607	1 2 3 4 5 6 7 8 9	Steven Kazan, Esq. (C.S.B. #46855) skazan@kazanlaw.com Matthew L. Thiel, Esq. (C.S.B. #237564) mthiel@kazanlaw.com Michael T. Stewart, Esq. (C.S.B. #253851) mstewart@kazanlaw.com KAZAN, McCLAIN, SATTERLEY & GREENWOOD A Professional Law Corporation Jack London Market 55 Harrison Street, Suite 400 Oakland, California 94607 Telephone: (510) 302-1000 Facsimile: (510) 835-4913 Attorneys for Plaintiffs					
Market • 55 Harrison Street, Suite 400 • Oakland, California 94607 0) 302-1000 • Fax: (510) 835-4913 • www.kazanlaw.com							
	10	NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION					
	11						
	12	In re	Chapter 11 Case No. 02-46284				
	13 14	WESTERN ASBESTOS COMPANY; WESTERN MACARTHUR COMPANY; and MACARTHUR COMPANY,	Adversary Case No. COMPLAINT FOR DECLARATORY				
son Str : (510)	15	Debtors.	JUDGMENT				
Jack London Market • 55 Harrison Street, Suite . (510) 302-1000 • Fax: (510) 835-4913	 16 17 18 19 20 	MARVIE DARDEN, individually and as successor in interest to EDDIE DARDEN; CHRISTOPHER DARDEN; DEBORA DARDEN; LAWRENCE DARDEN; ROSALIND DARDEN KEETON; ANITA GARDYNE; and ANGELA NEWSOME,					
	21	Plaintiffs,					
	22	vs.					
	23	WESTERN ASBESTOS SETTLEMENT					
	24	TRUST,					
	25	Defendant.					
	26						
	27						
	28						
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	1	1 I.					
	2	2 JURISDICTION AND VENUE					
	3	1. This Court has jurisdiction over this proceeding under 28 U.S.C. § 157(a);					
	4	28 U.S.C. § 1334; and the January 27, 2004 Order Confirming Second Amended Joint Plan of					
	5	Reorganization and Granting Related Relief entered by the United States Bankruptcy Court for the					
	6	Northern District of California. [Ch. 11 Case No. 02-46284, Docket No. 1205, pp. 9, 33-34.] This					
	7	is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue is proper pursuan					
	8	to 28 U.S.C. § 1409; Section 5.9 of the Western Asbestos Settlement Trust Distribution					
.94607	9	Procedures; and Section I of the Western Asbestos Settlement Trust Alternative Dispute					
lifornia com	10	Resolution Procedures.					
00 • Oakland, Califo• www.kazanlaw.com	11	2. This matter is an adversary proceeding governed by Part VII of the Federal Rules					
• Oakl ww.kaz	12	of Bankruptcy Procedure, Rule 7001(9).					
te 400 13 • w	13	3. The statutory basis for the relief requested herein is 11 U.S.C. § 105(a); and					
eet, Sui 835-49	14	28 U.S.C. § 2201.					
son Str : (510)							
isor x: (5	15	II.					
55 Harrisor) • Fax: (5	15 16	II. IDENTITIES OF PARTIES; AND NATURE OF ACTION					
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on Market • 55 Harrison Street, Suite • (510) 302-1000 • Fax: (510) 835-4913	16	IDENTITIES OF PARTIES; AND NATURE OF ACTION					
k London Market • 55 Harrisor (510) 302-1000 • Fax: (5	16 17	 IDENTITIES OF PARTIES; AND NATURE OF ACTION 4. Defendant Western Asbestos Settlement Trust (Defendant) is a trust organized 					
Jack London Market • 55 Harrison Street, Suite 400 • Oakland, California 94607 (510) 302-1000 • Fax: (510) 835-4913 • www.kazanlaw.com	16 17 18	IDENTITIES OF PARTIES; AND NATURE OF ACTION4.Defendant Western Asbestos Settlement Trust (Defendant) is a trust organizedunder 11 U.S.C. § 524(g) to satisfy all asbestos-related personal injury and wrongful death claims					
Jack London Market • 55 Harrisor (510) 302-1000 • Fax: (5	16 17 18 19	IDENTITIES OF PARTIES; AND NATURE OF ACTION4.Defendant Western Asbestos Settlement Trust (Defendant) is a trust organizedunder 11 U.S.C. § 524(g) to satisfy all asbestos-related personal injury and wrongful death claimscaused by conduct of, and/or exposure to asbestos-containing products for which Western					
