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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JEROME ZETZSCHE and CAROL
ZETZSCHE, husband and wife,

Plaintiffs,

vs.

ABB, INC., et al.,

Defendants.

NO. 21-2-14455-8 SEA

DEFENDANT PFIZER INC.’S ANSWER
AND AFFIRMATIVE DEFENSES TO
PLAINTIFFS’ COMPLAINT

I. ANSWER OF DEFENDANT PFIZER INC.

Defendant Pfizer Inc. (hereinafter, “Pfizer”), for answer to Plaintiffs’ Complaint for Personal Injuries, denies all allegations not expressly admitted herein and states:

1. Answering Paragraph I (A) of Plaintiffs’ Complaint, Pfizer is without knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

2. Answering Paragraph I (B) of Plaintiffs’ Complaint, Pfizer denies that it ever manufactured, sold, or distributed asbestos-containing products or products used in conjunction with asbestos that are connected to Plaintiffs’ alleged exposure to asbestos. As to the

1 allegations of this paragraph as they pertain to other defendants, Pfizer is without knowledge or
2 information sufficient to form a belief as to the truth thereof, and therefore denies the same.

3 3. To the extent Paragraph II of Plaintiffs' Complaint asserts a legal conclusion, it
4 does not require an answer by Pfizer. To the extent an answer is required, Pfizer admits that it
5 has transacted business at various times and/or may be served with process in King County,
6 State of Washington. As to the allegations of this paragraph as they pertain to other defendants,
7 Pfizer is without knowledge or information sufficient to form a belief as to the truth thereof,
8 and therefore denies the same.

9 4. Answering Paragraph III of Plaintiffs' Complaint, Pfizer is without knowledge
10 or information sufficient to form a belief as to Plaintiff Jerome Zetsche's personal, factual
11 history and therefore denies the same. Pfizer denies that it ever manufactured, sold, or
12 distributed asbestos-containing products or products used in conjunction with asbestos that are
13 connected to Plaintiff Jerome Zetsche's alleged exposure to asbestos. As to the allegations of
14 this paragraph as they pertain to other defendants, Pfizer is without knowledge or information
15 sufficient to form a belief as to the truth thereof, and therefore denies the same.

16 5. Answering Paragraph IV (A) of Plaintiffs' Complaint, Pfizer denies that it is
17 liable to Plaintiffs under any of the theories alleged in this paragraph. Pfizer denies that it ever
18 manufactured, sold, or distributed asbestos-containing products or products used in conjunction
19 with asbestos that are connected to Plaintiff Jerome Zetsche's alleged exposure to asbestos. As
20 to the allegations of this paragraph as they pertain to other defendants, Pfizer is without
21 knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies
22 the same.

23 6. To the extent Paragraph IV (B) of Plaintiff's Complaint asserts a legal
24 conclusion, it does not require an answer by Pfizer. To the extent an answer is required, Pfizer
25 denies that it ever manufactured, sold, or distributed asbestos-containing products or products

1 used in conjunction with asbestos that are connected to Plaintiffs' alleged exposure to asbestos.
2 As to the allegations of this paragraph as they pertain to other defendants, Pfizer is without
3 knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies
4 the same.

5 7. Pfizer denies Paragraph V of Plaintiffs' Complaint.

6 8. Answering Plaintiffs' prayer for relief, Pfizer denies that Plaintiffs are entitled to
7 any of the relief sought.

8 **II. AFFIRMATIVE DEFENSES**

9 Pfizer has not had an opportunity to conduct a reasonable inquiry of the facts underlying
10 this lawsuit, but based upon its knowledge, information and belief to date, states or reserves the
11 right to state the following affirmative defenses, some or all of which may ultimately be
12 supported by the facts to be revealed in discovery and investigation of this case. Upon request
13 and after having conducted discovery in this case, Pfizer will voluntarily withdraw those of the
14 following affirmative defenses that are unsupported by the facts revealed in pre-trial discovery
15 and investigation. On the basis of the above, by way of affirmative defenses, Pfizer alleges as
16 follows:

17 9. The Plaintiffs' claims against Pfizer are barred in whole or in part by the
18 injunction issued in *In re Quigley Co., Inc.*, Case No. 04-15739 (S.D.N.Y.).

