



Case No.

**S**

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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CESAR MANUEL GONZALEZ-QUIROZ,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent,

CAESARSTONE USA, INC. et al.,

Real Parties in Interest.

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**PETITION FOR REVIEW**

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Review Sought from Summary Denial of Writ Petition  
Second Appellate District, Division Seven (No. B347783)  
JCCP 5378 (L.A. Sup. Ct. No. 24STCV01477)

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**METZGER LAW GROUP, APLC**

Raphael Metzger (SBN 116020)  
Brian P. Barrow (SBN 177906)  
555 E. Ocean Blvd., Suite 800  
Long Beach, California 90802  
Telephone: (562) 437-4499  
Email: [bbarrow@toxictorts.com](mailto:bbarrow@toxictorts.com)

**BRAYTON PURCELL, LLP**

Gilbert L. Purcell (SBN 113603)  
Jason M. Rose (SBN 265984)  
222 Rush Landing Rd.  
Novato, California 94945  
Telephone: (415) 898-1555  
Email: [jrose@braytonlaw.com](mailto:jrose@braytonlaw.com)

Attorneys for Petitioner  
CESAR MANUEL GONZALEZ-QUIROZ

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## INTRODUCTION

Cesar Manuel Gonzalez-Quiroz developed accelerated silicosis, an occupational lung disease, after working for years as a stone countertop fabricator. The trial court presiding over his case (Hon. Cherol J. Nellon) found there was substantial medical doubt as to whether he would live another six months. Based on his medical records and the undisputed opinion of his treating physician, Judge Nellon granted Gonzalez-Quiroz's motion for trial preference. In doing so, Judge Nellon stated, "[e]ven if he does receive a [lung] transplant, there is a strong likelihood plaintiff may pass during or soon after the transplant." {Ex. 6; R. 512}

In accordance with that order, Judge Nellon conducted multiple days of hearings on motions in limine, page-line designations of prior testimony, jury instructions, and other similar matters. Judge Nellon was about to call a jury but, on July 18, a different judge (Hon. Samantha P. Jessner) stopped the trial by including the case in a new coordinated proceeding for stone countertop worker silicosis cases (JCCP 5378) and imposing an "automatic" stay.

Gonzalez-Quiroz filed a petition for writ of mandate challenging the stay on three substantive grounds. First, he argued that trial preference "is mandatory and absolute in its application and does not allow a trial court to exercise the inherent or statutory general administrative authority it would otherwise have." (*Koch-Ash v. Superior Court* (1986) 180 Cal.App.3d 689, 697.) Second, "[a]s a general rule, a trial judge cannot overturn the order of another trial judge." (*Paul Blanco's Good Car Co. Auto Group v. Superior Court* (2020) 56 Cal.App.5th 86, 99.) And, third, although the coordination rules permit the imposition of a temporary stay while considering whether coordination is appropriate, "the imminence of a trial in any

action otherwise appropriate for coordination may be a ground for summary denial of a petition for coordination, in whole or in part.” (Cal. Rules of Court, rule 3.521(d).) The trial in Gonzalez-Quiroz’s case was certainly “imminent,” if not already underway. By stopping trial, Judge Jessner’s order overruled Judge Nellon’s prior order and obviated Gonzalez-Quiroz’s vested right to preference.

Certain defendants filed preliminary responses to Gonzalez-Quiroz’s writ petition, primarily asserting belated challenges to Judge Nellon’s preference order. In response, Gonzalez-Quiroz provided a medical record showing his recent hospitalization for “hypoxic respiratory failure.” {7/28/25 letter brief} The Court of Appeal (Second Appellate District, Division Seven) nevertheless summarily denied Gonzalez-Quiroz’s petition on August 6. His petition, which raised questions as to whether a vested preference right can be obviated by creation of new coordination proceedings, warrants extraordinary relief. Gonzalez-Quiroz requests this Court, as authorized by Rule of Court 8.500(b)(4), to grant review and transfer the matter back to the Court of Appeal for further proceedings.

### **ISSUE PRESENTED FOR REVIEW**

Once a case is granted trial preference due to the plaintiff’s failing health, it cannot be stayed or otherwise delayed due to matters of judicial administration or convenience. The trial court granted preference and was presiding over trial in Gonzalez-Quiroz’s case when the case became part of a new coordinated proceeding and stayed. Is it proper for a different trial judge, in deciding a petition to establish a coordinated proceeding for the administration of similar cases, to overrule a previously-granted preference order and impose a stay on an ongoing preference trial?

## STATEMENT OF FACTS

Gonzalez-Quiroz filed his action and, thereafter, moved for a preferential trial under Code of Civil Procedure section 36. {Ex. 2; R. 478} His treating physician, Dr. Jane Fazio, stated in a supporting declaration that he suffers from “silicosis with progressive massive fibrosis (PMF) and severe restrictive disease.” {Ex. 5; R. 507} Dr. Fazio further explained “there is substantial medical doubt of his survival beyond six months.” {Ex. 5; R. 508}

The trial court presiding over Gonzalez-Quiroz’s case (Hon. Cherol J. Nellon) granted his motion for preference, finding “clear and convincing medical documentation that raises substantial medical doubt of his survival beyond six months.” {Ex. 6; R. 512} Judge Nellon acknowledged that Gonzalez-Quiroz sought a lung transplant, but noted that “[e]ven if he does receive a transplant, there is a strong likelihood plaintiff may pass during or soon after the transplant.” {*Ibid.*} Judge Nellon therefore set a preferential jury trial to begin on April 1, 2025. {Ex. 6; R. 515}