Jack London Market • 55 Harrisor (510) 302-1000 • Fax: (5	16 17 18 19 20	IDENTITIES OF PARTIES; AND NATURE OF ACTION4.Defendant Western Asbestos Settlement Trust (Defendant) is a trust organizedunder 11 U.S.C. § 524(g) to satisfy all asbestos-related personal injury and wrongful death claimscaused by conduct of, and/or exposure to asbestos-containing products for which WesternAsbestos Company; Western MacArthur Company; and/or MacArthur Company have legal					
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Jack London Market • 55 Harrisor (510) 302-1000 • Fax: (5	 16 17 18 19 20 21 22 23 	 IDENTITIES OF PARTIES; AND NATURE OF ACTION 4. Defendant Western Asbestos Settlement Trust (Defendant) is a trust organized under 11 U.S.C. § 524(g) to satisfy all asbestos-related personal injury and wrongful death claims caused by conduct of, and/or exposure to asbestos-containing products for which Western Asbestos Company; Western MacArthur Company; and/or MacArthur Company have legal responsibility. 5. Decedent Eddie Darden (Eddie) developed asbestos-related malignant mesothelioma in 2016; and he died from the cancer in 2017. His surviving spouse is Plaintiff 					
Jack London Market • 55 Harrisor (510) 302-1000 • Fax: (5	 16 17 18 19 20 21 22 23 24 	IDENTITIES OF PARTIES; AND NATURE OF ACTION 4. Defendant Western Asbestos Settlement Trust (Defendant) is a trust organized under 11 U.S.C. § 524(g) to satisfy all asbestos-related personal injury and wrongful death claims caused by conduct of, and/or exposure to asbestos-containing products for which Western Asbestos Company; Western MacArthur Company; and/or MacArthur Company have legal responsibility. 5. Decedent Eddie Darden (Eddie) developed asbestos-related malignant mesothelioma in 2016; and he died from the cancer in 2017. His surviving spouse is Plaintiff Marvie Darden (Marvie). Marvie is the successor-in-interest to Eddie's survivorship personal					
Jack London Market • 55 Harrison (510) 302-1000 • Fax: (5	 16 17 18 19 20 21 22 23 24 25 	 IDENTITIES OF PARTIES; AND NATURE OF ACTION Defendant Western Asbestos Settlement Trust (Defendant) is a trust organized under 11 U.S.C. § 524(g) to satisfy all asbestos-related personal injury and wrongful death claims caused by conduct of, and/or exposure to asbestos-containing products for which Western Asbestos Company; Western MacArthur Company; and/or MacArthur Company have legal responsibility. Decedent Eddie Darden (Eddie) developed asbestos-related malignant mesothelioma in 2016; and he died from the cancer in 2017. His surviving spouse is Plaintiff Marvie Darden (Marvie). Marvie is the successor-in-interest to Eddie's survivorship personal injury claim pursuant to Cal. Code Civ. Proc. § 377.11, <i>et seq.</i> Additionally, as Eddie's surviving 					
Jack London Market • 55 Harrisor (510) 302-1000 • Fax: (5	 16 17 18 19 20 21 22 23 24 25 26 	 IDENTITIES OF PARTIES; AND NATURE OF ACTION Defendant Western Asbestos Settlement Trust (Defendant) is a trust organized under 11 U.S.C. § 524(g) to satisfy all asbestos-related personal injury and wrongful death claims caused by conduct of, and/or exposure to asbestos-containing products for which Western Asbestos Company; Western MacArthur Company; and/or MacArthur Company have legal responsibility. Decedent Eddie Darden (Eddie) developed asbestos-related malignant mesothelioma in 2016; and he died from the cancer in 2017. His surviving spouse is Plaintiff Marvie Darden (Marvie). Marvie is the successor-in-interest to Eddie's survivorship personal injury claim pursuant to Cal. Code Civ. Proc. § 377.11, <i>et seq.</i> Additionally, as Eddie's surviving 					

