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FILED
Superior Court of California
County of Los Angeles

SEP 02 2015

Sherri R. Carter, Executive Officer/Clerk
By Judi Lara, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LINDSEY MARMONT, individually and
as a Successor in Interest to ASTRID
ELIZABETH MARMONT; TRISTEN
MARMONT, a minor, by and through his
Guardian Ad Litem, LINDSEY
MARMONT, and as Successor in
Interest to ASTRID ELIZABETH
MARMONT; MARCUS MARMONT, a
minor, by and through his Guardian Ad
Litem, LINDSEY MARMONT and as
Successor in Interest to ASTRID
ELIZABETH MARMONT; COLE
MARMONT, a minor, by and through his
Guardian Ad Litem LINDSEY
MARMONT and as Successor in
Interest to ASTRID ELIZABETH
MARMONT,

Plaintiffs,

v.

BERNZOMATIC, CORP., a corporation;
IRWIN INDUSTRIAL TOOL COMPANY,
INC., a corporation; NEWELL
RUBBERMAID, INC., a Corporation;
WORTHINGTON CYLINDERS INC., a
corporation; WORTHINGTON
WISCONSIN, LLC, a limited liability
company; LOWE'S COMPANIES, INC.,
a corporation; and DOES 1-20, et al.,

Defendants.

CASE NO.:

BC 593259

COMPLAINT FOR DAMAGES:

1. Product Liability - Strict Liability
2. Product Liability - Breach of Warranty
3. Product Liability - Negligence
4. Negligence- Wrongful Death and Personal Injury
5. Negligent Infliction of Emotional Distress
6. Loss of Consortium

JURY TRIAL DEMANDED

RECEIPT #: CCH520872074
DATE PAID: 09/02/15 02:12 PM
PAYMENT: \$435.00
RECEIVED:
CHECK: \$435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

FILED: 02/15/2017 TRIAL: 03/02/2017 OSC: 09/04/2017

CIT/CASE: BC593259
FILE/DEF#:

1.
COMPLAINT FOR DAMAGES

1 Plaintiffs complain of Defendants and each of them as follows:

- 2
- 3 1. At all times mentioned herein, Plaintiff Lindsey Marmont was a resident of
- 4 the City of Fillmore, State of California. Lindsey Marmont is the husband
- 5 and Successor in Interest to the decedent, Astrid Elizabeth Marmont.
- 6 2. At all times mentioned herein, Plaintiffs Tristen Marmont, Marcus Marmont
- 7 and Cole Marmont are the minor children of decedent, Astrid Elizabeth
- 8 Marmont, and Plaintiff Lindsey Marmont. Lindsey Marmont is at all times
- 9 mentioned herein the guardian ad litem for Tristen Marmont, Marcus
- 10 Marmont and Cole Marmont (hereafter collectively "Plaintiffs").
- 11 3. At all times mentioned herein, defendants BERNZOMATIC, CORP., a
- 12 corporation; IRWIN INDUSTRIAL TOOL COMPANY, INC., a corporation;
- 13 NEWELL RUBBERMAID, INC., a Corporation; WORTHINGTON
- 14 CYLINDERS INC., a corporation; WORTHINGTON WISCONSIN, LLC
- 15 were engaging in the design, manufacturing, distribution and sale of
- 16 certain products including Bernzomatic Gas dispenser/torch.
- 17 4. At all times mentioned herein, defendant LOWE'S COMPANIES, INC., a
- 18 corporation was engaged in the sale of certain products, including the
- 19 Bernzomatic Gas dispenser/torch.
- 20 5. Plaintiffs are informed and believe that Defendants BERNZOMATIC,
- 21 CORP.; IRWIN INDUSTRIAL TOOL COMPANY, INC.; NEWELL
- 22 RUBBERMAID, INC.; WORTHINGTON CYLINDERS INC.;
- 23 WORTHINGTON WISCONSIN, LLC; LOWE'S COMPANIES, INC.; and
- 24 DOES 1-20 (hereafter collectively "Defendants") are and at all times
- 25 mentioned herein were business entities and/or individuals qualified to
- 26 and business in the State of California with principal operations and/or
- 27 sales in the State of California, County of Los Angeles.
- 28

2.

