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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SAN JUANA SANDOVAL et al., Plaintiffs and Appellants, v. AMERICAN APPLIANCE MANUFACTURING CORP., Defendant and Respondent.	B278952 (Los Angeles County Super. Ct. No. JCCP4674/BC592765)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph R. Kalin, Judge. Reversed in part, affirmed in part, and remanded.

Weitz & Luxenberg, Benno Ashrafi and Josiah Parker, for Plaintiffs and Appellants.

Becherer Kannett & Schweitzer, Mark S. Kannett, Ira D. Goldberg and Alex P. Catalona, for Defendant and Respondent.

Appellants Rodolfo and San Juana Sandoval asserted claims for negligence, strict liability, premises liability, breach of warranty, and loss of consortium against respondent American Appliance Manufacturing Corp. (AAMC), alleging that Rodolfo's exposure to asbestos while employed by AAMC resulted in San Juana's mesothelioma.[1] The trial court granted summary judgment in AAMC's favor on appellants' claims, concluding that AAMC owed no duty of care to San Juana and that there was insufficient evidence that she was exposed to asbestos due to AAMC's employment of Rodolfo. We reverse the grant of summary judgment on the complaint and of summary adjudication on the claims for negligence, strict liability and loss of consortium, and on the request for punitive damages. We affirm summary adjudication on the unchallenged portions of the judgment.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

From 1977 to 1989, Rodolfo worked in the paint department of a water heater manufacturing facility owned by AAMC. Rodolfo's wife San Juana never visited his workplace or any other AAMC facility. In 2007, the California Secretary of State certified AAMC to be a

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[1] As appellants share a surname, we refer to them by their first names.

dissolved corporation. In March 2014, San Juana was diagnosed as suffering from mesothelioma.

In August 2015, the Sandovals initiated the underlying action against several defendants, asserting claims for negligence, strict liability, premises liability, breach of warranty, and loss of consortium. The claims were predicated on allegations that San Juana was exposed to asbestos by virtue of Rodolfo's encounter with asbestos-containing products, including paint, tape, and pipe insulation, in his place of employment. Accompanying the claims was a request for punitive damages. In early 2016, the complaint was amended to name AAMC as a Doe defendant.

In August 2016, AAMC sought summary judgment or adjudication on the Sandovals' claims. AAMC requested summary judgment on two grounds. Relying on the holding in *Campbell v. Ford Motor Co.* (2012) 206 Cal.App.4th 15, 34 (*Campbell*), which our Supreme Court recently disapproved in *Kesner v. Superior Court* (2016) 1 Cal.5th 1132 (*Kesner*), AAMC contended the Sandovals' claims failed because AAMC owed no duty of care to San Juana for "take home" exposure to asbestos arising from Rodolfo's employment in AAMC's facility. AAMC further contended the Sandovals' discovery responses and deposition testimony showed that they could not establish causation, for purposes of the claims asserted in the complaint. Regarding this issue, AAMC argued that the Sandovals lacked evidence that San Juana

was exposed to asbestos fibers as the result of Rodolfo's employment by AAMC.

In the alternative, AAMC sought summary adjudication on each claim in the complaint, as well as the request for punitive damages. AAMC contended that the premises liability and negligence claims failed under *Campbell*, that the breach of warranty and strict products liability claims failed because AAMC marketed no product that exposed San Juana to asbestos, and that Rodolfo's loss of consortium claim failed for want of a tenable underlying claim. AAMC further maintained that no punitive damages could be awarded because it was a dissolved corporation.

The Sandovals opposed summary judgment on the complaint, as well as summary adjudication on their claims and request for punitive damages, with the exception of their claims for premises liability and breach of warranty, which they "stipulated should be dismissed . . . ." They contended that *Campbell* did not bar their claims for negligence and strict products liability, which they maintained were tenable and capable of supporting Rodolfo's loss of consortium claim. The Sandovals further opposed summary judgment on the basis of their purported lack of evidence of causation, contending that AAMC failed to carry its initial burden on summary judgment regarding that issue. The Sandovals also maintained AAMC's status as a dissolved corporation did not preclude an award of punitive damages.

In granting summary judgment, the trial court concluded that AAMC owed no duty of care to San Juana as "a stay-at-home spouse," and that there was no competent evidence that she suffered any exposure to asbestos for which AAMC was liable. The court further concluded that summary adjudication was proper on each of the Sandovals' claims and their request for punitive damages. On September 19, 2016, judgment was entered in favor of AAMC and against the Sandovals.

DISCUSSION

Appellants contend summary judgment was improperly granted. For the reasons discussed below, we conclude that summary judgment was erroneous with respect to the Sandovals' claims for negligence, strict products liability, and loss of consortium, as well as their request for punitive damages.

A. *Standard of Review*

"A summary adjudication motion is subject to the same rules and procedures as a summary judgment motion. Both are reviewed de novo. [Citations.]" (*Lunardi v. Great-West Life Assurance Co.* (1995) 37 Cal.App.4th 807, 819.) "A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail. [Citation.]" (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1107.) Generally, "the party moving for summary judgment bears an initial

burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) In moving for summary judgment, "all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action -- for example, that the plaintiff cannot prove element X." (*Id.* at p. 853, fn. omitted.)

Although we independently assess the grant of summary judgment, our inquiry is subject to certain constraints. Under the summary judgment statute, we examine the evidence submitted in connection with the summary judgment motion, with the exception of evidence to which objections have been appropriately sustained. (*Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 711 (*Mamou*); Code Civ. Proc., § 437c, subd. (c).) Furthermore, our review is limited to contentions adequately raised in the Sandovals' briefs. (*Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125-126.)

