury**

**Alleged Against Plaintiff**

At the time of the injuries alleged in the Complaint, parties other than this responding Defendant were negligent in and about the matters referred to in said Complaint, and such negligence proximately and concurrently contributed to any loss or damage, including non-economic damages, alleged by Plaintiff. This responding Defendant shall not be liable for said parties' proportionate share of non-economic damages.

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1                                   **FOURTEENTH AFFIRMATIVE DEFENSE**  
2                                   **Entities Not Named Caused the Alleged Injuries**  
3                                   **Alleged Against Plaintiff**

4           It is alleged that the sole or partial proximate cause of the injuries, losses, or damages claimed  
5           was the fault, negligence, and/or strict liability of other named defendants, and persons, firms, or  
6           entities not specifically named in the Complaint. In the event of a finding of any against this  
7           Defendant by way of judgment, settlement, or otherwise, this responding Defendant requests that an  
8           apportionment of fault among all parties be made by the court or jury, and that a judgment and  
9           declaration of partial or total indemnification and contribution against all other parties be made in  
10          accordance with such apportionment of fault. Further, in the event of a finding of liability against this  
11          responding Defendant, this responding Defendant shall be liable only for the amount of non-economic  
12          damages allocated to Defendant in direct proportion to Defendant's percentage of fault in accordance  
13          with the Civil Code Section 1431.2.

14                                   **FIFTEENTH AFFIRMATIVE DEFENSE**  
15                                   **Action is in Violation of Labor Code**  
16                                   **Alleged Against Plaintiff**

17          The court lacks subject matter jurisdiction over the matters alleged in said Complaint in that  
18          each alleged cause of action against this responding Defendant is barred by the provisions of  
19          California Labor Code, Section 3600 (a) and (b); 3601 (a), (b), (c); and 3602(a), the special employer  
20          doctrine.

21                                   **SIXTEENTH AFFIRMATIVE DEFENSE**  
22                                   **Employer Negligence Caused the Alleged Injuries**  
23                                   **Alleged Against Plaintiff**

24          This responding Defendant states that at the time of the injuries alleged in the Complaint,  
25          Plaintiff's employers were negligent in and about the matters alleged, and that such negligence  
26          proximately and concurrently caused and/or contributed to any loss, injuries or damages, including  
27          non-economic damages alleged by Plaintiff. This responding Defendant is not liable for said  
28          employers' proportionate share of non-economic damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE**  
**Knowing Acts of Plaintiff's Employer**  
**Caused the Alleged Injuries**  
**Alleged Against Plaintiff**

Plaintiff's employers voluntarily and knowingly entered into and engaged in the operations, acts and conduct alleged in said Complaint, and voluntarily and knowingly assumed the risks incident to said operations, acts and conduct at the time and place alleged in the Complaint. The operations, acts and conduct of Plaintiff's employer was the cause of the injuries alleged in the Complaint, and this responding Defendant is not liable or at fault for such injuries.

**EIGHTEENTH AFFIRMATIVE DEFENSE**  
**Judgment to be Reduced by Workers' Compensation Benefits**  
**Alleged Against Plaintiff**

At all times material herein, Plaintiff was employed by various employers, the names of which are currently unknown to this responding Defendant, and was working within the course and scope of his/her employment. Each such employer and Plaintiff were subject to the provisions of the Workman's Compensation Act of the State of California which entitled Plaintiff to receive Workers' Compensation benefits from such employers. Certain sums have been paid to or on behalf of Plaintiff under the applicable provisions of the Labor Code of the State of California. Each such employer was negligent and careless in and about the matters alleged in the Complaint and such negligence and carelessness proximately and concurrently contributed to and caused the incidents complained of and injuries and damages alleged. Any judgment rendered in favor of Plaintiff must be reduced, as a set-off, by any benefits or payments made or to be made by the employer or the employers' compensation carrier under authority of Witt v. Jackson, 57 Cal.2d 57, 17 Cal.Rptr. 369, 366, P.2d 641 (1961).