COMPLAINT FOR DAMAGES

- 1 6. Defendant Does 1-20, are sued herein by such fictitious names for the
2 reasons that their true names and capacities are presently unknown to
3 Plaintiff, but who Plaintiff alleges were agents, servants, and employees of
4 their respective co-defendants, and in doing the things herein complained
5 of were acting in the course and scope of such agency and employment,
6 and were in some manner liable for the damages and injuries for which
7 compensation is sought herein by Plaintiff. At such time as their true
8 names and capacities are ascertained, Plaintiff will amend this complaint
9 to set forth the same.
- 10 7. At all times herein mentioned, Defendants and each of them, were the
11 agents, servants and employees of their respective co-defendants, and in
12 doing such things herein complained of were acting within the course and
13 scope of such agency and employment.
- 14 8. In or about 2013, Lindsey Marmont purchased a new, in the box,
15 Bernzomatic Gas dispenser/torch, which included a gas canister and torch
16 head from defendant LOWE'S COMPANIES, INC.
- 17 9. On September 15, 2013, Plaintiffs and decedent were eating dinner in
18 their backyard. At that time and place a product known as a Bernzomatic
19 Gas dispenser/torch and gas canister, which was designed,
20 manufactured, distributed and sold by Defendants was used to ignite
21 charcoal in a barbecue grill and then placed on a table adjacent to
22 Plaintiffs and decedent. At that time and place the Bernzomatic Gas
23 dispenser/torch and gas canister catastrophically failed by exploding and
24 sending shrapnel at Plaintiffs and decedent. The explosion resulted in the
25 death of Astrid Elizabeth Marmont and severe injuries to Lindsey
26 Marmont. Minor Plaintiffs Tristen Marmont, Marcus Marmont and Cole
27 Marmont were also present and witnessed the death of their mother and
28

1 serious injury to their father, Lindsey Marmont.

- 2 10. As a direct and proximate result of the negligent, careless, wrongful
3 and/or reckless conduct of the Defendants and each of them in the
4 design, manufacture, distribution and sale of said product, specifically the
5 Bernzomatic Gas dispenser/torch, Astrid Elizabeth Marmont sustained
6 severe injuries resulting in her untimely death, Lindsey Marmont
7 sustained severe physical injuries, and Lindsey Marmont, Tristen
8 Marmont, Marcus Marmont and Cole Marmont suffered severe emotional
9 distress.
- 10 11. All amounts being claimed are in excess of the jurisdictional limits of this
11 court, which will be stated according to proof in accordance with Section
12 425.10 of the *California Code of Civil Procedure*.
- 13

14 **FIRST CAUSE OF ACTION**

15 **(Products Liability- Strict Liability, Against All Defendants)**

- 16
- 17 12. Plaintiffs incorporate by reference all allegations in paragraphs 1 through
18 11 as though set forth in full herein.
- 19 13. Plaintiffs are informed and believe and thereon allege that at all time
20 herein mentioned, Defendants and each of them, were the manufacturers,
21 designers, labelers, developers, processors, producers, assemblers,
22 builders, testers, inspectors, installers, warners, endorsers,
23 recommenders, merchandisers, advertisers, exporters, wholesalers,
24 retailers, sellers, modifiers, servicers, repairers, providers and otherwise
25 distributors of the subject Bernzomatic Gas dispenser/torch.
- 26 14. Plaintiffs are informed and believe and thereon allege that the subject
27 Bernzomatic Gas dispenser/torch was defective at the time of its
28 manufacture, design, development, production, assembly, building,