The Sandovals do not challenge the grant of summary adjudication on their claims for premises liability and breach of warranty. On appeal, they state that they stipulated to the dismissal of those claims, and they neither discuss the claims nor challenge the stipulation. We

therefore exclude the claims from our review. (*Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1177; *Yu v. Signet Bank/Virginia* (1999) 69 Cal.App.4th 1377, 1398; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.)

B. *Summary Judgment on the Complaint and Summary Adjudication on the Negligence Claim On the Basis of* Campbell

The Sandovals contend summary judgment on the complaint and summary adjudication on the negligence claim were erroneous, insofar as those rulings rely on *Campbell*. As explained below, we agree. To the extent the rulings are based on *Campbell*, they cannot stand because our Supreme Court disapproved that decision in *Kesner,* after the Sandovals noticed this appeal.

In *Campbell*, the plaintiff asserted a premises liability claim against a car manufacturer, alleging that she contracted mesothelioma through exposure to asbestos while laundering the work clothes of her father and brother, who were employed by the manufacturer to install asbestos insulation. (*Campbell*, *supra*, 206 Cal.App.4th at pp. 18-20.) After a jury found in favor of the plaintiff on her claim, the appellate court reversed, concluding that "a property owner has no duty to protect family members of workers on its premises from secondary exposure to asbestos used during the course of the property owners' business." (*Id*. at pp. 23, 34.)

Kesner involved appeals in two cases in which relatives of employees alleged that they contracted mesothelioma through exposure to asbestos carried home from the employees' places of work. (*Kesner*, *supra*, 1 Cal.5th at pp. 1140-1141.) In one case, the primary theory of liability was premises liability, and in the other, the primary theory of liability was negligence. (*Id*. at p. 1158.) In each case, the trial court determined that the pertinent claims failed under *Campbell*. (*Id*. at p. 1142.) Applying the multi-factored test set forth in *Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*) regarding the existence of a duty of care, our Supreme Court reversed the judgments in the two cases, concluding that property owners and employers generally have "a duty to prevent take-home exposure that extends to members of a worker's household . . . ." (*Kesner, supra,* at p. 1165; see *id.* at pp. 1158-1161.) In so holding, the court disapproved *Campbell*. (*Id.* at p. 1156.)

Kesner controls here. Ordinarily, decisions by the Supreme Court are given retroactive effect in pending appeals. (*Norager v. Nakamura* (1996) 42 Cal.App.4th 1817, 1820-1821.) "A narrow exception to this general rule exists 'when considerations of fairness and public policy are so compelling in a particular case that, on balance, they outweigh the considerations that underlie the basic rule." (*Id.* at p. 1820, quoting *Newman v. Emerson Radio Corp.* (1989) 48 Cal.3d 973, 983.) We find no such considerations present here.

AAMC maintains that the Sandovals' conduct before the trial court precludes them from challenging the court's rulings. The crux of AAMC's contention is that they waived reliance on *Kesner*, or are estopped from relying on it, because they stipulated to the dismissal of their premises liability claim. We disagree. During the hearing on AAMC's motion for summary judgment or adjudication, the Sandovals' counsel expressly argued that *Campbell* encompassed only their premises liability claim, and was inapplicable to their negligence claim. Furthermore, as explained below, the Sandovals' negligence claim is distinct from the premises liability claim.

In *Kesner*, the court explained that claims for take-home asbestos exposure may be based on two "primary theories of liability" -- negligence and premises liability -- that are closely aligned, but "different." (*Kesner*, *supra*, 1 Cal.5th at pp. 1142-1143, 1158-1161.) As the court noted, those theories reflect a common source, as they rely on duties subject to the *Rowland* test under Civil Code section 1714, which "establishes a general duty to exercise ordinary care in one's activities." (*Kesner*, *supra*, at pp. 1142-1143, 1158-1159; see *Rowland*, *supra*, 69 Cal.2d at p. 119.) Furthermore, in determining under the *Rowland* test that employers and property owners are subject to a duty to prevent take-home asbestos exposure, the court placed special emphasis on facts applicable to both employers and property owners, including "[the] employee's role as a vector in bringing asbestos fibers into his or her home," which

"derive[s] from the employer's or property owner's failure to control or limit exposure in the workplace." (*Kesner*, *supra*, at pp. 1148, 1156, 1160-1161.) Nonetheless, the court stated that "the duties of employers and the duties of premises owners are not necessarily coextensive," as premises liability is subject to special affirmative defenses and exceptions flowing from its underlying basis, namely, the possession and control of property. (*Id.* at pp. 1158-1160.)

In view of *Kesner*, a distinct negligence claim for take-home asbestos exposure may be based on the defendant's status as an employer -- rather than a property owner -- and predicated on allegations that the defendant, as employer, failed to control asbestos exposure in the workplace. The Sandovals asserted such a claim. Their negligence claim is focused on AAMC's activities as a supplier and manufacturer of asbestos-containing products, alleging that Rodolfo encountered asbestos through using, handling, or otherwise being exposed to asbestos containing products "designed to be used in association with" AAMC's products. Nonetheless, the claim alleges broadly that AAMC, as Rodolfo's employer, failed to control asbestos exposure in his workplace. The claim specifically asserts that Rodolfo worked at an AAMC facility in Santa Monica, that San Juana was exposed to asbestos from "the clothing and person of [Rodolfo] by his use and exposure to asbestos as a worker," and that AAMC negligently manufactured products containing asbestos, causing personal injury to "persons . . . living with persons working with or around such

asbestos and asbestos-containing products," including San Juana. These allegations state a take-home asbestos exposure claim against AAMC on the basis of its status as Rodolfo's employer, as distinct from its status as a property owner. In sum, the grant of summary judgment of the complaint and the grant of summary adjudication on the negligence claim were erroneous, insofar as they relied on *Campbell*.