In the event Plaintiffs are awarded damages against Defendant, this responding Defendant claims a credit against such award to the extent that Defendant is barred from enforcing its rights to reimbursement for Workers' Compensation benefits that Plaintiff has received or may in the future receive.

1 Although this responding Defendant denies the validity of Plaintiff's claims, in the event those  
2 tort claims are held valid and not barred by the statute of limitations or otherwise, Defendant asserts  
3 that cross-demands for money have existed between Plaintiff and Defendant and the demands are  
4 compensated, so far as they equal each other, pursuant to California Code of Civil Procedure Section  
5 431.70.

6  
7 **NINETEENTH AFFIRMATIVE DEFENSE**  
8 **Products Conformed With Existing Safety Knowledge**  
9 **Alleged Against Plaintiff**

10 Plaintiff is barred from recovery in that all products formulated, sold, distributed or produced  
11 by this responding Defendant were in conformity with the existing state-of-the-art applicable at the  
12 time of their manufacture, sale, formulation or distribution, and thus, such products were not defective  
13 in any manner.

14 **TWENTIETH AFFIRMATIVE DEFENSE**  
15 **Products Were Unforeseeably Misused**  
16 **Alleged Against Plaintiff**

17 The products sold or distributed and referred to in the Complaint were properly designed,  
18 manufactured, and fit for the purpose for which they were intended. Said products were improperly  
19 maintained, misused, and/or abused by Plaintiff and/or others and proximately caused Plaintiff's  
20 alleged damages, thus barring recovery herein. Such misuse, abuse or improper maintenance was not  
21 reasonably foreseeable to this responding Defendant.

22 **TWENTY-FIRST AFFIRMATIVE DEFENSE**  
23 **Negligent Product Use by Sophisticated Employers**  
24 **Was Proximate, Superseding Cause of Alleged Injuries**  
25 **Alleged Against Plaintiff**

26 This responding Defendant states that the Plaintiff is barred from recovery herein, because of  
27 modification, alteration or change in some other manner, of the product(s) alleged in Plaintiff's  
28 Complaint. All of Plaintiff's employers were sophisticated users of asbestos-containing products and  
said employers' negligence in providing such equipment and material to its employees in an altered,



1 modified, negligent, careless and reckless manner was a superseding intervening cause of Plaintiff's  
2 alleged injuries.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**  
4 **Failure to warn Plaintiff by Plaintiff's Sophisticated**  
5 **Employers Caused the Alleged Injuries**  
6 **Alleged Against Plaintiff**

7 This responding Defendant states that the Plaintiff's employer or employers, by reason of  
8 advice, information, warnings, and use, handling and storage information given to them, and/or by  
9 reason of their long standing and continuous experience with the products, substances, and equipment  
10 alleged, are and were sophisticated users, handlers, and storers of any and all such products,  
11 substances, garments and equipment, and thus acquired a separate and affirmative duty to warn,  
12 advise and inform Plaintiff of any potential harmful effects from the mishandling, misstorage, and/or  
13 misuse of the subject property, if any. Each such employer failed to so warn Plaintiff and thereby  
14 breached said duty. Such failure and breach directly and proximately caused all damages, injuries,  
15 and losses alleged.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**  
17 **Failure to State Market Share Cause of Action**  
18 **Alleged Against Plaintiff**

19 This responding Defendant states that the Complaint fails to state facts sufficient to constitute  
20 a cause of action against this Defendant, to the extent it asserts and bases a claim upon "alternative,"  
21 "market share," or "enterprise liability."