19 10. Plaintiffs' claims against Pfizer fail under the doctrine(s) contained in
20 Restatement (Second) of Torts § 400, and/or Restatement (Third) of Torts: Products Liability §
21 14 because Pfizer: (i) did not manufacture, sell, distribute, or design the product(s) alleged to
22 have caused the damages, injuries and losses alleged in the Plaintiffs' Complaint; and (ii) did
23 not hold itself out as the manufacturer of any such product(s). Therefore, Pfizer was not an
24 apparent manufacturer of any product alleged to have caused the damages, injuries and losses
25 alleged in the Plaintiffs' Complaint.

1 11. Plaintiffs' apparent manufacturer claims fail because no reasonable consumer
2 could have (1) inferred from Pfizer's representations in the advertising, distribution, and sale of
3 either Insulag or Panelag that Pfizer manufactured these products and (2) relied on Pfizer's
4 reputation as an assurance of the products' quality.

5 12. Plaintiffs have failed to state a claim against Pfizer upon which relief may be
6 granted.

7 13. Plaintiffs lack personal jurisdiction over Pfizer.

8 14. Some or all of Plaintiffs' claims may be barred by the doctrine of estoppel,
9 collateral estoppel, laches, waiver and/or res judicata.

10 15. Plaintiffs' claims may be barred by the applicable statutes of limitations and/or
11 repose.

12 16. Plaintiffs' claims may be barred in whole or in part because Plaintiffs' alleged
13 injuries and damages were proximately caused in whole or in part by their own negligence or
14 fault of another entity.

15 17. Plaintiffs' damages, if any, may have been caused in whole or in part by the acts
16 or omissions of others over whom Pfizer had no control.

17 18. Plaintiffs' claims may be barred because Pfizer had no actual or constructive
18 knowledge of any alleged defective, dangerous, abnormally dangerous or hazardous condition.

19 19. Plaintiffs' claims are barred because Pfizer had no duty to warn Plaintiffs of a
20 hazard known to them, and Pfizer owed no other duty to Plaintiffs.

21 20. At all times relevant to Plaintiffs' claims, Pfizer acted in compliance with
22 government and/or private specifications.

23 21. Pfizer may rely upon the law of a state, territory, or other jurisdiction of the
24 United States as may be appropriate following further investigation and discovery in this
25 action.

1 22. At all times material hereto, the state of the medical and industrial art was such
2 that there was not generally accepted or recognized knowledge of any unavoidably unsafe,
3 inherently dangerous or hazardous or defective character or nature of asbestos products when
4 used in the manner and for the purpose intended. Thus, there was no duty by Pfizer to know of
5 such character or nature, or to warn Plaintiffs or others similarly situated.

6 23. Pursuant to RCW 4.22.070, the percentage of fault that allegedly caused
7 Plaintiffs' injuries, if any, should be apportioned among the Plaintiffs, other named defendants,
8 and any other entities whose conduct contributed to Plaintiffs' injuries.

9 24. Plaintiffs' employers were and are sophisticated users and knew independently
10 or should have known of any danger or hazard associated with the use of a product containing
11 asbestos and of exposure to asbestos dust or fibers. Furthermore, Plaintiffs' employers were
12 warned of the danger or hazard associated with the use of asbestos-related products, and
13 Plaintiffs' employers failed to rely upon such warning resulting in alleged damages due to
14 Plaintiffs' employers' acts or omissions and failures to act as sophisticated users.

15 25. Plaintiffs' co-workers and employers misused, abused, mistreated, and
16 misapplied the products designated as asbestos material as alleged in the Complaint.

17 26. Plaintiffs failed to mitigate or otherwise act to lessen or reduce the injuries
18 alleged.

19 27. Plaintiffs' alleged damages were not proximately caused by an act or omission
20 on the part of Pfizer.

21 28. In the event Plaintiffs were exposed to products allegedly manufactured,
22 distributed, sold or supplied by Pfizer, which exposure Pfizer denies, that exposure was de
23 minimis and legally insufficient to permit recovery against Pfizer.
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1 29. Plaintiffs' damages, if caused by a product manufactured, sold or distributed by
2 Pfizer, which damages Pfizer denies, were caused in whole or in part by misuse or unintended
3 use of the product.

4 30. Plaintiffs' damages, if any, were caused by changes and/or alterations to
5 products allegedly manufactured, sold or distributed by Pfizer not within Pfizer's control.

6 31. Accord and Satisfaction.

7 32. To the extent that Plaintiffs seek punitive or exemplary damages, such damages
8 are disallowed by Washington's bar on punitive damages and awards having a punitive
9 element.