C. *Summary Judgment on the Ground that the Sandovals Lacked Evidence of Causation*

The Sandovals also challenge the grant of summary judgment to the extent it relies on the ground that they cannot establish the element of causation required for their claims against AAMC. As explained below, AAMC failed to carry its initial burden on summary judgment regarding that issue.

1. *Governing Principles*

The defendant, in seeking summary judgment, need not "conclusively negate" the essential elements of the plaintiff's claims. (*Aguilar*, *supra*, 25 Cal.4th at pp. 853-854.) It is sufficient that the defendant demonstrate "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence" regarding one or more elements of the claims. (*Id.* at p. 854.) On summary judgment, the defendant bears the initial burden regarding this issue. (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 805.) "If

the defendant fails to meet this initial burden, it is unnecessary to examine the plaintiff's opposing evidence." (*Ibid.*)

Here, AAMC sought to show that the Sandovals did not possess, and could not reasonably obtain, evidence sufficient to establish an aspect of causation crucial to their claims, namely, exposure to asbestos. In asbestos cases, "the plaintiff must first establish some threshold exposure to . . . asbestos-containing products, and must further establish in reasonable medical probability that a particular exposure or series of exposures was a 'legal cause' of his injury, i.e., a substantial factor in bringing about the injury." (*Rutherford v. Owen-Illinois, Inc.* (1997) 16 Cal.4th 953, 982, italics & fn. omitted.) Thus, "[a] threshold issue in asbestos litigation is exposure to the relevant asbestos product. [Citations.] 'If there has been no exposure, there is no causation.' [Citation.]" (*Casey v. Perini Corp.* (2012) 206 Cal.App.4th 1222, 1236, quoting *McGonnell v. Kaiser Gypsum Co.* (2002) 98 Cal.App.4th 1098, 1103 (*McGonnell*.)

In attempting to show that the plaintiff does not possess, and cannot reasonably obtain, needed evidence, the defendant may satisfy its initial burden on summary judgment through "admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing" (*Aguilar, supra*, 25 Cal.4th at p. 855), or through discovery responses that are factually devoid (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590). As the defendant must do more than "simply point out" the

purported deficiency (*Aguilar*, *supra*, at pp. 853-854), the burden on summary judgment does not shift to the plaintiff unless a "stringent review of the direct, circumstantial and inferential evidence" shows that the plaintiff inherently lacks the needed evidence (*Scheiding v. Dinwiddie Construction Co.* (1999) 69 Cal.App.4th 64, 83 (*Scheiding*)).

Generally, the responses upon which the defendant relies must be to discovery sufficiently comprehensive, or sufficiently focused on key elements of the plaintiff's claims, to support the reasonable inference that the plaintiff cannot marshal needed evidence. Thus, in *Andrews v. Foster Wheeler LLC* (2006) 138 Cal.App.4th 96, 103, 106-107, which involved an asbestos-based personal injury action, the appellate court affirmed summary judgment in favor of a manufacturer of asbestos-containing products, concluding that the plaintiff's evasive responses to broad discovery requests seeking the factual basis of his claims and identities of relevant witnesses showed that he could not establish causation. Again, in *McGonnell*, which also involved an asbestos-based personal injury action, the appellate court concluded that the defendant carried its initial burden on summary judgment by showing that when deposed, the plaintiff admitted he was familiar with the defendant's products and could not recall seeing them at his jobsites. (*McGonnell*, *supra*, 98 Cal.App.4th at pp. 1104-1105.)

In contrast, when the pertinent discovery is insufficiently comprehensive or focused, summary judgment

is not properly ordered in the defendant's favor. In *Scheiding*, a worker asserted asbestos-related personal injury claims against numerous defendants, including a general contractor. (*Scheiding*, *supra*, 69 Cal.App.4th at pp. 67-68.) The general contractor successfully sought summary judgment on the ground that the worker, testifying in deposition and responding to form interrogatories, did not specifically name the general contractor as active at any jobsite where the worker encountered asbestos. (*Ibid.*) Reversing, the appellate court concluded that the general contractor failed to carry its initial burden, as the general contractor directed no questions to the worker during his deposition, and propounded no discovery specifically designed to elicit whether the worker possessed evidence regarding the general contractor. (*Id.* at pp. 67, 83-84.)

2. *Underlying Proceedings*

a. *AAMC's Showing*

In seeking summary judgment, AAMC submitted the Sandovals' responses to three sets of interrogatories, one set of requests for admissions, and one set of requests for production of documents, together with excerpts from their depositions. AAMC asserted that the Sandovals' responses to AAMC's discovery were "factually devoid," and further noted that when deposed, Rodolfo admitted he had no knowledge whether he encountered asbestos while employed by AAMC.