22 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**  
23 **Failure to Join a Substantial Share of the**  
24 **Market Defeating Market Share Theory**  
25 **Alleged Against Plaintiff**

26 This responding Defendant has never possessed a substantial percentage of the market for the  
27 asbestos-containing products which allegedly caused Plaintiff's injuries. Further, Plaintiff has failed to  
28 join in this action Defendants representing a substantial share of said market. Therefore, this

1 responding Defendant shall not be liable to Plaintiff based on its alleged percentage share of the  
2 applicable market.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**  
4 **Liability Absent Identification Violates**  
5 **Constitutional Rights**  
6 **Alleged Against Plaintiff**

7 The Complaint, and each cause of action therein, which is admittedly based upon a lack of  
8 identification of the manufacturer of the alleged injury causing product, fails to state facts sufficient to  
9 constitute a cause of action in that Plaintiff has asserted a claim for relief which, if granted, would  
10 contravene this responding Defendant's constitutional rights to substantive and procedural due process  
11 and equal protection laws as required by the Fourteenth Amendment to the United States Constitution,  
12 and by Article I, Section 7 of the Constitution of the State of California, and further, if granted would  
13 constitute the taking of private property for public use without just compensation and would deprive  
14 this responding Defendant of its property in contravention of the Fifth and Fourteenth Amendments to  
15 the United States Constitution and Article I, Sections 7 and 19 of the Constitution of the State of  
16 California, and the applicable California statutes.

17 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**  
18 **Actions of Defendant Conformed to Existing Knowledge**  
19 **And So Were Not Negligent**  
20 **Alleged Against Plaintiff**

21 Plaintiff is barred from recovery in that all actions taken by this responding Defendant that  
22 involved the handling, disturbing, manipulation or dissemination, if any, of asbestos were done in  
23 conformity with the existing state-of-the-art applicable at the time of such acts, and thus, such actions  
24 were not negligent, and no liability can result.

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1                                   **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**  
2                                   **Plaintiff Was Directed by Contractor**  
3                                   **That Was Not Controlled by Defendant**  
4                                   **Alleged Against Plaintiff**

5           This responding Defendant is not liable for any injury to Plaintiff, the existence of which  
6           injuries is denied, in that Plaintiff was employed by others as an independent contractor or worked for  
7           an independent contractor hired by this Defendant or its contractors, during any time at which he  
8           worked at a site ostensibly controlled by this answering Defendant, and this answering Defendant did  
9           not in any fashion direct the manner in which Plaintiff's job duties were accomplished, nor control the  
10          environment in which those job duties were accomplished.

11                                   **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**  
12                                   **Defendant is not Liable Because of**  
13                                   **Lack of Control of Work Site**  
14                                   **Alleged Against Plaintiff**

15          This responding Defendant is not liable for any of Plaintiff's injuries and damages, the  
16          existence of which is denied, pursuant to the holding of the Court in Privette v. Superior Court (1993)  
17          5 Cal.4th 689, and the case that follow Privette in that this Defendant was not negligent, did not  
18          control Plaintiff's activities, and did not cause Plaintiff's injuries.

19                                   **TWENTY-NINTH AFFIRMATIVE DEFENSE**  
20                                   **Complaint Fails to State Cause of Action**  
21                                   **For Punitive Damages**  
22                                   **Alleged Against Plaintiff**

23          This responding Defendant states that neither the Complaint nor any alleged cause of action  
24          therein states facts sufficient to allow Plaintiff an award of punitive damages.

25                                   **THIRTIETH AFFIRMATIVE DEFENSE**  
26                                   **Imposition of Punitive Damages**  
27                                   **Would Constitute Criminal Fine or Penalty**  
28                                   **Alleged Against Plaintiff**

29          The causes of action asserted herein by Plaintiff fail to state facts sufficient to constitute a  
30          cause of action, in that Plaintiff has asserted claims for punitive damages which, if granted, would  
31          violate the prohibition against laws impairing the obligation of contracts set forth in Article I, Section

1 10 of the United States Constitution and further, if granted would contravene this responding  
2 Defendant's constitutional right to be free of excessive fines as set forth in the Eighth Amendment to  
3 the United States Constitution.