Around that time, the Los Angeles Superior Court submitted a petition to the Judicial Council seeking to coordinate 79 countertop worker silicosis cases pending in different counties. {Ex. 7; R. 516} The petition, which acknowledged that the cases identified for coordination “are in varying stages of development,” did not seek to include Gonzalez-Quiroz’s case in any coordinated proceeding. {Ex. 7; R. 518-524} The petition also noted that “many of these cases are entitled to preference under Code of Civil Procedure section 36.” {Ex. 7; R. 535}

After a series of continuances due to another preferentially-set silicosis case, Judge Nellon conducted a final status conference in Gonzalez-Quiroz’s case on July 1. {Ex. 14; R. 1147} In a series of subsequent hearings, Judge Nellon then heard arguments and issued

rulings on dozens of motions in limine, as well as page-line designations, and ordered the parties to meet and confer in person regarding joint trial documents. {Ex. 17, 18, 19; R 1184-1192, Ex. 20; R. 1193-1194, Ex. 23; R. 1241} Finally, Judge Nellon ordered the parties to submit their stipulation for pre-screening of jurors for economic hardships. {Ex. 23; R. 1242}

On July 11, Judge Jessner issued a tentative opinion and heard oral argument on the coordination petition. {Ex 21; R. 1196} The tentative order granted the petition, but specifically exempted Gonzalez-Quiroz's case and another from coordination and the "stay automatically imposed by this Order under rule 3.529(b)." {Ex. 21; R. 1199, 1206} Judge Jessner's stated rationale for the exemption was "motions for trial preference have been granted" and "trial has either begun or is imminent." {Ex. 21; R. 1205}

On July 18, however, Judge Jessner disregarded that rationale and changed her tentative ruling to not exempt any cases from the coordination and automatic stay. {Ex. 25; R. 1258} Judge Jessner found that the purposes of coordination "is best served by a stay of all cases encompassed by the until further order of the coordination trial judge. [¶] Therefore, the Court directs that no cases encompassed by the petition . . . are exempt from the stay imposed by rule 3.529(b), including the two above-mentioned cases, *Gonzalez-Quiroz* . . . and *Gonzalez-Morin* . . . ." {Ex. 25; R. 1258}

Gonzalez-Quiroz filed a timely petition for writ of mandate challenging Judge Jessner's inclusion of his case in the coordination proceeding and staying the preference trial. Real parties filed informal oppositions, primarily arguing that Gonzalez-Morin's medical condition had improved such that preference was no longer necessary. Gonzalez-Morin, however, filed a reply that included a portion of his



medical records showing that he was hospitalized in July 2025 with “hypoxic respiratory failure.” {Reply letter dated 7/28/2025} On August 6, however, the Second Appellate District, Division Seven, issued an order summarily denying Gonzalez-Quiroz’s request for extraordinary relief. {Appendix}

## **REASONS TO GRANT REVIEW**

### **I.**

#### **Extraordinary Relief Is Appropriate In Cases Involving Coordination and Preference.**

Code of Civil Procedure section 404.6 authorizes writ review of trial court orders concerning coordination of actions. In *Pesses v. Superior Court* (1980) 107 Cal.App.3d 117, the court noted that “[t]he petitions in this court are authorized by Code of Civil Procedure section 404.6, establishing review by writ of mandate of superior court orders in coordination proceedings.” (*Id.* at p. 119; see also *McGhan Medical Group v. Superior Court* (1992) 11 Cal.App.4th 804, 807 [“an order of the superior court either granting or denying coordination may be reviewed by a timely petition for mandamus . . . .”].) A leading treatise on writ procedure in California further notes that reviewing courts are often inclined to “grant a statutory writ without requiring a factual showing of inadequate legal remedy and irreparable harm on the theory that the Legislature has in effect determined these questions in the petitioners’ favor by authorizing writ relief.” (Eisenberg et al., CAL. PRACTICE GUIDE: CIVIL APPEALS AND WRITS (The Rutter Group 2018) ¶ 15.87, p. 15-47.) Where, as here, the question presented concerns matters of judicial administration, the applicable standard of review is de novo. (*McGhan Medical Group, supra*, 11 Cal.App.4th at p. 810-811.)

In addition to being a statutory writ arising from the grant of an underlying petition for coordination, Gonzalez-Quiroz's petition also raised important issues concerning his substantive rights to trial preference. Judge Jessner's order imposing a stay, should it stand, deprives Gonzalez-Quiroz of his only opportunity to present his claims to a jury. Over the years, writ relief has been granted in many such cases because the harm resulting in any delay of a preference trial is, by definition, irreparable. (See, e.g., *Fox v. Superior Court* (2018) 21 Cal.App.5th 529; *Looney v. Superior Court* (1993) 16 Cal.App.5th 521; *Miller v. Superior Court* (1990) 221 Cal.App.3d 1200; *Koch-Ash v. Superior Court* (1986) 180 Cal.App.3d 689, 699; *Rice v. Superior Court* (1982) 136 Cal.App.3d 81, 94.)

Moreover, in *Fox*, the First Appellate District noted that section 36 cases not only justify extraordinary relief, but they also present "unusual urgency, requiring acceleration of our normal process in writ proceedings." (*Fox v. Superior Court, supra*, at p. 536, citing *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Writ review was therefore not only appropriate based on the coordination issues and Code of Civil Procedure section 404.6, but also based on the fact that Judge Jessner's order contravened Judge Nellon's prior granting of trial preference under section 36.