AAMC placed special emphasis on the Sandovals' response to two sets of interrogatories -- namely, AAMC's form interrogatories and special interrogatories -- offered, inter alia, to identify "all facts" supporting the complaint's key allegations regarding the Sandovals' exposure to asbestos. The Sandovals served that "all facts" response in August 2016, shortly before AAMC filed its motion for summary judgment. According to the "all facts" response, while working in AAMC's paint department, Rodolfo engaged in several activities that generated asbestos dust. In contacting an electrical panel Rodolfo regularly needed to access, he released dust from a pipe elbow encased with a type of insulation that a 1991 asbestos survey of AAMC's facilities found to contain chrysotile asbestos. Furthermore, Rodolfo serviced a conveyor belt by cutting and applying tape that his supervisor described as made of asbestos. Rodolfo's work itself involved the application of Richeson brand paint, which the Sandovals "allege[d]" contained asbestos; additionally, he cleaned an industrial oven containing dried paint. Rodolfo's co-workers engaged in the cutting, sanding, and application of water heater components (including gaskets), several of which -- according to AAMC's own product specifications -- contained asbestos. Rodolfo also frequently worked near welders who wore asbestos gloves, and occasionally used such gloves himself. The "all facts" response further asserted that San Juana was exposed to asbestos fibers as the result of Rodolfo's workplace activities.

In order to show that the "all facts" response was factually devoid or deficient, AAMC relied primarily on Rodolfo's deposition testimony. When deposed, Rodolfo stated that he had no knowledge whether he was exposed to asbestos while working for AAMC. He further stated that he touched an insulated pipe on a daily basis in order to turn off the electricity at the end of his shift, that he always wore a mask while applying tape to the conveyor belt, that he was responsible only for turning the industrial oven on and off, that he performed no work on "gaskets," and that he did not know the manufacturer of any products used in the AAMC facility, aside from Richeson paint. Additionally, AAMC submitted evidence that the Sandovals lacked witnesses to support Rodolfo's belief that the tape he applied to the conveyor belt contained asbestos.

b. *The Sandovals' Opposition*

The Sandovals contended AAMC failed to carry its initial burden for two reasons. They argued (1) that the discovery responses upon which AAMC relied were inadmissible, and (2) that if those responses were admissible, they showed only that the Sandovals had sufficient evidence of their exposure to asbestos.

The Sandovals' first contention was founded on the discovery statutes, which require responses to interrogatories, requests for the production of documents, and requests for admissions to be verified under oath by the responding party. (Code Civ. Proc., §§ 2030.250, subd. (a),

2031. 250, subd. (a), 2033.210, subd. (a).) Their contention encompassed the "all facts" interrogatory response described above (see pt. B.2.a. of the Discussion, *ante*), as all the discovery responses of the Sandovals submitted by AAMC containing that response lacked the requisite verifications. The Sandovals maintained that in the absence of the "all facts" response, AAMC failed to carry its initial burden.

The Sandovals' second contention also relied on the "all facts" interrogatory response. They argued that if admissible, it stated facts sufficient to submit the issue of their asbestos exposure to a jury.

In support of the opposition, the Sandovals submitted verified responses to AAMC's special interrogatories, notwithstanding their contention that the unverified version of those responses submitted by AAMC was inadmissible. The verified responses included the "all facts" response. Also attached to the verified responses was a document mentioned in the "all facts" response but not included with responses submitted by AAMC, namely, the 1991 asbestos survey of AAMC's facilities that found chrysotile asbestos in pipe insulation.

c. *AAMC's Reply*

AAMC contended its showing established the Sandovals' lack of needed evidence. AAMC further argued that even if the unverified discovery responses it submitted were disregarded, the remaining responses sufficed to carry its initial burden on summary judgment. Additionally,

AAMC objected to the verified responses submitted by the Sandovals, contending that the use of those responses by the Sandovals in their own favor rendered them inadmissible hearsay (Evid. Code, § 1220) and contravened the discovery statutes (Code Civ. Proc., § 2030.410).[2]

d. *Trial Court's Rulings*

At the hearing on the summary judgment motion, the Sandovals' counsel stated that he had submitted their verified interrogatory responses "not to rely on [that] evidence," but to assist the court in determining whether AAMC had carried its initial burden. Following the hearing, the trial court concluded that AAMC had shifted the burden to the Sandovals, who had raised no triable issues of fact. In granting summary judgment, the court sustained AAMC's evidentiary objections to the verified responses submitted by the Sandovals.

3. *Analysis*

Our inquiry into the grant of summary judgment has a narrow focus, namely, whether AAMC's showing -- by

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[2] Code of Civil Procedure section 2030.410 provides: "At the trial or any other hearing in the action, so far as admissible under the rules of evidence, the propounding party or any party other than the responding party may use any answer or part of an answer to an interrogatory only against the responding party."

itself -- was sufficient to carry its initial burden regarding the Sandovals' purported lack of needed evidence, rather than whether there is a triable issue regarding that matter. When a defendant seeks summary judgment on the ground that the plaintiff inherently lacks needed evidence, summary judgment cannot be ordered until the defendant meets its initial burden, even if the plaintiff "does not respond sufficiently or at all." (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.) Furthermore, although a gap in the moving party's initial showing may sometimes be filled by the opposing party's showing (*Villa v. McFerren* (1995) 35 Cal.App.4th 733, 750-751), the trial court sustained objections to the entirety of the Sandovals' responsive evidence. Because those rulings have not been challenged on appeal, the propriety of summary judgment must be assessed solely in light of AAMC's showing.