4 **THIRTY-FIRST AFFIRMATIVE DEFENSE**  
5 **An Award of Punitive Damages Would Be**  
6 **In Violation of California Law**  
7 **Alleged Against Plaintiff**

8 Plaintiff's claim for punitive damages against this responding Defendant should not be  
9 sustained, because an award of punitive damages under California law by a jury that (1) is not  
10 provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of  
11 a punitive damages award, (2) is not instructed on the limits of punitive damages imposed by the  
12 applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding  
13 punitive damages, or determining the amount of an award of punitive damages in whole or in part, on  
14 the basis of invidiously discriminatory characteristics, including the corporate status of this  
15 responding Defendant, (4) is permitted to award punitive damages under a standard for determining  
16 liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the  
17 conduct or mental state that makes punitive damages permissible, and (5) is not subject to judicial  
18 review on the basis of objective standards, would violate this responding Defendant's due process and  
19 equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution  
20 and double jeopardy clause of the Fifth Amendment as incorporated into the  
21 Fourteenth Amendment and the California Constitution's provisions providing for due process, equal  
22 protection, and guaranty against double jeopardy.  
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**THIRTY-SECOND AFFIRMATIVE DEFENSE**  
**Action Violates Rule Against Splitting Cause of Action**  
**Alleged Against Plaintiff**

This action violates California law against splitting a cause of action, in that Plaintiff has sued this Defendant and other Defendants parties to this case in another State, that other action having been files prior to the filing of this case.

**III. PRAYER**

**WHEREFORE**, this responding Defendant prays:

1. That Plaintiff take nothing by this Complaint;
2. That judgment be entered in favor of Defendant;
3. For recovery of Defendant's costs of suit;
4. For appropriate credits and set-offs arising out of any payment of Workers' Compensation benefits as alleged above;
5. For appropriate credits and set-offs arising from allocation of liability to other named and unnamed tort feasors; and
6. For such other and further relief as the court deems just and proper.


**IV. NOTICE OF REQUEST FOR JURY TRIAL**

Pursuant to California Code of Civil Procedure §631, this responding Defendant hereby gives notice of its request for trial by jury.

DATED: February 20, 2015

ADAMS | NYE | BECHT LLP

By:

  
\_\_\_\_\_  
BARBARA R. ADAMS  
Attorneys for Defendant  
AMCORD, INC.

## PROOF OF SERVICE

I am over the age of eighteen years, not a party to the above-captioned matter, and employed by Adams | Nye | Becht LLP at 222 Kearny Street, Seventh Floor, San Francisco, California, where the service described below took place on the date set forth below.

### Person(s) Served:

See attached "Service List."

### Document Served:


## ANSWER OF DEFENDANT AMCORD, INC. TO COMPLAINT FOR PERSONAL INJURY - ASBESTOS

### Manner of Service:

- ☐ **Mail:** I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service: such correspondence is deposited with the United States Postal Service on the same day in the ordinary course of business in the county where I work. On the date set forth below, at my place of business, following ordinary business practices, I placed for collection and mailing by deposit in the United States Postal Service a copy of each Document Served, enclosed in a sealed envelope, with the postage thereon fully prepaid, each envelope being addressed to one of the Person(s) Served, in accordance with Code of Civil Procedure 1013(a).
- ☐ **Facsimile:** I transmitted by facsimile a copy of each Document Served mentioned above to each Person Served mentioned above pursuant to Code of Civil Procedure 1013(e).
- ☐ **Personal service:** I caused a copy of each Document Served to be hand delivered to each Person Served pursuant to Code of Civil Procedure 1011. If required, the actual server's original proof of personal service will be filed with the court.
- ☐ **Express Mail (U.S. Post Office):** I deposited in a post office, mailbox, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail a copy of each Document Served in a sealed envelope with Express Mail postage paid, each envelope being addressed to each Person Served as mentioned above in accordance with Code of Civil Procedure 1013(c).
- ☐ **Express Mail (other express service carrier):** I deposited in a box or other like facility regularly maintained by an express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, a copy of each Document Served in an envelope or package designated by the express service carrier with delivery fees paid or provided for, each envelope being addressed to each Person Served in accordance with Code of Civil Procedure 1013 (c).
- ☒ **Electronic service:** I caused a copy of each Document Served to be electronically served via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

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

2 Dated: February 20, 2015

  
Christine Thomas