## II.

### **Judge Jessner's Order Deprived Gonzalez-Quiroz of His Vested Preference Rights.**

It is fundamental that a case that has been preferentially set for trial may not be stayed by the judge to whom the case is assigned, let alone a different judge. Indeed, in *Koch-Ash v. Superior Court* (1986)

180 Cal.App.3d 689, the court held that trial preference “is mandatory and absolute in its application and does not allow a trial court to exercise the inherent or statutory general administrative authority it would otherwise have.” (*Id.* at p. 692.) In so doing, the *Koch-Ash* court observed that “[i]n the analogous context of the entitlement of unlawful detainer actions to the absolute trial preference conferred by section 1179a, it is uniformly held that trial courts have no discretion to temporarily stay such actions . . . .” (*Id.* at p. 697.)

Here, Judge Nellon granted trial preference under Code of Civil Procedure section 36, subdivision (d). “There can be little argument that section 36 was enacted for the purpose of assuring that an aged or terminally ill plaintiff would be able to participate in the trial of his or her case and be able to realize redress upon the claim asserted. Such a preference is not only necessary to assure a party’s peace of mind that he or she will live to see a particular dispute brought to resolution but it can also have substantive consequences.” (*Looney v. Superior Court* (1993) 16 Cal.App.4th 521, 532, fn. 12.) Section 36 “safeguard[s] litigants . . . against the acknowledged risk that death or incapacity might deprive them of the opportunity to have their case effectively tried and to obtain the appropriate recovery.” (*Swaithe v. Superior Court* (1989) 212 Cal.App.3d 1082, 1086.) “The express legislative mandate for trial preference is a substantive public policy concern which supersedes such considerations.” (*Id.* at p. 1085-1086.)

In granting preference, Judge Nellon necessarily found there was clear and convincing evidence that Gonzalez-Quiroz “suffers from an illness or condition raising substantial medical doubt of survival . . . beyond six months” and that the “interests of justice will be served by granting the preference.” (Code Civ. Proc., § 36, subd. (d).) Judge Nellon thus made the legal and factual determination that Gonzalez-

Quiroz, due to his illness and condition, was entitled to a preferential trial of his claims. Real party defendants did not seek review, or otherwise challenge, Judge Nellon's order. Upon its issuance and, as here, with the parties and Judge Nellon acting on it, the assigned preferential trial date should be considered "locked in."

This is because section 36, subdivision (f), imposes strict time requirements for the commencement and conduct of trial. By imposing a stay notwithstanding the prior preference order, Judge Jessner erroneously gave priority to administrative and scheduling concerns rather than Gonzalez-Quiroz's statutory right to preference. Judge Jessner also improperly imposed the stay pursuant to rule 3.529(b) despite its direct conflict with the timing requirements set forth in section 36, subdivision (f). Where "a statute even implicitly or inferentially reflects a legislative choice to require a particular procedure, a rule of court may not deviate from that procedure." (*In re Marriage of Woolsey* (2013) 220 Cal.App.4th 881, 896, citing *People v. Hall* (1994) 8 Cal.4th 950, 961-962.) As explained, the provisions of section 36 reflect our Legislature's policy decision to assure that trials preferentially set for aged, infirm, and terminally ill plaintiffs actually proceed to trial. The "automatic" stay referenced in rule 3.529(b) should not be given precedence over section 36 and the substantive rights it codifies. Judge Jessner's stay order, resting as it does on a rule of court, improperly elevates the rule over the statute.

Put simply, Judge Jessner's order erroneously interferes with Gonzalez-Quiroz's already-adjudicated right to trial preference. "If trial courts are permitted to make administrative inroads into the section 36 mandate, the effectiveness of that mandate will be eviscerated, if only to the extent that a litigant's section 36 rights will be jeopardized while appellate courts review circumstances seen by

trial courts as justifying their revocation of trial preferences upon their own re-balancing of interests.” (*Koch-Ash v. Superior Court, supra*, 180 Cal.App.3d at pp. 698-699.) Judge Jessner’s order granting coordination and imposing an indefinite stay of trial erroneously interferes with Judge Nellon’s prior order granting preference.

### III.

#### **Judge Jessner Could Not Properly Overturn Judge Nellon’s Prior Order Granting Preference.**

“As a general rule, a trial judge cannot overturn the order of another trial judge.” (*Paul Blanco’s Good Car Co. Auto Group v. Superior Court* (2020) 56 Cal.App.5th 86, 99.) “Weighty concerns compel this long-standing principle. Fundamentally, it is founded on the inherent difference between a judge and a court and is designed to ensure the orderly administration of justice. Because a superior court is a single entity comprised of member judges, one member of that court cannot sit in review on the actions of another member of that same court.” (*Id.* at pp. 99-100, internal quotes and citations omitted.) “A narrow exception to this venerable rule applies when the record shows that the original judge is no longer ‘available.’” (*Id.* at p. 100.)

Since Judge Jessner and Judge Nellon are both superior court judges, neither can properly overturn rulings of the other. Judge Jessner did exactly that, however, by staying the trial in Gonzalez-Quiroz’s case. This effectively negated Judge Nellon’s prior grant of trial preference. Because Judge Jessner’s coordination order and imposition of a stay conflicts with, and effectively overturns, Judge Nellon’s prior order, it is incorrect and in violation of the well-established rule that one superior court judge cannot overrule another. Judge Jessner’s order including Gonzalez-Quiroz’s case in the

coordination proceedings and staying trial should be modified so as to permit the preference trial to immediately resume.