The Sandovals contend our review is subject to a further limitation. Relying on *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632 and *Thomas v. Makita, U.S.A., Inc.* (1986) 181 Cal.App.3d 989, they argue that the unverified discovery responses submitted by AAMC are inadmissible. However, those decisions stand solely for the proposition that a party's unverified discovery responses render the party vulnerable to unfavorable consequences specified in the discovery statutes. (*Appleton*, *supra*, at pp. 634-636 [party's unverified responses to requests for admissions were "tantamount to no responses at all," and thus mandated the imposition of discovery sanctions (*id.* at

p. 636)]; *Thomas, supra*, at pp. 991-992 [unverified responses to requests for admissions was "tantamount to a failure to respond at all," for purpose of deeming the requested admissions as admitted (*id.* at p. 993)].) Our research has identified no decision suggesting that a plaintiff's unverified discovery responses cannot be offered against the plaintiff on summary judgment to show that he or she inherently lacks needed evidence.

In any event, it is unnecessary to resolve the Sandovals' contention because we conclude AAMC failed to carry its initial burden, regardless of whether the unverified discovery responses are properly included within AAMC's showing. As explained below, absent those responses, the discovery offered by AAMC does not support the reasonable inference that the Sandovals inherently lack evidence of asbestos exposure. Moreover, even if taken to include the responses, AAMC's showing did not establish that the Sandovals lacked evidence of asbestos exposure.

We begin by evaluating AAMC's showing in the absence of the unverified responses. In *Weber v. John Crane, Inc.* (2006) 143 Cal.App.4th 1433, 1435 (*Weber*), a worker asserted asbestos-related personal injury claims against numerous defendants, including a manufacturer of asbestos-containing products. When deposed, the worker testified that he was not familiar with the manufacturer's name, and could not recall seeing its products in his workplace. (*Id.* at p. 1436.) Relying on that deposition testimony, the manufacturer secured summary judgment on

the ground that the worker was unable to show that he was exposed to asbestos through encounters with the manufacturer's products. (*Ibid.*)

Reversing, the appellate court held that the manufacturer failed to carry its initial burden, stating: "A motion for summary judgment is not a mechanism for rewarding limited discovery; it is a mechanism allowing the early disposition of cases where there is no reason to believe that a party will be able to prove its case." (*Weber*, *supra*, 143 Cal.App.4th at p. 1442.) The court concluded that the discovery submitted by the manufacturer was insufficiently comprehensive to show that the worker inherently lacked needed evidence, as the manufacturer relied solely on the worker's deposition, and offered no discovery intended to elicit all the worker's evidence. (*Ibid.*) The court further concluded that the worker's testimony itself did not show that he never encountered the manufacturer's products, as there was no evidence that those products always displayed the manufacturer's name. (*Ibid.*)

In our view, absent the unverified responses, AAMC's showing was insufficiently comprehensive and focused to support the reasonable inference that the Sandovals inherently lacked evidence of their asbestos exposure. AAMC's showing, so limited, consists of the Sandovals' deposition testimony and their verified responses to a single set of interrogatories. Rodolfo's testimony established his lack of knowledge regarding his exposure to asbestos while working for AAMC and inability to identify product

manufacturers other than Richeson. However, Rodolfo's personal lack of knowledge, by itself, does not show that the Sandovals could not demonstrate that he was exposed to asbestos. That defect in AAMC's showing is not remedied by the verified interrogatory responses, as those responses were submitted early in the action -- namely, in January 2016, approximately when AAMC was formally identified as a defendant -- and expressly state that they were subject to supplementation upon further discovery.[3] Accordingly, in the absence of the unverified responses, AAMC's showing does not carry its initial burden.

The same is true if the unverified responses are included in AAMC's showing, albeit for a different reason. In *Ganoe v. Metalclad Insulation Corp.* (2014) 227 Cal.App.4th 1577, 1578-1579 (*Ganoe*), the plaintiff asserted a wrongful death claim against an insulation contractor and other defendants, alleging that her husband died from mesothelioma caused by exposure to asbestos in his workplace. The contractor sought summary judgment, contending the plaintiff lacked evidence of asbestos exposure

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[3] The set of verified responses to interrogatories do not contain that "all facts" response found in the unverified responses served by the Sandovals in August 2016, shortly before AAMC sought summary judgment. Although the verified responses include one to an interrogatory seeking the facts supporting the Sandovals' allegation that San Juana's mesothelioma was due to asbestos exposure, that early response lacked many facts asserted in the subsequently-served unverified "all facts" response.

attributable to the contractor. (*Id*. at pp. 1579-1580.) In opposing the summary judgment motion, the plaintiff directed the trial court's attention to her response to an "all facts" interrogatory, which stated that in 1974, while employed, her husband was exposed to asbestos dust released from pipe insulation during a steam pipe replacement project in which the contractor participated. (*Id*. at p. 1580.) The trial court granted summary judgment in the contractor's favor. (*Id*. at pp. 1580-1581.) Reversing, the appellate court determined that the contractor failed to carry its initial burden, concluding that the "all facts" response contained "'specific facts' showing that [the contractor] had exposed [the decedent] to asbestos in 1974 by removing asbestos-containing insulation in [the decedent's workplace] while he was present." (*Id*. at p. 1584.)