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1 6. As a result of Eddie's asbestos-related malignant mesothelioma and resulting death, 2 Eddie and Plaintiffs filed Asbestos Personal Injury and Wrongful Death Claims with Defendant 3 pursuant to the Western Asbestos Settlement Trust Distribution Procedures. However, Defendant rejected Plaintiffs' claims on the basis of a "threshold legal issue" that must be resolved by this 4 5 Court rather than by an arbitrator. Defendant asserted, as an affirmative defense, that Eddie's and Plaintiffs' claims are barred because in 1986 Eddie signed a release of liability in the context of 6 7 Eddie's personal injury lawsuit for non-malignant asbestosis.

8 7. As explained herein, Eddie's and Plaintiffs' claims are not barred by the 1986 9 release. Plaintiffs therefore seek a declaratory judgment providing that Defendant must evaluate and pay decedent Eddie Darden's and Plaintiffs' Asbestos Personal Injury and Wrongful Death 10 11 Claims irrespective of the 1986 release.

III.

FACTUAL ALLEGATIONS

14 8. From 1930 through May 1967, Western Asbestos Company was a Bay Area 15 distributor and installer of Johns-Manville brand asbestos-containing insulation products. 16 [Kaminski v. Western MacArthur Co., 175 Cal.App.3d 445, 451-453 (1985).] In May 1967, MacArthur Company formed a new entity – Western MacArthur Company – to take over the 17 18 business of Western Asbestos Company. [Id.] The deal was structured as an asset-purchase 19 agreement, such that Western MacArthur Company never formally held itself out to be the same 20 corporate entity as Western Asbestos Company. [Id.] Western Asbestos Company immediately 21 ceased its operations, and then dissolved in 1969. [Id.] By contrast, Western MacArthur 22 Company continued to operate the Western Asbestos Company business without change from the 23 public's perspective. In sum, "Western MacArthur sent a letter to Western customers asking if it 24 may 'continue to serve' them, stressing that the new company had 'the same experienced 25 personnel' and offered 'the same products, engineering and contracting services.' Western MacArthur continued to supply the same products and services as Western. It employed the same 26 27 sales personnel, warehousemen, truck drivers, and estimators. Johns-Manville remained the 28 primary supplier, and the product line and shipyard work remained essentially unchanged. Orders

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addressed to 'Western Asbestos' were filled by Western MacArthur. Western MacArthur 1 2 capitalized on Western's reputation. Prior to the formation of Western MacArthur, people referred 3 to 'Western Asbestos' as 'Western'; the verbal shortform continued to be used in reference to "Western MacArthur."" [Kaminski, 175 Cal.App.3d at 453.] Western MacArthur Company 4 5 continued to distribute and install asbestos-containing insulation products at Bay Area shipyards from May 1967 through the mid-1970's. 6

9. The 1985 Kaminski decision held that Western MacArthur Company was the successor-in-interest to Western Asbestos Company – but *only* for purposes of *strict products liability* under the product-line successor theory. [Kaminski, 175 Cal.App.3d at 456-459.] As a matter of law, the product-line successor theory does not apply to "ordinary negligence" liability. [Franklin v. USX Corp., 87 Cal.App.4th 615, 628-629 (2001).] Moreover, as of the date of the 1986 release that is at-issue here, no court held on any other basis that Western MacArthur Company was the successor-in-interest to the negligence liability of Western Asbestos Company.

14 10. Decedent Eddie Darden was a welder who worked at several Bay Area shipyards 15 throughout the 1960's and 1970's. Before May 1967, Eddie was exposed to asbestos because of 16 Western Asbestos Company's negligent distribution and installation of asbestos-containing 17 insulation products. Likewise, after May 1967, Eddie was exposed to asbestos because of Western 18 MacArthur Company's similar conduct.

19 11. In 1983, Eddie filed a personal injury lawsuit for non-malignant asbestosis. Eddie 20 did not sue Western Asbestos Company. Eddie did sue Western MacArthur Company. But he did 21 not allege that Western MacArthur Company held any successor liability for Western Asbestos 22 Company.

23 12. In 1986, Eddie settled his asbestosis lawsuit against Western MacArthur Company. 24 In exchange for \$1,300.00, Eddie signed a release of liability in favor of Western MacArthur 25 Company as well as its unspecified "predecessors"-in-interest. As previously explained, the 1985 Kaminski decision held that Western MacArthur Company was the successor-in-interest to 26 27 Western Asbestos Company, but only for strict products liability, not for negligence liability. Nor 28 had any other court otherwise held that Western MacArthur Company was the successor-ininterest to Western Asbestos Company for purposes of negligence liability. Thus, the 1986 release
 neither expressly nor impliedly released the pre-May 1967 negligence liability of Western
 Asbestos Company.

13. Additionally, the 1986 release purported to discharge all future asbestos-related 4 5 wrongful death claims of Eddie's future heirs. But only Eddie signed the release. And under 6 California law, Eddie lacked the power to release his future heirs' wrongful death claims. [Hass v. 7 RhodyCo Productions, 26 Cal.App.5th 11, 25 (2018) ("Because a wrongful death claim is not 8 derivative of the decedent's claims, an agreement by the decedent to release or waive liability for 9 [his or] her death does not necessarily bar a subsequent wrongful death cause of action.").] The 10 only exception to that rule applies in the limited context of waivers signed before participation in 11 sports or other dangerous recreational activities. [*Id.*]

14. Eddie continued to work as a welder at Bay Area jobsites until his retirement in the early 1990's.

14 15. In 2002, Chapter 11 Case No. 02-46284 was commenced to provide for the uniform
15 resolution of the asbestos-related liabilities of the three separate but related "Western" entities:
16 (1) Western Asbestos Company; (2) Western MacArthur Company; and (3) MacArthur Company.
17 Pursuant to 11 U.S.C. § 524(g), this Court established a trust to receive, evaluate, reject, or accept
18 and pay all Asbestos Personal Injury and Wrongful Death Claims that are related to one or more of
19 the "Western" entities. That trust is Defendant Western Asbestos Settlement Trust.