#### IV.

#### **Judge Jessner Should Have Exempted Gonzalez-Quiroz's Case From Coordination Due to the “Imminence” of Trial.**

Judge Jessner based her stay order on Rule 3.529(b), which provides that “[w]hen an order granting coordination is filed in an included action, all further proceedings in that action are automatically stayed, except as directed by the coordination trial judge or by the coordination motion judge under (c).” This rule, however, first and only applies “when an order granting coordination is filed in an included action” and does not address whether a particular action *should* be coordinated. That determination is subject to Rule 3.521(d), which states: “The imminence of a trial in any action otherwise appropriate for coordination may be a ground for summary denial of a petition for coordination, in whole or in part.”

In her order granting coordination, Judge Jessner considered the facts to determine which superior court should preside over the new coordination proceeding. One of two facts upon which respondent court relied for recommending Los Angeles Superior Court was that “there are two cases ***on the eve of trial*** pending in Los Angeles.” {Ex. 25; R. 1257} Judge Jessner thus made a factual determination that Gonzalez-Quiroz’s case was “on the eve of trial.” Indeed, Judge Jessner even referred to “the two cases in which trial is ‘imminent.’” {Ex. 25; R. 1258} Having made such a factual determination as to the imminence of trial, respondent court should have denied coordination

as to Gonzalez-Quiroz's case. Judge Jessner thus failed to properly apply her own factual determination in accordance with Rule 3.521(d).

### **CONCLUSION**

The Court of Appeal should not have, under the circumstances, summarily denied Gonzalez-Quiroz's petition for writ of mandate. Writ relief is appropriate in cases involving coordination and trial preference, and there are three distinct reasons why Judge Jessner's decision to stay Gonzalez-Quiroz's case is incorrect. Gonzalez-Quiroz therefore requests this Court to grant review of the Court of Appeal's order summarily denying his writ petition and to thereafter transfer the matter back to the Court of Appeal with instructions to conduct further proceedings.

Dated: August 15, 2025

**METZGER LAW GROUP, APLC**

*/s/ Brian P. Barrow*

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Brian P. Barrow

Attorneys for Petitioner

## **WORD COUNT CERTIFICATION**

Counsel for petition hereby certifies that this brief contains  
4367 words as measured by WordPerfect X9 word processing software.

Respectfully submitted,

**METZGER LAW GROUP APLC**

*/s/ Brian P. Barrow*

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Brian P. Barrow  
Attorneys for Petitioner



# APPENDIX

(Order of Summary Denial dated August 6, 2025)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

COURT OF APPEAL – SECOND DIST.

SECOND APPELLATE DISTRICT

DIVISION SEVEN

FILED

Aug 06, 2025

EVA McCLINTOCK, Clerk

C.Meza

Deputy Clerk

IN RE: STONE COUNTERTOP  
WORKER SILICOSIS CASES

B347783

CESAR MANUEL GONZALEZ-  
QUIROZ,

(Super. Ct. No. JCCP 5378)

(Samantha P. Jessner, Judge)

Petitioner,

v.

ORDER

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent.

CAESARSTONE USA, INC. et  
al.,

Real Parties in Interest.

THE COURT:

The court has read and considered the petition for writ of mandate filed on July 24, 2025, as well as the three informal oppositions filed on July 25, July 29 and August 5, 2025 and the replies filed on July 28 and July 30, 2025. The petition is denied.

MARTINEZ, P. J.

SEGAL, J.

STONE, J.

## PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 555 East Ocean Blvd., #800, Long Beach, CA 90802.

On August 15, 2025 I served the foregoing document, described as: **PETITION FOR REVIEW** on the parties to this action as follows:

**BY MAIL.** I caused a copy of such document, enclosed in a sealed envelope, to be deposited in the mail at Long Beach, California with postage thereon fully prepaid to:

Honorable Cherol J. Nellon  
Los Angeles County Superior Court  
Stanley Mosk Courthouse, Dept. 14  
111 N. Hill Street  
Los Angeles, CA 90012  
(Trial Judge)

Honorable Samantha P. Jessner  
Los Angeles County Superior Court  
Spring Street Courthouse, Dept. 7  
312 N. Spring Street  
Los Angeles, CA 90012  
(Petition for Coordination Hearing Judge)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 15, 2025, at Long Beach, California.

*/s/ Nina S. Vidal*

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Nina S. Vidal

## ELECTRONIC PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 555 E. Ocean Blvd., 8<sup>th</sup> Floor, Long Beach, CA 90802.

On August 15, 2025, I served the **PETITION FOR REVIEW** on the interested parties to this action by submitting an electronic version of the document via FTP upload to File&ServeXpress.

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

Executed on August 15, 2025, at Long Beach, California.

