

JAN 28 2009

John A. Clark, Executive Officer/Clerk  
By [Signature], Deputy

1 GRAHAM & MARTIN, LLP  
2 Anthony G. Graham (State Bar No.148682)  
3 Michael J. Martin (State Bar No. 171757)  
4 950 South Coast Drive, Suite 220  
5 Costa Mesa, California 92626  
6 (714) 850-9390

7 Attorneys for Plaintiff  
8 DR. RICHARD F. SOWINSKI  
9 CASE MANAGEMENT CONFERENCE  
10 SET FOR 8:30 a.m.

JUN 29 2009

11 IN DEPARTMENT [Signature]

12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES – LONG BEACH

14 DR. RICHARD F. SOWINSKI, IN THE  
15 PUBLIC INTEREST,

16 Plaintiff,

17 vs.

18 SOUTHERN CALIFORNIA EDISON; AND  
19 DOES 1 - 10

20 Defendants.

CASE NO. NC052434

COMPLAINT FOR VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE  
25249.5 ET SEQ

21 As and for his cause of action against SOUTHERN CALIFORNIA EDISON and DOES 1  
22 - 10, plaintiff Dr. Richard F. Sowinski alleges as follows:

23 ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION

24 A. PARTIES

25 1. Plaintiff Dr. Richard F. Sowinski is and has been at all relevant times a resident of  
26 the State of California, and brings this action in the public interest on behalf of the People of the  
27 State of California as defined under Health & Safety Code § 25249.7 (d).  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. Defendants SOUTHERN CALIFORNIA EDISON and DOES 1 - 10 (hereinafter referred to collectively as "Defendants") are and at all times mentioned herein have been qualified to do business in the State of California.

3. Plaintiff is ignorant of the true names and capacities of defendants sued as DOES 1- 500, inclusive, and therefore sue these defendants by such fictitious names. The fictitious defendants named in this Complaint are sued pursuant to the provisions of C.C.P. § 474. Plaintiff is informed and believes, and upon that ground, alleges that each fictitious defendant is in some way responsible for, participated in, or contributed to the matters and things of which Plaintiff complains herein, and in some fashion, has legal responsibility therefor. When the exact nature and identity of such fictitious defendants' responsibility for, participation in, and contribution to the matters and things alleged herein are ascertained by Plaintiff, Plaintiff will seek to amend this Complaint and all proceedings herein to set forth the same.

4. At all times mentioned herein each of the Defendants was a person within the meaning of Business & Professions Code § 17201 and a person doing business within the meaning of Health & Safety Code § 25249.11 (a). Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, each of the Defendants has had 10 or more employees.

5. The Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. The statutes under which this action is brought do not specify any other basis of jurisdiction.

**CAUSE OF ACTION AGAINST ALL DEFENDANTS  
AND DOES 1- 500  
(Violation of California Health & Safety Code)**

6. Plaintiff repeats and incorporates by reference paragraphs 1 through 5 of this Complaint as though fully set forth herein.

7. Plaintiff is informed and believe and thereon allege that Defendants and DOES 1- 500 knowingly and intentionally exposed consumers, their customers and/or the general public to chemicals known to the State of California to cause cancer, birth defects and reproductive

1 toxicity, as set forth in Health & Safety Code §§ 25249.5, *et seq.* and 22 California Code of  
2 Regulations §§ 12000 through 14000 (“Proposition 65”) without giving clear and reasonable  
3 warnings of that fact to the exposed persons prior to exposure.

4 8. Proposition 65 states that when parties, such as Defendants, entities with more  
5 than ten employees, have been or are knowingly and intentionally exposing their customers and  
6 users of the products they sell to a detectable level of any chemical designated by the State of  
7 California to cause cancer or reproductive toxicity (the “Designated Chemical”), it has violated  
8 the statute unless, prior to such exposure, it provides clear and reasonable warning of the  
9 exposure to the potentially exposed persons (Health & Safety Code § 25249.6).

10 9. Defendants knowingly and intentionally exposed consumers, customers, visitors,  
11 Employees and/or the general public to chemicals known to the State of California to cause  
12 cancer, birth defects and reproductive toxicity, as set forth in Health & Safety Code § 25249.5, *et*  
13 *seq.* and 22 California Code of Regulations §§ 12000 through 14000 through the sale and  
14 distribution of propane gas in California.

15 10. In the ordinary course of business, Defendants, since at least April 11, 2004  
16 through the present date, have sold and distributed propane gas throughout California for use by  
17 consumers. When propane gas is burned it produces, in the ordinary course of usage, hazardous  
18 emissions in significant amounts that pose a serious health risk to unsuspecting people. The  
19 burning of propane gas produces benzene levels that exceed the allowable threshold exposure  
20 level set forth in California Health & Safety Code § 25249.6. Defendants now and for at least  
21 the four years prior to this Notice have failed to provide its customers and the general public with  
22 a clear and reasonable warning of this potential exposure.