10 33. To the extent Plaintiffs seek recovery of punitive or exemplary damages against
11 Pfizer, unless Pfizer's liability for punitive damages and the appropriate amount of punitive
12 damages is required to be established by clear and convincing evidence, any award of punitive
13 damages would violate Pfizer's due process rights guaranteed by the Fourteenth Amendment to
14 the United States Constitution and by the applicable state constitutions, and would be improper
15 under the common law and public policies of the applicable states.

16 34. To the extent Plaintiffs seek recovery of punitive or exemplary damages against
17 Pfizer, any such claim of Plaintiffs for punitive damages against Pfizer cannot be maintained,
18 because an award of punitive damages under applicable law would be unlawful and
19 unauthorized, and would be void for vagueness, both facially and as applied, as a result of,
20 among other deficiencies, the absence of adequate notice of what conduct is subject to
21 punishment; the absence of adequate notice of what punishment may be imposed; and the
22 absence of a predetermined limit, such as a maximum multiple of compensatory damages or a
23 maximum amount, on the amount of punitive damages that a jury may impose, all in violation
24 of the due process clause of the Fourteenth Amendment to the United States Constitution, and
25 by the applicable state constitutions, and the common law and public policies of those states.

1 35. To the extent Plaintiffs seek recovery of punitive or exemplary damages against
2 Pfizer, any such claim of Plaintiffs for punitive damages against Pfizer cannot be maintained,
3 because any award of punitive damages under applicable law would be by a jury that (1) is not
4 provided standards of sufficient clarity for determining the appropriateness, and the appropriate
5 size, of a punitive damages award, (2) is not adequately instructed on the limits on punitive
6 damages imposed by the applicable principles of deterrence and punishment, (3) is not
7 expressly prohibited from awarding punitive damages, or determining the amount of an award
8 of punitive damages, in whole or in part, on the basis of invidiously discriminatory
9 characteristics, including the residence, wealth, and corporate status of Pfizer, (4) is permitted
10 to award punitive damages under a standard for determining liability for punitive damages that
11 is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that
12 makes punitive damages permissible, (5) is permitted to award punitive damages based on out-
13 of-state conduct, conduct that complied with applicable law, or conduct that was not directed,
14 or did not proximately cause harm, if any, to Plaintiffs, (6) is permitted to award punitive
15 damages in an amount that is not both reasonable and proportionate to the amount of harm, if
16 any, to Plaintiffs and to the amount of compensatory damages, if any and (7) is not subject to
17 adequate trial court and appellate judicial review for reasonableness and furtherance of
18 legitimate purposes on the basis of objective standards. Any such verdict would violate
19 Pfizer's due process rights guaranteed by the Fourteenth Amendment to the United States
20 Constitution and by the due process and equal protection provisions of the applicable state
21 constitution, and would be improper under the common law and public policies of that state.

22 36. To the extent Plaintiffs seek recovery of punitive or exemplary damages against
23 Pfizer, any award of punitive damages based on anything other than Pfizer's conduct in
24 connection with the design, manufacture, and sale of the specific products that are the subject
25 of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United

1 States Constitution and the due process provisions of the applicable state constitutions, and
2 would be improper under the common law and public policies of those states, because any
3 other judgment for punitive damages in this case cannot protect Pfizer against impermissible
4 multiple punishment for the same wrong and against punishment for extra-territorial conduct,
5 including especially conduct that is lawful in states other than the applicable state. In addition,
6 any such award would violate principles of comity under the laws of that state.

7 37. To the extent Plaintiffs' claims relate to Pfizer's advertising, public statements,
8 lobbying, or other activities protected by the First Amendment to the Constitution of the United
9 States or by the provisions of any applicable state constitution, such claims are barred.

10 38. If Plaintiffs are unable to identify the manufacturer or manufacturers of the
11 products which allegedly caused injury, or fail to establish that any material or product
12 manufactured and/or sold by Pfizer was contaminated by asbestos, each and every Count in the
13 Complaint fails to state a claim upon which relief can be granted, for if relief were granted,
14 such relief would constitute a taking of Pfizer's property for a public use without just
15 compensation and would constitute a violation of Pfizer's rights under the state and federal
16 constitutions.

17 39. Pfizer gave no special warranties, either express or implied, to Plaintiffs or to
18 anyone acting on Plaintiffs' behalf. Further, to the extent that Plaintiffs alleges any claim based
19 upon a breach or breaches of express or implied warranties (allegations which Pfizer
20 specifically denies), such claim is barred because at no time did Pfizer enter into any contract
21 with Plaintiffs and Plaintiffs were not in privity of contract with Defendant.