*/s/ Nina S. Vidal*

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Nina S. Vidal

## SERVICE LIST

(Gonzalez Quiroz v. American Marble & Onyx Company, No. 24STCV01477)

The following parties are the Defendants in the Superior Court case and Real Parties in Interest in this matter:

Al Brayton, Esq.  
Gilbert L. Purcell, Esq.  
James Nevin, Esq.  
Dan Morse, Esq.  
Heather-Ann Young, Esq.  
Brayton Purcell LLP  
222 Rush Landing Road  
Novato, CA 94945-2469  
(Plaintiffs)  
(415) 898-1555 Phone  
(415) 898-1247 Fax  
Service of Pleadings:  
[mail@braytonlaw.com](mailto:mail@braytonlaw.com)  
Email Communications:  
[jnevin@braytonlaw.com](mailto:jnevin@braytonlaw.com)  
[dmorse@braytonlaw.com](mailto:dmorse@braytonlaw.com)  
[Hyoung@braytonlaw.com](mailto:Hyoung@braytonlaw.com)

Rey S. Yang, Esq.  
Johanna Boktor, Esq.  
Andrew Cho, Esq.  
Yang Professional Law Corporation  
80 S. Lake Ave., Suite 720  
Pasadena, CA 91101  
(Arriaga USA, Inc., dba Stoneland USA; Gem International, Inc.; Hyundai L&C SA LLC)  
(626) 921-4300 Phone  
(626) 243-7050 Fax  
email: [ryang@yangpc.com](mailto:ryang@yangpc.com)  
[jboktor@yangpc.com](mailto:jboktor@yangpc.com)  
[acho@yangpc.com](mailto:acho@yangpc.com)

Rey Yang, Esq.  
Yang Professional Law Corp.  
80 S. Lake Ave.,  
Pasadena, CA 91101  
(Color Marble, Inc.)  
(626) 921-4300 Phone  
email: [ryang@yangpc.com](mailto:ryang@yangpc.com)

Nicolas P. Martin, Esq.  
Joshua W. Praw, Esq.  
Kelsie Longerbeam, Esq.  
Wilson Elser Moskowitz  
Edelman & Dicker LLP  
655 Montgomery St., Suite 900  
San Francisco, CA 94111  
(Jacobe Enterprises, Inc.)  
(415) 433-0990 Phone  
(415) 434-1370 Fax  
e m a i l :  
[nick.martin@wilsonelser.com](mailto:nick.martin@wilsonelser.com)

[joshua.praw@wilsonelser.com](mailto:joshua.praw@wilsonelser.com)  
[kelsie.longerbeam@wilsonelser.com](mailto:kelsie.longerbeam@wilsonelser.com)  
m  
Scott Humphreys, Esq.  
Brianna R. Howard, Esq.  
Ballard Spahr LLP  
2029 Century Park East, Suite 1400  
Los Angeles, CA 90067-2915  
(Ikea US Retail LLC)  
(424) 204-4400 Phone  
(424) 204-4350 Fax  
e m a i l :  
[humphreyss@ballardspahr.com](mailto:humphreyss@ballardspahr.com)  
[howardbr@ballardspahr.com](mailto:howardbr@ballardspahr.com)  
[conboya@ballardspahr.com](mailto:conboya@ballardspahr.com)

J. Todd Konold, Esq.  
Robert C. Rodriguez, Esq.  
Kamalani F. Tydingco, Esq.  
Gordon Rees Scully Mansukhani  
101 W. Broadway, Suite 2000  
San Diego, CA 92101  
(Architectural Surfaces Group, LLC; Delta Stone Products, Inc., Elite Quartz Mfg LLC; Hirsch Glass Corp.)  
(619) 230-7468 Phone  
(619) 696-7124 Fax  
email: [tkonold@grsm.com](mailto:tkonold@grsm.com)  
[rrodriguez@grsm.com](mailto:rrodriguez@grsm.com)  
[ktydingco@grsm.com](mailto:ktydingco@grsm.com)

Jason F. Meyer, Esq.  
Todd Konold, Esq.  
Donna C. Fazio, Esq.  
Gordon Rees Scully Mansukhani  
101 W. Broadway, Suite 2000  
San Diego, CA 92101  
(Piedrafina Marble, Inc.)  
(619) 230-7468 Phone  
(619) 696-7124 Fax  
email: [jmeyer@grsm.com](mailto:jmeyer@grsm.com)  
[tkonold@grsm.com](mailto:tkonold@grsm.com)  
[dfazio@grsm.com](mailto:dfazio@grsm.com)

Jonathon D. Sayre, Esq.  
Jacklyn J. Kim, Esq.  
CMBG3 Law PC  
620 Newport Center Dr., Suite 250  
Newport Beach, CA 92660  
(Icestone, LLC)  
(949) 467-9500 Phone

(949) 377-3355 Fax  
email: [jsayre@cmbg3.com](mailto:jsayre@cmbg3.com)  
[jkim@cmbg3.com](mailto:jkim@cmbg3.com)

Jonathon D. Sayre, Esq.  
CMBG3 Law PC  
100 Spectrum Center Dr., Suite 820  
Irvine, CA 92618  
(Stonetiledepot of Virginia, LLC; Stonetiledepot.com LLC)  
(949) 467-9500 Phone  
(949) 377-3355 Fax  
email: [jsayre@cmbg3.com](mailto:jsayre@cmbg3.com)

Patrick J. Foley, Esq.  
Rod Cappy, Esq.  
Marla T. Almazan, Esq.  
Lewis Brisbois Bisgaard & Smith  
633 W. 5<sup>th</sup> St., Suite 4000  
Los Angeles, CA 90071  
(C&C North America, Inc.)  
*Settlement pending*  
(213) 250-1800 Phone  
(213) 250-7900 Fax  
e m a i l :  
[patrick.foley@lewisbrisbois.com](mailto:patrick.foley@lewisbrisbois.com)  
[rod.cappy@lewisbrisbois.com](mailto:rod.cappy@lewisbrisbois.com)  
[marla.almazan@lewisbrisbois.com](mailto:marla.almazan@lewisbrisbois.com)

Jennifer A. Cormier, Esq.  
Tiffany K. Ackley, Esq.  
Michael T. Joyce, Esq.  
Manning Gross + Massenburg LLP  
601 Montgomery St., Suite 1000  
San Francisco, CA 94111  
(CAB620, Inc., fka Parsoda U.S.A. Inc., dba Pacifica Wholesale Tile & Stone)  
(415) 512-4381 Phone  
(415) 512-6791 Fax  
email: [jcormier@mgmlaw.com](mailto:jcormier@mgmlaw.com)  
[tackley@mgmlaw.com](mailto:tackley@mgmlaw.com)  
[mjoyce@mgmlaw.com](mailto:mjoyce@mgmlaw.com)

Christopher Campbell, Esq.  
Alan Khlevony, Esq.  
Christine Brice, Esq.  
Lydecker, LLP  
523 W. Sixth St., Suite 715  
Los Angeles, CA 90014  
(Caesarstone USA, Inc.)