23 11. When propane gas is burned it emits vapors, gases and particles containing the  
24 following Designated Chemical: benzene, a chemical known to the State of California to cause  
25 cancer and reproductive toxicity. Persons using propane gas distributed and sold by Defendants  
26 will be exposed to this Designated Chemical primarily via inhalation, that is, by breathing in the  
27 chemical. Defendants have however not provided to those persons a clear and reasonable  
28

1 warning that use of propane gas will expose the user to the Designated Chemical, Benzene.

2 Defendants are therefore violating Health & Safety Code Section 25249.6.

3 12. At all times relevant to this action Defendants knew that their customers,  
4 consumers, and/or the general public could be and/or were being exposed, through inhalation, to  
5 benzene, a chemical known to the State of California to cause cancer, birth defects and  
6 reproductive toxicity, as set forth in Health & Safety Code § 25249.5, *et seq.* and 22 California  
7 Code of Regulations §§ 12000 through 14000.

8 13. Each of the Defendants knew these facts because they are in the business of  
9 distributing and selling propane gas.

10 14. Plaintiff has investigated each of the Defendants and has determined that they do  
11 not provide any warning which even mentions California Health & Safety Code section 25249.6  
12 *et seq* or Proposition 65

13 15. Despite having a consent judgment entered which mandates that distributors and  
14 sellers of propane gas provide a warning, Defendants and DOES 1- 10 have not and do not  
15 provide the warnings called for by that consent judgment or by Proposition 65 and thus have  
16 knowingly and intentionally exposed their customers, consumers and/or the general public to  
17 benzene without providing prior clear and reasonable warnings to those customers, consumer  
18 and/or the general public that use of the Product could expose them and others to a chemical  
19 known to the State of California to cause cancer, birth defects and reproductive toxicity, as set  
20 forth in Health & Safety Code §§ 25249.5, *et seq.* and 22 California Code of Regulations  
21 §§ 12000 through 14000.

22 16. The route of exposure for the said chemical has been primarily through inhalation,  
23 that is, via the breathing of the said chemical.

24 16. More than sixty (60) days prior to filing this action Plaintiff mailed to the  
25 Defendant a Sixty (60) Day Notice of Intent to Sue (hereinafter referred to collectively as "the  
26 Notices") for violations of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act  
27 (commencing with Health & Safety Code § 25249.5) by knowingly and intentionally exposing  
28 consumers, their customers and/or the general public to benzene, a chemical designated by the

1 State of California to cause cancer, birth defects and reproductive toxicity without first giving  
2 clear and reasonable warning of that fact to the exposed persons as required by Health & Safety  
3 Code § 24249.6. The Notices specifically identified that the Defendant offered for sale and  
4 distributed throughout California propane gas, and that thereby Defendant had exposed  
5 consumers, their customers and/or the general public to a Designated Chemical without  
6 providing a warning. The Notices identified the time period wherein such exposures had  
7 occurred, and also identified the route of exposure for the chemicals as inhalation. Included with  
8 the Notices was a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986  
9 (Proposition 65): A Summary."

10 17. Copies of the Notices referred to in paragraph 16 were mailed to the California  
11 Attorney General, the relevant County District Attorneys and City Attorneys for each city  
12 containing a population of at least 750,000 people (hereinafter referred to collectively as the  
13 "Prosecutors") where the Defendants had violated Health & Safety Code §§ 25249.5, *et seq.* and  
14 22 California Code of regulations §§ 12000 through 14000.

15 18. No response was ever received from any of the Prosecutors. None of the  
16 Prosecutors is prosecuting an action against any Defendant herein for the violations set forth  
17 above.

18 19. Individuals exposed to the listed chemicals suffered and continue to suffer harm  
19 due to their exposure to said chemicals without prior clear and reasonable warning.

20 20. This action for injunctive relief and penalties for violation of Health & Safety  
21 Code §§ 25249.5, *et seq.* is specifically authorized by Health & Safety Code § 25249.7.

#### 22 PRAYER FOR RELIEF

23 WHEREFORE, Plaintiffs request against Defendants and DOES 1 - 10:


- 24 1. A permanent injunction pursuant to California Health & Safety Code  
25 § 25249.7(a), and the equitable powers of the court;
- 26 2. Penalties pursuant to California Health & Safety Code § 25249.7(b) in the amount  
27 of \$2,500.00 per day per violation at each of the locations listed in Exhibit A;
- 28 3. Costs of suit;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 4. Reasonable attorneys fees and costs; and,
- 5. Any further relief that the court may deem just and equitable.

DATED: January 22, 2009

GRAHAM & MARTIN, LLP

By:   
Anthony G. Graham  
Attorneys for Plaintiff  
DR. RICHARD F. SOWINSKI