

S218176

IN THE
SUPREME COURT OF CALIFORNIA

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FILED

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Frank A. McGuire Clerk

Deputy

FLAVIO RAMOS et al.,
Plaintiffs and Appellants,

v.

BRENNTAG SPECIALTIES, INC. et al.,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION FOUR, CASE No. B248038

DEFENDANT AND RESPONDENT PORTER WARNER'S JOINDER IN THE
OPENING BRIEF ON THE MERITS OF DEFENDANT AND RESPONDENT
ALCOA, INC.

6th

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PORTER WARNER INDUSTRIES, LLC

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**DEFENDANT AND RESPONDENT PORTER WARNER'S
JOINDER IN THE OPENING BRIEF ON THE MERITS OF
DEFENDANT AND RESPONDENT ALCOA, INC.**

Defendant and respondent Porter Warner Industries, LLC ("Porter Warner") hereby joins in the Opening Brief on the Merits filed by defendant and respondent Alcoa, Inc. This joinder is filed pursuant to California Rules of Court, rule 8.200(a)(5), to avoid duplication and needless waste of paper, and yet to protect the interests of defendant and respondent Porter Warner.

By this joinder, respondent Porter Warner joins in and incorporates by reference the entire Opening Brief on the Merits. Porter Warner is similarly situated to Alcoa, Inc. in that plaintiffs make identical allegations as to each defendant, and Porter Warner, like Alcoa, supplied raw materials for a manufacturing process undertaken by plaintiff's employer, who exercised total control over the process that allegedly gave rise to plaintiff's claimed injuries. The grounds set forth

in the Opening Brief on the Merits are equally available to Porter Warner.

Plaintiffs allege Porter Warner supplied raw materials, plaster and zircon sand, to Plaintiff's employer, which Plaintiff used to manufacture molds used in the employer's manufacturing process. Plaintiff Ramos worked as a mold maker, machine operator and laborer at Supreme Castings from 1972 to 1978 and 1981 to 2009. [9 AA 2280] During his employment, Ramos worked with and around various sand, plaster, and metal products. [9 AA 2280] Appellants allege Porter Warner supplied Breakaway Plaster, Brown Zircon Sand, and Zircon "T" Grade Sack "P" to Supreme Castings. [9 AA 2273]

Defendant Porter Warner's products are raw materials, susceptible to numerous applications, including but not limited to architecture, ceramics, as well as various arts and crafts. Indeed, courts have expressly identified sand as a "versatile", "basic raw material". *Maxton*, 203 Cal.App.4th at 90; *Arena v. Owens Corning Fiberglas Corp.* (1998) 63 Cal.App.4th 1178, 1190; *In re TMJ Implants Products Liability Litigation* (1996) 97 F.3d 1050, 1057.

Plaintiffs failed to identify any defect in Porter Warner's products. There is not anything inherently dangerous about these products. Plaintiffs did not allege, and Porter Warner did not have, any influence or control over the innumerable manufacturing processes undertaken by the purchasers of its products, including Mr. Ramos's employer.

Porter Warner demurred to Appellants' Fourth Amended Complaint. [10 AA 2521-2563] The trial court sustained Porter Warner's Demurrer to Plaintiff's Fourth Amended Complaint, on the same bases as Defendant Alcoa's Demurrer. [12 AA 2969-2970, Typed

Opn. 3.]

The ruling by Division Four of the Second Appellate District improperly expands the duties of raw material suppliers, including Defendant Porter Warner, based on mistakes of law and fact, and should be reversed.

September 5, 2014

LYNBERG & WATKINS
RUTH SEGAL
ROSEMARY DO

By: _____

A handwritten signature in black ink, appearing to be 'Ruth Segal', written over a horizontal line.

Ruth Segal

Attorneys for Defendant and
Respondent
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LLC

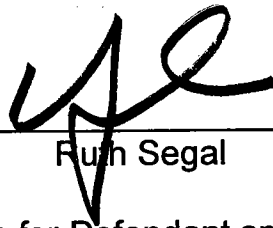
CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.520(c)(1))

Counsel for Defendant and Respondent PORTER WARNER INDUSTRIES, LLC hereby certifies that the enclosed Joinder contains **416** words, including footnotes, in compliance with Rule 8.520(c)(1) of the *California Rules of Court*. Counsel relies on the word count measured by Microsoft Office Word 2010 word processing software.

Dated: September 5, 2014

LYNBERG & WATKINS, APC
Ruth Segal
Rosemary Do

By: _____



Ruth Segal

Attorneys for Defendant and
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INDUSTRIES, LLC

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 888 South Figueroa Street, 16th Floor, Los Angeles, California 90017.

On September 5, 2014, I served the foregoing document(s) described as **DEFENDANT AND RESPONDENT PORTER WARNER'S JOINDER IN THE OPENING BRIEF ON THE MERITS OF DEFENDANT AND RESPONDENT ALCOA, INC.** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

X BY MAIL: As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on the same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing an affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed September 5, 2014, at Los Angeles, California.


Cynthia Arlt

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<p>Clerk of the Court LOS ANGELES SUPERIOR COURT 111 N. Hill St. Los Angeles, CA 90012-3014</p>	<p>Hon. Amy D. Hogue Judge of the Superior Court LOS ANGELES SUPERIOR COURT 111 N. Hill St., Dept. 34 Los Angeles, CA 90012-3014</p>
<p>Clerk of the Court of Appeal Second Appellate District Court Division 4 Ronald Reagan State Building 300 S. Spring St., 2nd Fl. Los Angeles, CA 90013</p>	<p>Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797 (Original and 13 copies)</p>