(213) 226-7068 Phone  
(213) 293-4425 Fax  
email: [ccampbell@lydecker.com](mailto:ccampbell@lydecker.com)  
[akhlevnoy@lydecker.com](mailto:akhlevnoy@lydecker.com)  
[cbrice@lydecker.com](mailto:cbrice@lydecker.com)

Peter A Strotz, Esq.  
Paul R. Johnson, Esq.  
Bryan L. King, Esq.  
King & Spalding LLP  
633 W. Fifth St., Suite 1600  
Los Angeles, CA 90071  
(Caesarstone USA, Inc.)  
(213) 443-4355 Phone  
(213) 443-4310 Fax  
email: [pstrotz@kslaw.com](mailto:pstrotz@kslaw.com)  
[pjohnson@kslaw.com](mailto:pjohnson@kslaw.com)  
[bking@kslaw.com](mailto:bking@kslaw.com)

Marc S. Shapiro, Esq.  
Andrea S. Shapiro, Esq.  
Hanger, Steinberg, Shapiro & Ash  
21031 Ventura Blvd., Suite 800  
Woodland Hills, CA 91364-6512  
(Euro Stone America  
International, Inc.)  
(818) 226-1222 Phone  
(818) 226-1215 Fax  
email: [mss@hsssalaw.com](mailto:mss@hsssalaw.com)  
[as@hsssalaw.com](mailto:as@hsssalaw.com)

Michael G. Romey, Esq.  
Lindsey E. Sugimoto, Esq.  
Joseph L. Teresi, Esq.  
Latham & Watkins LLP  
355 S. Grand Ave., Suite 100  
Los Angeles, CA 90071-1560  
(Stylenquaza LLC)  
(213) 485-1234 Phone  
(213) 891-8763 Fax  
email: [michael.romey@lw.com](mailto:michael.romey@lw.com)  
[lindsey.sugimoto@lw.com](mailto:lindsey.sugimoto@lw.com)  
[joe.teresi@lw.com](mailto:joe.teresi@lw.com)

Angela V. Sayre, Esq.  
Vick K. Mansourian, Esq.  
Margaret I. Johnson, Esq.  
Foley & Mansfield, PLLP  
181 W. Huntington Dr., Suite 210  
Monrovia, CA 91016  
(Dal-Tile, LLC; Dal-Tile  
Distribution, LLC; Inc.; Mohawk  
Industries, Inc.; Dal-Tile  
Tennessee, LLC)  
(213) 283-2100 Phone  
(213) 283-2101 Fax  
email: [asayre@foleymansfield.com](mailto:asayre@foleymansfield.com)  
[vmansourian@foleymansfield.com](mailto:vmansourian@foleymansfield.com)  
[mijohnson@foleymansfield.com](mailto:mijohnson@foleymansfield.com)

Bradford J. DeJardin, Esq.  
Alexandria C. Montes, Esq.  
Rochelle Smith, Esq.  
Husch Blackwell  
355 S. Grand Ave., Suite 2850  
Los Angeles, CA 90071  
(Arizona Tile, L.L.C.)  
(213) 337-6550 Phone  
(213) 337-6551 Fax  
email  
[brad.dejardin@huschblackwell.com](mailto:brad.dejardin@huschblackwell.com)  
[ali.montes@huschblackwell.com](mailto:ali.montes@huschblackwell.com)  
[rochelle.smith@huschblackwell.com](mailto:rochelle.smith@huschblackwell.com)

Claire Weglarz, Esq.  
Christine L. Hawkins, Esq.  
Khaled Taqi-Eddin, Esq.  
Womble Bond Dickinson (US) LLP  
50 California St., Suite 2750  
San Francisco, CA 94111  
(Cambria Company LLC)  
a Minnesota Corporation)  
(415) 433-1900 Phone  
(415) 433-5530 Fax  
email: [claire.weglarz@wbd-us.com](mailto:claire.weglarz@wbd-us.com)  
[christine.hawkins@wbd-us.com](mailto:christine.hawkins@wbd-us.com)  
[khaled.taqi-eddin@wbd-us.com](mailto:khaled.taqi-eddin@wbd-us.com)

Philip C. Zvonicek, Esq.  
Lewis Stevenson, Esq.  
Gibbs Giden Locher Turner  
Senet & Wittbrodt LLP  
12100 Wilshire Blvd., Suite 300  
Los Angeles, CA 90025  
(San Fernando Marble & Granite  
Inc.)  
(310) 552-3400 Phone  
(310) 861-5422 Fax  
email: [pzvonicek@gibbsgiden.com](mailto:pzvonicek@gibbsgiden.com)  
[l Stevenson@gibbsgiden.com](mailto:l Stevenson@gibbsgiden.com)