The Sandovals' "all facts" interrogatory response contains similarly specific facts regarding Rodolfo's asbestos exposure. After describing the duration and place of Rodolfo's employment, the response states: "Rodolfo's work regularly required him to come into contact and disturb asbestos-containing pipe insulation . . . . He specifically recalled regularly coming into contact with an insulated pipe elbow in order to get into a small area containing an electrical panel he would regularly need to access. . . . Per AAMC's own asbestos survey results, this pipe insulation contained chrysotile asbestos. . . . This asbestos-containing insulation was in place throughout Rodolfo's employment

with [AAMC]. . . . The acts of coming into contact and disturbing this pipe insulation tape released asbestos-containing dust, which Rodolfo could see. This dust would settle on his clothes, hair and person on a regular basis."[4]

Additionally, the response states that AAMC's products incorporated numerous specified asbestos-containing components that were manipulated, cut, sanded, or applied by Rodolfo's co-workers. The response asserts: "Although Rodolfo did not recall doing any of this work itself, it [*sic*] he testified that the final product was completed at his facility which establishes that this work was done in close proximity to him at the facility. No measures were taken by [AAMC] to prevent dust from any section of the facility from settling in the area in which Rodolfo was located. . . . [D]ust resulting from this work would settle in his clothes, hair and person on a regular basis." In view of *Ganoe*, we conclude that the response precluded AAMC from carrying its initial burden.

The remaining question is whether the facts identified in the response require reversal of the grant of summary judgment, in view of the Sandovals' agreement to dismiss their premises liability claim. Because the response expressly states that Rodolfo's work required him to make

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[4] Additionally, when deposed, Rodolfo testified that he touched an insulated pipe on a daily basis in the course of contacting an electrical panel at the end of his shift.

regular contact with the pipe, AAMC is reasonably viewed as responsible for Rodolfo's exposure to asbestos through that contact both as employer and as a possessor or owner of property, as AAMC controlled Rodolfo's work in both capacities. (See *Kesner*, *supra*, 1 Cal.5th at p. 1161 [in the absence of any exceptions or defenses specific to premises liability, take-home asbestos exposure claims based on premises liability and general negligence are "subject to the same requirements and same duty analysis"].) Additionally, the response also ascribes Rodolfo's exposure to asbestos to co-worker activities under AAMC's control as their employer. The response thus states facts pertinent to the Sandovals' negligence claim, which they did not agree to dismiss. Accordingly, the Sandovals' possession of evidence supporting the causation element of their negligence claim mandates the reversal of summary judgment. (*UDC-Universal Development, L.P. v. CH2M Hill* (2010) 181 Cal.App.4th 10, 25 [when party requests summary judgment rather than summary adjudication, the trial court must deny the motion "when any one claim withst[ands] the grounds asserted in the motion"].) Summary judgment was thus improperly granted on the basis that the Sandovals cannot establish the element of causation.

D. *Summary Adjudication on the Strict Products Liability Claim*

As an alternative to summary judgment on the complaint, AAMC contends summary adjudication was

properly granted on the Sandovals' claim for strict products liability. That claim is predicated on allegations that San Juana was exposed to asbestos through Rodolfo, whose workplace was engaged in the handling of defective asbestos-containing products designed to be used in association with AAMC's defective asbestos-containing products. In seeking summary adjudication on the claim, AAMC relied on facts not disputed by the Sandovals, namely, that San Juana never went to Rodolfo's workplace, never saw, purchased, or used an AAMC product, and never encountered an AAMC product in use. As explained below, those facts do not support the grant of summary adjudication.

Although the Sandovals did not challenge AAMC's showing, the facts AAMC established by that showing do not attack the key allegations underlying the claim, namely, that San Juana was exposed to asbestos through Rodolfo's work with, and around, defective asbestos-containing products incorporated into, or comprising components of, AAMC's own products. For that reason, the propriety of summary adjudication hinges on whether those allegations state a claim for strict products liability. (*Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1662-1663.)

The doctrine of strict products liability is traceable to *Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57, 59-60, in which our Supreme Court held that manufacturers of defective products are subject to strict liability for injuries to consumers arising from their products. The court

explained that "[t]he purpose of such liability is to insure that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market[,] rather than by the injured persons who are powerless to protect themselves." (*Id.* at p. 63.) The doctrine has been extended to other parties involved in the vertical distribution of products such as retailers, wholesalers, and developers of mass-produced homes. (*Bay Summit Community Assn. v. Shell Oil Co.* (1996) 51 Cal.App.4th 762, 772-773 (*Bay Summit*).) Those parties were subject to liability for "passing the product down the line to the consumer" because they "were 'able to bear the cost of compensating for injuries' [citation] and 'played a part in insuring that the product [was] safe or . . . [were] in a position to exert pressure on the manufacturer to that end.' [Citation.]" (*Id.* at p. 773.)

"[U]nder the stream-of-commerce approach to strict liability[,] no precise legal relationship to the member of the enterprise causing the defect to be manufactured or to the member most closely connected with the customer is required before the courts will impose strict liability. It is the defendant's participatory connection, for his personal profit or other benefit, with the injury-producing product and with the enterprise that created consumer demand for and reliance upon the product . . . which calls for imposition of strict liability." (*Kasel v. Remington Arms Co.* (1972) 24 Cal.App.3d 711, 725.)

Under these principles, a business that buys and installs a defective product in supplying it to the end user may be subject to liability. In *Hernandezcueva v. E. F. Brady Company, Inc.* (2015) 243 Cal.App.4th 249, 252 (*Hernandezcueva*), a janitor asserted a claim for strict products liability against a subcontractor engaged in drywall installation and plastering, alleging that asbestos-containing products it distributed caused his mesothelioma. At trial, the janitor presented evidence that the subcontractor participated in many major construction projects, invariably agreed in its subcontracts to buy the drywall materials it installed, made sizeable purchases of asbestos-containing drywall materials, and always passed the costs of those purchases to the user of the building under construction. (*Id*. at p. 263.) The janitor also offered evidence that long after the subcontractor completed its installation of drywall in a building, he was exposed to asbestos dust released from the drywall materials when the building was renovated. This court reversed a grant of nonsuit on the strict products liability claim, concluding that the janitor's evidence established that the subcontractor was involved in the stream of commerce relating to the defective products, and was in a position to exert pressure on their manufacturers to improve safety. (*Id*. at pp. 262-264.)