1 testing, inspection, endorsement, exportation, importation, wholesaling,
2 retailing, selling, modification, service, repair and entrustment and that the
3 subject Bernzomatic Gas dispenser/torch along with its gas canister failed
4 to meet the reasonable expectations of safety of the class of persons of
5 which Plaintiffs were members, and that any benefits derived from the
6 design of said Bernzomatic Gas dispenser/torch was substantially
7 outweighed by the risk of harm inherent in said design in that, and not by
8 way of limitation, despite the availability to Defendants of safer alternative
9 designs, said defective Bernzomatic Gas dispenser/torch presented a
10 substantial and unreasonable risk of death or injury to the users of said
11 Bernzomatic Gas dispenser/torch and those in the vicinity of their use.

12 15. Plaintiffs are informed and believe that said Bernzomatic Gas
13 dispenser/torch and gas canister were defective in their design,
14 construction, assembly and manufacture and dangerous to life and limb of
15 the users and those in the vicinity thereof, in that, among other things and
16 not by way of limitation, said Bernzomatic Gas dispenser/torch and gas
17 canister were so poorly designed and manufactured that they failed to
18 maintain their integrity under normal operating conditions, including the
19 subject incident. The aforementioned defects created a substantial
20 danger which was unknown to Plaintiffs and the public in general, and
21 would not be recognized by the ordinary user, and said defendant failed to
22 give adequate warning of such danger.

23 16. Prior to the sale and distribution of said Bernzomatic Gas dispenser/torch
24 and gas canister, Defendants and each of them, knew the subject
25 Bernzomatic Gas dispenser/torch and gas canister was in a defective
26 condition as previously described. Further, Defendants and each of them,
27 through their officers, directors and managing agents, had prior notice and
28 knowledge from several sources, including but not limited to test results

1 and a multiplicity of tests run prior to the date of said accident, internal
2 memoranda and correspondence, and industry publications, expert
3 opinions, as well as notice of numerous serious injuries caused by the
4 design of the subject Bernzomatic Gas dispenser/torch and gas canister
5 were defective and presented a substantial and unreasonable risk of harm
6 to the American consumers and general public, including Plaintiffs in that
7 said defects unreasonably subjected users and those in the vicinity to
8 injury or death as a result of failure in the event of foreseeable use and
9 conditions.

10 17. Plaintiffs are informed and believe and thereon allege that Defendants,
11 and each of them, had unfettered ability, after years of extensive in-
12 house, government and independent testing and expert opinion to
13 minimize the substantial risk of serious bodily harm or death caused by
14 the subject Bernzomatic Gas dispenser/torch and gas canister by
15 redesigning or warning of the potential for serious risk or harm, thereby
16 minimizing or eliminating said potential. But, Defendants consciously
17 chose not to take such steps, including, but not limited to, not providing
18 proper design and manufacturing provisions, all of which allowed
19 Defendants to save money and avoid loss of sales. These acts by
20 Defendants prevented the public from becoming aware that the defects in
21 the subject Bernzomatic Gas dispenser/torch and gas canister were, in
22 reality unsafe, dangerous and defective, thereby causing the injuries and
23 damages to Plaintiffs. In addition, Plaintiffs are informed and believe and
24 thereon allege that the aforementioned malfeasance, nonfeasance,
25 defects, failure to warn, were done with the advance knowledge,
26 authorization, approval and ratification of officers, directors and/or
27 managing agents of the aforesaid Defendants.

28 18. As a direct and proximate result of the conduct of Defendants and each of

1 them, Astrid Elizabeth Marmont was killed and Lindsey Marmont was
2 compelled to, did employ and will continue to employ the services of
3 hospitals, physicians, surgeons, nurses and the like to treat serious and
4 substantial injuries and Tristen Marmont, Marcus Marmont and Cole
5 Marmont suffered extreme emotional distress. Plaintiffs did incur and will
6 continue to incur medical, professional and/or incidental expenses, and
7 the like, all to their general and special damages, in an amount according
8 to proof at the time of trial.