Noushan Nouredдини, Esq.  
Erin M. Pauley, Esq.  
Duncan T. Justice, Esq.  
Barnes & Thornburg LLP  
2029 Century Park E., Suite 300  
Los Angeles, CA 90067-2904  
(Costco Wholesale Corporation)  
(310) 284-3880 Phone  
(310) 284-3894 Fax  
email: [Nnouredдини@btlaw.com](mailto:Nnouredдини@btlaw.com)  
[erin.pauley@btlaw.com](mailto:erin.pauley@btlaw.com)  
[djustice@btlaw.com](mailto:djustice@btlaw.com)

Paul V. Ash, Esq.  
Benson Y.L. Chan, Esq.  
Hanger, Steinberg, Shapiro & Ash  
21031 Ventura Blvd., Suite 800  
Woodland Hills, CA 91364-6512  
(Global Stone Trading, Inc.)  
(818) 226-1222 Phone

(818) 226-1215 Fax  
email: [pva@hsssalaw.com](mailto:pva@hsssalaw.com)  
[bc@hsssalaw.com](mailto:bc@hsssalaw.com)

Deanne L. Miller, Esq.  
Yardena R. Zwang-Weissman, Esq.  
Holly A. Henrich, Esq.  
Morgan, Lewis & Bockius LLP  
300 S. Grand Ave., 22nd Flr.  
Los Angeles, CA 90071-3132  
(EIDP, Inc. fka E.I. Du Pont De  
Nemours and Company)  
(213) 612-2500 Phone  
(213) 612-2501 Fax  
email: [deanne.miller@morganlewis.com](mailto:deanne.miller@morganlewis.com)  
[yardena.zwang-weissman@morganlewis.com](mailto:yardena.zwang-weissman@morganlewis.com)  
[holly.henrich@morganlewis.com](mailto:holly.henrich@morganlewis.com)  
[collie.james@morganlewis.com](mailto:collie.james@morganlewis.com)

Paul D. Rasmussen, Esq.  
Madison Romine, Esq.  
Booth LLP  
11835 W. Olympic Blvd., Suite  
600E  
Los Angeles, CA 90064  
(Stone Mart Corp.; Best Cheer  
Stone Inc.)  
(310) 641-1800 Phone  
(310) 641-1818 Fax  
email: [prasmussen@boothllp.com](mailto:prasmussen@boothllp.com)  
[mromine@boothllp.com](mailto:mromine@boothllp.com)

Jennifer A. Cormier, Esq.  
Carrie Lin, Esq.  
Manning Gross + Massenburg LLP  
601 Montgomery St., Suite 1000  
San Francisco, CA 94111  
(Francini Inc.)  
(415) 512-4381 Phone  
email: [jcormier@mgmlaw.com](mailto:jcormier@mgmlaw.com)  
[clin@mgmlaw.com](mailto:clin@mgmlaw.com)

Jason F. Meyer, Esq.  
Luis A. Barba, Esq.  
Donna C. Fazio, Esq.  
Gordon Rees Scully Mansukhani,  
LLP  
101 W. Broadway, Suite 2000  
San Diego, CA 92101  
(LX Hausys American, Inc)  
(619) 696-6700 Phone  
(619) 696-7124 Fax  
email: [jmeyer@grsm.com](mailto:jmeyer@grsm.com)  
[lbarba@grsm.com](mailto:lbarba@grsm.com)  
[dfazio@grsm.com](mailto:dfazio@grsm.com)

Niv V. Davidovich, Esq.  
Elan N. Stone, Esq.  
Davidovich Law Group LLP

6442 Coldwater Canyon Ave.,  
Suite 209  
North Hollywood, CA 91606  
(Bmosaics, Inc., dba Imperial Tile  
& Stone)  
(818) 661-2420 Phone  
(818) 301-5131 Fax  
email: [niv@davidovichlaw.com](mailto:niv@davidovichlaw.com)  
[elan@davidovichlaw.com](mailto:elan@davidovichlaw.com)

Edward Tafe, Esq.  
Litchfield Cavo LLP  
2 North Lake Ave., Suite 400  
Pasadena, CA 91101  
(Bmosaics, Inc. [dba Imperial Tile  
& Stone]; New Marble  
Unlimited, Inc.)  
(626) 683-1100 Phone  
(626) 683-1113 Fax  
email: [tafe@litchfieldcavo.com](mailto:tafe@litchfieldcavo.com)

Thomas M. Crawford, Pro Hac Vice  
Counsel  
Litchfield Cavo LLP  
303 W. Madison St., Suite 300  
Chicago, IL 60606  
(Bmosaics, Inc. [dba Imperial Tile  
& Stone])  
(312) 781-6677 Phone  
(312) 781-6630 Fax  
email: [abbott@litchfieldcavo.com](mailto:abbott@litchfieldcavo.com)

Michael R. Halvorsen, Esq.  
Howard P. Brody, Esq.  
Nathaly N. Medina, Esq.  
Phillips, Spallas & Angstadt LLP  
11150 W. Olympic Blvd., Suite 670  
Los Angeles, CA 90064-1839  
(Stoneville USA, Inc.)  
(310) 407-3017 Phone  
(310) 772-0023 Fax  
email: [stoneville@psalaw.net](mailto:stoneville@psalaw.net)  
[mhalvorsen@psalaw.net](mailto:mhalvorsen@psalaw.net)