Here, the key issue is whether a strict products liability claim may be based on San Juana's injurious exposure to asbestos that Rodolfo encountered during the installation or incorporation of asbestos-containing products

into AAMC's own products. California courts have long held that the doctrine of strict products liability may be invoked by so-called "bystanders" who are neither purchasers nor users of a defective product. In *Elmore v. American Motors Corp.* (1969) 70 Cal.2d 578, 580-581 (*Elmore*), a motorist asserted a strict products liability claim against the manufacturer and seller of a particular car, alleging that he suffered injuries when the car's defective transmission failed while the car was moving, causing it to collide with the motorist's own vehicle. (*Id.* at pp. 585-587.) Our Supreme Court reversed a grant of nonsuit on the claim in favor of the manufacturer and seller, concluding that the doctrine of strict products liability encompasses claims by bystanders when "injury to bystanders from the defect is reasonably foreseeable." (*Id.* at pp. 586-587.)

In *Johnson v. Standards Brands Paint Co.* (1969) 274 Cal.App.2d 331, 334, the plaintiffs asserted a strict products liability claim against a retailer, alleging that the retailer sold a defective stepladder that collapsed near the decedent and overturned the ladder on which he was standing, thereby causing his fatal injuries. At trial, the retailer submitted evidence that the decedent was neither a consumer nor user of the stepladder, and that the stepladder had been improperly positioned when it collapsed. After a jury returned a verdict in favor of the plaintiffs, the appellate court affirmed under *Elmore.* (*Id.* at pp. 337-338.) The court further determined that for purposes of a bystander claim, it was sufficient for the plaintiffs to show

that the stepladder was being used in a way which the seller should reasonably have anticipated, rather than an abnormal or unusual use. (*Id.* at pp. 339-341.)

Bystanders may assert claims for strict products liability predicated on injuries incurred before the defendant's defective product reached its ultimate consumer or user. In *Nelson v. Superior Court* (2006) 144 Cal.App.4th 689, 691-693 (*Nelson*), the plaintiff asserted a strict products liability claim against a gasoline refiner, alleging that the refiner's fuel was defective due to a hazardous additive, that the fuel was stored in the tanks of filling stations not operated by the refiner, and that the fuel leaked from those tanks, thereby contaminating the plaintiff's groundwater wells with the additive. In reversing a grant of judgment on the pleadings on the claim, the appellate court held that the refiner was subject to liability under a bystander theory for foreseeable uses of the fuel such as its storage in filling station tanks, even though those uses occurred before the fuel reached the ultimate consumer. (*Id.* at pp. 694-698.)

In so concluding, the court placed emphasis on *Moreno v. Leslie's Pool Mart* (1980) 110 Cal.App.3d 179 (*Moreno*). There, an employee of a retailer of swimming pool products asserted a claim for strict products liability against the retailer, alleging that he suffered injuries while disposing of pool chemicals at the retailer's request. (*Id.* at pp. 181-183.) After the retailer secured summary judgment in its favor, the appellate court reversed, concluding, inter alia, that the

employee's activities regarding the chemicals constituted an expected "'use.'"[5] (*Id.* at p. 182.)

We conclude that the Sandovals stated a claim for strict products liability founded on a bystander theory. Their complaint asserts that AAMC marketed asbestos-containing products requiring asbestos-containing components, that Rodolfo encountered asbestos through workplace activities involving asbestos-containing products designed to be used in association with AAMC's products, that the component products so used were defective, and that San Juana was exposed to asbestos as the result of Rodolfo's workplace activities. The complaint thus adequately alleges that AAMC was in the stream of commerce regarding the asbestos-containing components, which were defective when used as designed -- that is, incorporated into AAMC's product -- because they exposed Rodolfo and San Juana to asbestos. AAMC thus failed to

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[5] The principal issue in *Moreno* concerned the application of the so-called "dual capacity" doctrine, which permitted employees to assert certain claims for relief against their employers outside the workers' compensation claim when the claims were not based on the employer-employee relationship. (See *Douglas v. E. & J. Gallo Winery* (1977) 69 Cal.App.3d 103, 113.) That doctrine is now substantially limited by statute. (Lab. Code, § 3602.) However, as explained in *Nelson*, *Moreno* remains persuasive authority regarding the general scope of the strict products liability doctrine. (*Nelson*, *supra*, 144 Cal.App.4th at p. 697, fn. 4.)

carry its initial burden on summary adjudication regarding the strict products liability claim.