- 9 19. As a further legal cause of Defendants and each of their negligence, as
10 herein alleged, Plaintiff Lindsey Marmont suffered and will continue to
11 suffer a loss of earning capacity in the future, in an amount according to
12 proof at the time of trial.

13
14 **SECOND CAUSE OF ACTION**

15 **(Products Liability- Breach of Warranty, Against All Defendants)**

- 16
17 20. Plaintiffs incorporate by reference all allegations in paragraphs 1 through
18 19 as though set forth in full herein.
- 19 21. At all times herein mentioned, Defendants and each of them, designed,
20 developed, processed, repaired, serviced, inspected, represented, tested,
21 distributed, sold, consigned, delivered, maintained installed and operated
22 for purpose of sale and distribution, said Bernzomatic Gas dispenser/torch
23 and gas canister use by the general public.
- 24 22. Plaintiffs are informed and believe and based upon such information and
25 belief allege, that at the time and place of said sale, delivery, distribution,
26 repair, service, installation, consignment, maintenance, or operation of
27 said product, Defendants and each of them, expressly and impliedly
28 warranted to each buyer and user and to all persons reasonably expected

1 inspected, maintained, modified, changed, designed and manufactured
2 and furnished the defective subject Bernzomatic Gas dispenser/torch and
3 gas canister so as to cause, permit and/or allow the same to be in a
4 dangerous, defective, unguarded and unsafe condition, and such acts
5 and/or omissions were a substantial factor contributing to the injuries,
6 damages and death suffered by Plaintiffs, as herein alleged.

7 32. The negligence of Defendants, and each of them was a substantial factor
8 in causing the injuries, death and damages herein alleged.

9 33. As a direct and proximate result of the conduct of Defendants and each of
10 them, Astrid Elizabeth Marmont was killed and Lindsey Marmont was
11 compelled to, did employ and will continue to employ the services of
12 hospitals, physicians, surgeons, nurses and the like to treat serious and
13 substantial injuries and Tristen Marmont, Marcus Marmont and Cole
14 Marmont suffered extreme emotional distress. Plaintiffs did incur and will
15 continue to incur medical, professional and/or incidental expenses, and
16 the like, all to their general and special damages, in an amount according
17 to proof at the time of trial.

18 34. As a further legal cause of Defendants and each of their negligence, as
19 herein alleged, Plaintiff Lindsey Marmont suffered and will continue to
20 suffer a loss of earning capacity in the future, in an amount according to
21 proof at the time of trial.

22
23 **FOURTH CAUSE OF ACTION**

24 **(Negligence: Personal Injury and Wrongful Death, Against All Defendants)**

25
26 35. Plaintiffs incorporate by reference all allegations in paragraphs 1 through
27 34 as though set forth in full herein.

28 36. Plaintiffs are informed and believe, and thereupon alleges, that at said

1 time and place, Defendants and each of them negligently, recklessly and
2 carelessly manufactured, designed, developed, processed, produced,
3 assembled, built, tested, inspected, installed, warned, equipped,
4 endorsed, exported, wholesaled, retailed, sold, modified, serviced,
5 repaired, installed, provided and otherwise distributed the subject
6 Bernzomatic Gas dispenser/torch and gas canister, which caused the
7 death of Astrid Elizabeth Marmont and severe injuries to Lindsey Marmont
8 and damages to Plaintiffs as herein alleged.

9 37. Defendants and each of them knew or should have known that it was
10 likely that a person, such as Plaintiff would use the subject Bernzomatic
11 Gas dispenser/torch and gas canister in a reasonably foreseeable
12 manner, under normal conditions for igniting or heating material and that
13 the subject Bernzomatic Gas dispenser/torch and gas canister would
14 catastrophically fail, resulting in an explosion and causing death, injury
15 and damage because of the subject defective Bernzomatic Gas
16 dispenser/torch and gas canister.