22 40. Pfizer states that if there were express or implied warranties as alleged in the
23 Complaint (allegations which Pfizer specifically denies), Plaintiffs were not within the scope of
24 any such alleged warranties.
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1 41. If Pfizer or its agents or servants made any warranties, express or implied
2 (allegations which Pfizer specifically denies), then Pfizer denies that it breached any of the
3 warranties.

4 42. If Pfizer or its servants or agents made any express warranties (allegations which
5 Pfizer specifically denies), then Plaintiffs did not rely on the express warranties.

6 43. Pfizer states that Plaintiffs failed to give notice of the alleged breach of
7 warranties within a reasonable time as required by applicable statutes, resulting in delay and
8 prejudice to Pfizer in this case, and, therefore, Plaintiffs cannot recover.

9 44. Pfizer states that Plaintiffs were not a third-party beneficiary with reference to
10 any alleged warranties, either express or implied, and therefore Plaintiffs cannot recover in this
11 action for any such claim.

12 45. Defendant, at all relevant times hereto, had no duty to give instructions to
13 Plaintiffs or to warn Plaintiffs of any hazards attendant to the contact with, use of, or exposure
14 to any material or product manufactured and/or sold by Defendant.

15 46. Any alleged negligence on the part of Pfizer was superseded by new and
16 independent conduct by Plaintiffs' employer or employers, and/or third parties. Such new and
17 independent conduct included the negligence of Plaintiffs' employer or employers and/or other
18 third parties, who owed a duty to Plaintiffs and over whom Pfizer had no control. Pfizer also
19 could neither anticipate nor reasonably foresee such superseding conduct, which was the actual
20 cause of the injuries allegedly sustained by Plaintiffs.

21 47. The negligence of Plaintiffs' employers or co-workers caused in whole or in part
22 whatever disease, injury, or disability, if any, which Plaintiffs may have sustained. Therefore,
23 even if Plaintiffs are entitled to recover against Defendant, which Pfizer specifically denies,
24 Plaintiffs are not entitled to recover in the amount set forth in the Complaint because Pfizer is
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1 entitled to set off any and all workers' compensation payments against any judgment which
2 might be rendered in Plaintiffs' favor.

3 48. There was no negligence, gross negligence, willful, wanton or malicious
4 misconduct, reckless indifference or reckless disregard of the rights of Plaintiffs, or malice
5 (actual, legal or otherwise) on the part of Pfizer as to Plaintiffs, individually or collectively.

6 49. Pfizer is entitled to, and claims the benefit of, all defenses and presumptions set
7 forth in or arising from any rule of law or statutes of any applicable states, or any other
8 applicable law.

9 50. To the extent applicable, Pfizer is entitled to contribution from any person
10 and/or entity whose negligence or other fault contributed to Plaintiffs' alleged injuries and
11 damages.

12 51. Should Pfizer be held liable to Plaintiffs, which liability is specifically denied,
13 Pfizer would be entitled to a set-off for all sums of money received or available from or on
14 behalf of any tortfeasors for the same injuries alleged in Plaintiffs' Complaint.

15 52. Pfizer incorporates by reference herein, as if fully set forth, all defenses, both
16 affirmative and otherwise, raised, pleaded or asserted by all other answering defendants.

17 53. Pfizer reserves the right to assert additional affirmative defenses, additional
18 party defendants, and cross-claims as may be appropriate following further investigation and
19 discovery.

20 **III. PRAYER FOR RELIEF**

21 WHEREFORE, Pfizer prays for judgment as follows:

- 22 1. Dismissing Plaintiffs' claims against Pfizer with prejudice;
 - 23 2. Awarding Pfizer attorneys' fees, costs, and disbursements;
 - 24 3. For such other relief as the Court deems just and equitable.
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DATED this 9th day of December, 2021.

BETTS, PATTERSON & MINES, P.S.

Marissa Alkhazov

By _____

Marissa A. Alkhazov, WSBA #34278

Midori R. Sagara, WSBA #39626

Attorneys for Defendant Pfizer Inc.

CERTIFICATE OF SERVICE

I, Cynthia Daniel, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts, Patterson & Mines, P.S., whose address is One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

2) By the end of the business day on December 9, 2021, I caused to be served upon counsel of record at the addresses and in the manner described below, the following document(s):

- **DEFENDANT PFIZER INC.’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS’ COMPLAINT; and**
- **Certificate of Service.**

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

11 DATED this 9th day of December 2021.

12 

13 _____
14 Cynthia Daniel, Legal Assistant