16. In 2016, Eddie developed asbestos-related malignant mesothelioma. Eddie's
mesothelioma was caused by his cumulative lifetime dose of asbestos. That included the asbestos
exposures that Western Asbestos Company *negligently* caused *before* May 1967; as well as the
asbestos exposures that Western MacArthur Company caused *after* May 1967. Eddie died from
the cancer in 2017.

17. Before Eddie died in 2017, he submitted a personal injury claim to Defendant
seeking compensation for Eddie's asbestos-related malignant mesothelioma. Eddie's pre-death
claim identified his spouse and all of his children, who would become his heirs. And then shortly
after Eddie's death, Plaintiffs provided Defendant a certified copy of Eddie's Certificate of Death,

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1 || thereby adding Plaintiffs' wrongful death claims to the case.

18. Eddie and Plaintiffs showed that Eddie's asbestos-related malignant mesothelioma
 resulted from the independent negligent conduct of *both* Western Asbestos Company (before May
 1967) and Western MacArthur Company (after May 1967).

19. As to Western Asbestos Company, Eddie was exposed to asbestos because of that
entity's negligence at two main jobsites: (1) Willamette (AKA Willamette Iron & Steel) shipyard
in Richmond, California in 1960 and 1961; and (2) Martinolich (AKA Pacific Dry Dock &
Repair) shipyard in Oakland, California in 1966. Defendant, via its valuation "Matrix," considers
both of those shipyards to be "High" exposure sites because "Western has been identified as a
primary supplier such that Western was responsible for a large portion of asbestos exposure at the
work site."

20. As to Western MacArthur Company, Eddie likewise was exposed to asbestos
because of that entity's negligence at Willamette (AKA Willamette Iron & Steel) shipyard in
Richmond, California in 1968, 1969, 1974, and 1975.

15 21. Defendant initially offered to accept and pay Eddie's personal injury claim and
16 Plaintiffs' wrongful death claims. But then Defendant revoked its offer, and rejected the claims,
17 because of Eddie's 1986 release.

18 22. As to Eddie's personal injury claim, Defendant wrongly determined that Eddie had 19 discharged his claim against Western Asbestos Company when he signed the 1986 release in favor 20 of Western MacArthur Company and its "predecessors"-in-interest. As previously explained, 21 Western MacArthur Company was the successor-in-interest to Western Asbestos Company only 22 for purposes of strict products liability -not for purposes of Western Asbestos Company's pre-23 May 1967 negligence that contributed to Eddie's asbestos exposures and resulting mesothelioma. 24 23. As to Plaintiffs' wrongful death claims, Defendant wrongly determined that Eddie 25 had successfully discharged those claims when he signed the 1986 release and purported to

26 eliminate the rights of his future heirs. As previously explained, Eddie lacked the power to release27 his future heirs' wrongful death claims.

28

24. On December 3, 2019, Defendant sent an e-mail stating that Eddie's and Plaintiffs'

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A Professional Law Corporation Jack London Market • 55 Harrison Street, Suite 400 • Oakland, California 94607 Zeam 2004 1000 • Dam Zeam 254 4013 • Januar Lanalua 2000		1	claims would	l be rejected. Defendant of	ficially	rejected t	he claims o	on February 24	, 2020.
		2	IV.						
		3	CLAIM FOR RELIEF						
		4	25. Pursuant to: (1) governing federal and California law; (2) the bankruptcy trust						
		5	documents that govern Defendant's operations; (3) all materials submitted in support of decedent						
		6	j					ms; and (4) the	
		7							
		8	i. Entry of a declaratory judgment providing that Defendant must evaluate and pay						luate and pay
	94607	9		decedent Eddie Darden's	and Pl	aintiffs' A	Asbestos Pe	rsonal Injury a	nd Wrongful
	lifornia om	10		Death Claims irrespective	e of the	e 1986 rel	ease;		
	and, Ca anlaw.c	11	ii.	Recovery of attorney's fe	ees and	other cos	ts of suit in	curred in prose	ecuting this
	• Oakl ww.kaz	12		action; and					
	te 400 13 • w	13	iii.	Such other relief as is jus	st and p	roper und	er the circu	mstances.	
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