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Original Conformed Copy
Of Original Filed
Los Angeles Superior Court

DEC 22 2008

John A. Clarke, Executive Officer/Clerk
By: I. Flores, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

MAYTAG CORPORATION, AMERICAN
RANGE CORPORATION, DYNAMIC
COOKING SYSTEMS, INC., THE
MONTAGUE COMPANY; RANKIN-DELUX,
INC.; ROYAL RANGE OF CALIFORNIA,
INC.; THERMADOR CORPORATION;
TOASTMASTER CORPORATION; U.S.
RANGE; WHIRLPOOL CORPORATION
AND DOES 1- 500

Defendants.

CASE NO. BC 393706

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

As and for his cause of action against Maytag Corporation, American Range Corporation,
Dynamic Cooking Systems, Inc., The Montague Company, Rankin-Delux, Inc., Royal Range of
California, Inc., Thermador Corporation, Toastmaster Corporation; U.S. Range, Whirlpool
Corporation and DOES 1- 500, plaintiff Dr. Richard F. Sowinski alleges as follows:

1 ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION

2 A. PARTIES

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

6 2. Defendants Maytag Corporation, American Range Corporation, Dynamic Cooking
7 Systems, Inc., The Montague Company, Rankin-Delux, Inc., Royal Range of California, Inc.,
8 Thermador Corporation, Toastmaster Corporation; U.S. Range, Whirlpool Corporation and
9 DOES 1- 500 (hereinafter referred to collectively as "Defendants") are and at all times mentioned
10 herein have been qualified to do business in the State of California.

11 3. Plaintiff is ignorant of the true names and capacities of defendants sued as DOES
12 1- 500, inclusive, and therefore sue these defendants by such fictitious names. The fictitious
13 defendants named in this Complaint are sued pursuant to the provisions of C.C.P. § 474.
14 Plaintiff is informed and believes, and upon that ground, alleges that each fictitious defendant is
15 in some way responsible for, participated in, or contributed to the matters and things of which
16 Plaintiff complains herein, and in some fashion, has legal responsibility therefor. When the exact
17 nature and identity of such fictitious defendants' responsibility for, participation in, and
18 contribution to the matters and things alleged herein are ascertained by Plaintiff, Plaintiff will
19 seek to amend this Complaint and all proceedings herein to set forth the same.

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

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

28 **CAUSE OF ACTION AGAINST ALL DEFENDANTS**

1 **AND DOES 1- 500**

2 **(Violation of California Health & Safety Code)**

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

5 7. Plaintiff is informed and believe and thereon allege that Defendants and DOES 1-
6 500 knowingly and intentionally exposed consumers, their customers and/or the general public to
7 chemicals known to the State of California to cause cancer, birth defects and reproductive
8 toxicity, as set forth in Health & Safety Code §§ 25249.5, *et seq.* and 22 California Code of
9 Regulations §§ 12000 through 14000 (“Proposition 65”) without giving clear and reasonable
10 warnings of that fact to the exposed persons prior to exposure.

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

17 9. Defendants knowingly and intentionally exposed consumers, customers, visitors,
18 Employees and/or the general public to chemicals known to the State of California to cause
19 cancer, birth defects and reproductive toxicity, as set forth in Health & Safety Code § 25249.5, *et*
20 *seq.* and 22 California Code of Regulations §§ 12000 through 14000 through the manufacture,
21 sells and/or distribution throughout California of gas cooking ranges which use or can use
22 propane gas.

23 10. In the ordinary course of business, Defendants, since at least April 11, 2004
24 through the present date, have manufactured, sold and/or distributed throughout California
25 propane gas cooking products (“the Products”) both through stores and on various internet
26 websites. The Products produce, in the ordinary course of usage, hazardous emissions in
27 significant amounts that pose a serious health risk to unsuspecting people. These gas cooking
28 ranges burn propane gas which produce benzene levels that exceed the allowable threshold

1 exposure level set forth in California Health & Safety Code § 25249.6. Defendants now and for
2 at least the four years prior to this Notice have failed to provide their customers with a clear and
3 reasonable warning of this potential exposure.

4 11. Each of the Products, when used to cook using propane gas, emit vapors, gases
5 and particles containing the following Designated Chemical: benzene, a chemical known to the
6 State of California to cause cancer and reproductive toxicity. Persons using the Products will be
7 exposed to this Designated Chemical primarily via inhalation, that is, by breathing in the
8 chemical. Defendants have however not placed on their Products, a clear and reasonable warning
9 that use of any such Product will expose the user to the Designated Chemical, Benzene.
10 Defendants are therefore violating Health & Safety Code Section 25249.6.

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

16 13. Defendants and DOES 1- 500 knowingly and intentionally exposed their
17 customers, consumers and/or the general public to benzene without providing prior clear and
18 reasonable warnings to those customers, consumer and/or the general public that use of the
19 Product could expose them and others to a chemical known to the State of California to cause
20 cancer, birth defects and reproductive toxicity, as set forth in Health & Safety Code §§ 25249.5,
21 *et seq.* and 22 California Code of Regulations §§ 12000 through 14000.

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

24 15. More than sixty (60) days prior to filing this action Plaintiff mailed to each of the
25 Defendants 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 the Products manufactured, sold and/or
4 distributed throughout California by Defendants and the chemical to which Defendants had
5 exposed consumers, their customers and/or the general public. The Notices identified the time
6 period wherein such exposures had occurred, and also identified the route of exposure for the
7 chemicals as inhalation. Included with the Notices was a copy of "The Safe Drinking Water and
8 Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

9 16. Copies of the Notices referred to in paragraph 15 were mailed to the California
10 Attorney General, the relevant County District Attorneys and City Attorneys for each city
11 containing a population of at least 750,000 people (hereinafter referred to collectively as the
12 "Prosecutors") where the Defendants had violated Health & Safety Code §§ 25249.5, *et seq.* and
13 22 California Code of regulations §§ 12000 through 14000.

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

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

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

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs request against Defendants and DOES 1 - 500:

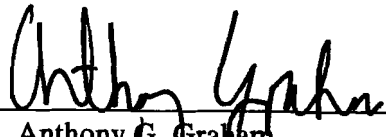
- 23 1. A permanent injunction pursuant to California Health & Safety Code
24 § 25249.7(a), and the equitable powers of the court;
- 25 2. Penalties pursuant to California Health & Safety Code § 25249.7(b) in the amount
26 of \$2,500.00 per day per violation at each of the locations listed in Exhibit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

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5. Any further relief that the court may deem just and equitable.

DATED: December 16, 2008

GRAHAM & MARTIN, LLP

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