AAMC contends the strict products liability claim fails because Rodolfo was not exposed to asbestos from a "completed product" that AAMC had placed on the market. We disagree. In view of *Hernandezcueva* and *Nelson*, a defendant may be subject to strict products liability for defective components of the defendant's own product; furthermore, in view of *Moreno*, the defendant may be liable for injuries traceable to the use of a product before it is sold. The policies underlying the doctrine of strict liability do not preclude the imposition of liability on AAMC, as nothing in the complaint suggests that AAMC could not bear the cost of injuries from defective products integrated into its own products or pressure their manufacturers to improve their safety. (*Bay Summit*, *supra*, 51 Cal.App.4th at p. 773.)[6]

Before the trial court, AAMC contended the Sandovals' claim failed under *O'Neil v. Crane Co.* (2012) 53 Cal.4th 335. There, the family of a deceased U.S. Navy seaman asserted claims for negligence and strict liability against manufacturers of pumps and valves used on warships, alleging that the serviceman's exposure to asbestos dust from asbestos-

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[6] To the extent AAMC suggests that summary adjudication was properly granted because the Sandovals lacked evidence that the asbestos-containing products integrated into AAMC's own products exposed Rodolfo to asbestos, that contention fails for the reasons discussed above (see pt. C.3. of the Discussion, *ante*).

containing materials used in connection with the pumps and valves caused his fatal mesothelioma. (*Id.* at pp. 342-347.) Our Supreme Court rejected the claims, concluding that "a product manufacturer may not be held liable in strict liability or negligence for harm caused by another manufacturer's product unless the defendant's own product contributed substantially to the harm, or the defendant participated substantially in creating a harmful combined use of the products." (*Id.* at p. 342.)

Here, the Sandovals' claim falls within the latter exception, as it relies on allegations that Rodolfo's work for AAMC required him to encounter defective asbestos-containing products designed to be used in association with AAMC's defective asbestos-containing products. *O'Neil* thus does not bar their claim. In sum, summary adjudication was improperly granted on the Sandovals' claim for strict products liability.

E. *Summary Adjudication on Rodolfo's Loss of Consortium Claim*

The trial court granted summary adjudication on Rodolfo's loss of consortium claim, concluding that it failed for want of a tenable substantive claim regarding injuries to San Juana. (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 746 ["[A] cause of action for loss of consortium is, by its nature, dependent on the existence of a cause of action for tortious injury to a spouse"].) In view of our conclusions regarding

the Sandovals' claims for negligence and strict products liability, that ruling must be reversed.

F. *Summary Adjudication on the Sandovals' Request for Punitive Damages*

AAMC contends the trial court properly granted summary adjudication on the Sandovals' request for punitive damages because there is no triable issue whether AAMC is a dissolved corporation. In seeking summary adjudication, AAMC submitted evidence that it is a dissolved corporation with no remaining officers, directors, or shareholders. The Sandovals did not dispute that showing. For the reasons discussed below, we reject AAMC's contention.

As our Supreme Court has explained, "At common law, the dissolution of a corporation was treated like the death of a natural person: Once it had dissolved, a corporation ceased to exist and could not sue or be sued, and any actions pending against it abated. [Citations.] [¶] California no longer follows the common law rules with respect to either the death of a natural person or the dissolution of a corporation. Except as provided by statute, 'no cause of action is lost by reason of the death of any person, but may be maintained by or against the person's personal representative.' [Citation.] If the decedent had liability insurance, the action may be maintained against the decedent's estate, with service upon an agent of the insurer.

[Citation.]" (*Penasquitos, Inc. v. Superior Court* (1991) 53 Cal.3d 1180, 1184, quoting Prob. Code § 573.)

Subdivision (a)(1) of Corporations Code section 2011 authorizes the assertion of claims against a dissolved corporation, to the extent the corporation or its former shareholders retain certain specified assets.[7] Because nothing in the statute bars a plaintiff from asserting a claim for punitive damages, AAMC's contention fails.

AAMC's reliance on *Soto v. BorgWarner Morse TEC Inc.* (2015) 239 Cal.App.4th 165 is misplaced, as that decision stands solely for the proposition that "[e]vidence of a defendant's financial condition is a legal precondition to the award of punitive damages." (*Id.* at p. 195.) However, as AAMC offered no evidence establishing the nonexistence

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[7] Corporations Code section 2011, subdivision (a)(1), states: "Causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, may be enforced against any of the following: [¶] (A) Against the dissolved corporation, to the extent of its undistributed assets, including, without limitation, any insurance assets held by the corporation that may be available to satisfy claims. [¶] (B) If any of the assets of the dissolved corporation have been distributed to shareholders, against shareholders of the dissolved corporation to the extent of their pro rata share of the claim or to the extent of the corporate assets distributed to them upon dissolution of the corporation, whichever is less. [¶] A shareholder's total liability under this section may not exceed the total amount of assets of the dissolved corporation distributed to the shareholder upon dissolution of the corporation."

of assets cognizable under Corporations Code section 2011, subdivision (a)(1), AAMC did not carry its initial burden with respect to that matter.[8]

Before the trial court, AAMC suggested that an award of punitive damages against it would "serve no public policy purpose" because "there is no one to punish for any alleged misconduct, and no future action that can be deterred." We disagree. The purpose of punitive damages is "to punish wrongdoing and deter future misconduct by either the defendant or other potential wrongdoers." (*Stevens v. Owens-Corning Fiberglas Corp.* (1996) 49 Cal.App.4th 1645, 1658.) AAMC's status as a dissolved corporation neither precludes the imposition of punishment on it -- to the extent permitted under Corporations Code section 2011, subdivision (a)(1) -- nor undermines the deterrent effect of that punishment with respect to other potential wrongdoers. In sum, summary adjudication on the Sandovals' request for punitive damages was improperly granted.

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[8] We recognize that the trial court, in granting summary adjudication, stated that AAMC was a dissolved corporation "with no assets." As AAMC has identified nothing in the record to establish that fact, summary adjudication cannot be affirmed on that ground.

DISPOSITION

Summary judgment on the Sandovals' complaint and summary adjudication on their claims for negligence, strict liability and loss of consortium, and their request for punitive damages are reversed. The judgment is otherwise affirmed, and the matter is remanded for further proceedings in accordance with this opinion. The Sandovals are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.