Matthew S. Brady, Esq.  
Farah A. Ballout, Esq.  
Gordon Rees Scully Mansukhani,  
LLP  
5 Park Plaza, Suite 1100  
Irvine, CA 92614  
(Southland Stone USA, Inc.)  
(949) 255-6950 Phone  
(949) 474-2060 Fax  
email: [mbrady@grsm.com](mailto:mbrady@grsm.com)  
[fballout@grsm.com](mailto:fballout@grsm.com)

Todd C. Theodora, Esq.  
Timothy J. Heggem, Esq.  
Christopher J. Harney, Esq.  
Darryl A. Meigs, Esq.  
Theodora Oringher PC

535 Anton Blvd., 9<sup>th</sup> Flr.  
Costa Mesa, CA 92626-7109  
(Paragon Industries, Inc.)  
(714) 549-6200 Phone  
(714) 549-6201 Fax  
email: [ttheodora@tocounsel.com](mailto:ttheodora@tocounsel.com)  
[jheggem@tocounsel.com](mailto:jheggem@tocounsel.com)  
[charney@tocounsel.com](mailto:charney@tocounsel.com)  
[dmeigs@tocounsel.com](mailto:dmeigs@tocounsel.com)

Thomas F. Vandenburg, Esq.  
Dennis M. Baier, Esq.  
Rudolf Petrosyan, Esq.  
Janessa B. Chun, Esq.  
Sharis Rostamlou, Esq.  
Wood, Smith, Henning & Berman  
LLP  
505 N. Brand Blvd., Suite 1100  
Glendale, CA 91203  
(Walker & Zanger, LLC)  
(818) 551-6000 Phone  
(818) 551-6050 Fax  
email: [tvandenburg@wshblaw.com](mailto:tvandenburg@wshblaw.com)  
[dbaier@wshblaw.com](mailto:dbaier@wshblaw.com)  
[rpetrosyan@wshblaw.com](mailto:rpetrosyan@wshblaw.com)  
[jchun@wshblaw.com](mailto:jchun@wshblaw.com)  
[srostamlou@wshblaw.com](mailto:srostamlou@wshblaw.com)

David R. Scheidemantle, Esq.  
Adam D. Wieder, Esq.  
Scheidemantle Law Group P.C.  
35 E. Union St., Suite F  
Pasadena, CA 91103  
(Walker & Zanger, LLC)  
(626) 660-4434 Phone  
(800) 616-4410 Fax  
email: [david@scheidemantle-law.com](mailto:david@scheidemantle-law.com)  
[adam@scheidemantle-law.com](mailto:adam@scheidemantle-law.com)

Robert J. Hatem, Esq.  
Thomas M. Regan, Esq.  
Klinedinst PC  
777 S. Figueroa St., Suite 4000  
Los Angeles, CA 90017  
(Wilsonart LLC)  
(213) 442-7000 Phone  
(213) 406-1101 Fax  
email: [rhate@klinedinstlaw.com](mailto:rhate@klinedinstlaw.com)  
[tregan@klinedinstlaw.com](mailto:tregan@klinedinstlaw.com)

Randall K. Bernard, Esq.  
Mark A. Love, Esq.  
Michael X. Guan, Esq.  
Hawkins Parnell & Young LLP33  
New Montgomery St., Suite 800  
San Francisco, CA 94105  
(Raphael Stone CA, Inc., fka  
California Quartz, Inc.)  
(415) 766-3200 Phone  
(415) 766-3250 Fax

email: [rbernard@hpylaw.com](mailto:rbernard@hpylaw.com)  
[mlove@hpylaw.com](mailto:mlove@hpylaw.com)  
[mguan@hpylaw.com](mailto:mguan@hpylaw.com)

James C. Parker, Esq.  
John M. Marston, Esq.  
Alice T. Wong, Esq.  
Shane M. Hoover, Esq.  
Hugo Parker, LLP  
90 New Montgomery St., Suite  
1010  
San Francisco, CA 94105  
(Surface Warehouse, LP, dba US  
Surfaces)  
(415) 808-0300 Phone  
(415) 808-0333 Fax  
email: [service@hugoparker.com](mailto:service@hugoparker.com)

Stephen J. Erigero, Esq.  
Jana Simmons, Esq.  
Robert Orozco, Esq.  
Mark Gnesin, Esq.  
Ropers Majeski  
801 S. Figueroa St., Suite 2100  
Los Angeles, CA 90017  
(Surface Warehouse, LP, dba US  
Surfaces)  
(213) 312-2000 Phone  
(213) 312-2001 Fax  
email: [stephen.erigero@ropers.com](mailto:stephen.erigero@ropers.com)  
[jana.simmons@ropers.com](mailto:jana.simmons@ropers.com)  
[robert.oro@ropers.com](mailto:robert.oro@ropers.com)  
[mark.gnesin@ropers.com](mailto:mark.gnesin@ropers.com)

Andrea L. Cook, Esq.  
Andrea Cook & Associates  
555 East Ocean Blvd., Suite 430  
Long Beach, CA 90802  
(Bernardino Sanchez; Bernardino's  
Marble Shop)  
(562) 951-9135 Phone  
(562) 951-9126 Fax  
email: [alcook@alcooklaw.com](mailto:alcook@alcooklaw.com)

Jeremy W. Faith, Esq.  
Margulies Faith LLP  
16030 Ventura Blvd., Suite 470  
Encino, CA 91436  
(Compac USA Inc.)  
(818) 705-2777 Phone  
e m a i l :  
[jeremy@marguliesfaithlaw.com](mailto:jeremy@marguliesfaithlaw.com)

updated 07/21/25 ab