17 38. As a direct and proximate result of the conduct of Defendants and each of
18 them, Astrid Elizabeth Marmont was killed and Lindsey Marmont suffered
19 severe catastrophic physical injuries.

20 39. As a further proximate result of the conduct of Defendants and each of
21 them, Astrid Elizabeth Marmont was killed and Lindsey Marmont was
22 compelled to, did employ and will continue to employ the services of
23 hospitals, physicians, surgeons, nurses and the like to treat serious and
24 substantial injuries and Tristen Marmont, Marcus Marmont and Cole
25 Marmont suffered extreme emotional distress. Plaintiffs did incur and will
26 continue to incur medical, professional and/or incidental expenses, and
27 the like, all to their general and special damages, in an amount according
28 to proof at the time of trial.

1 40. As a proximate result of the above described tortuous conduct of
2 Defendants and each of them, Plaintiff Lindsey Marmont has and will,
3 suffer future medical care and treatment and loss of earnings capacity, as
4 well as pain and suffering and loss of enjoyment of life, all to their general
5 damage, in a sum to be proven at time of trial.

6 41. As a further legal cause of Defendants and each of their negligence, as
7 herein alleged, Plaintiff Lindsey Marmont suffered and will continue to
8 suffer a loss of earning capacity in the future, in an amount according to
9 proof at the time of trial.

10
11 **FIFTH CAUSE OF ACTION**

12 **(Negligent Infliction of Emotional Distress/Dillon v. Legg - Against All Defendants)**

13
14 42. Plaintiffs incorporate by reference all allegations in paragraphs 1 through
15 41 as though set forth in full herein.

16 43. As a direct and proximate result of the conduct of Defendants, and each
17 of them, Astrid Elizabeth Marmont was killed and Lindsey Marmont
18 sustained severe physical injuries. Plaintiff Lindsey Marmont witnessed
19 his wife's death as a result of defendants negligence. Further, Plaintiffs
20 Tristen Marmont, a minor; Marcus Marmont, a minor; and Cole Marmont a
21 minor witnessed their mother's death as a result of defendants
22 negligence.

23 44. Further, Plaintiffs Lindsey Marmont; Tristen Marmont, a minor; Marcus
24 Marmont, a minor; and Cole Marmont a minor, have suffered from severe
25 emotional distress pursuant to a *Dillon vs. Legg* claim as they witnessed
26 their wife/mother, Astrid Elizabeth Marmont, sustain severe physical
27 injuries and then witnessed her untimely death due to the incident caused
28 by Defendants negligence. Plaintiffs have suffered and will continue to

suffer psychological/psychiatric injuries, emotional injuries and mental anguish as a result of the collision and as a result of witnessing the injuries sustained and witnessing the death of their loved one, Astrid Elizabeth Marmont.

45. As a further proximate result of the acts of Defendants, and each of them, and due to the negligence as alleged, Plaintiffs have incurred and will continue to incur substantial medical expenses and have incurred funeral and burial expenses and will continue to incur future medical expenses and related expenses, including but not limited to future hospitalizations, therapy, home care, medications, psychological therapy, family counseling and other cost related expenses, the total amount of such expenses is not known to plaintiffs at this time and plaintiffs will move to amend this complaint to state such amount when the same becomes known to them, or on proof thereof.

46. As a proximate result of the above described conduct of Defendants, and each of them, the Plaintiffs have and will, suffer the loss of Decedent's love, companionship, guidance, comfort, society, solace, moral support, financial support and physical assistance, all to their general damages, in a sum to be proven at time of trial.

SIXTH CAUSE OF ACTION

(Loss of Consortium by Plaintiff Lindsey Marmont, Against All Defendants)

47. Plaintiffs incorporate by reference all allegations in paragraphs 1 through 46 as though set forth in full herein.

48. Plaintiff Lindsey Marmont as the lawful husband of Astrid Elizabeth Marmont has suffered a loss of consortium as a result of the wrongful acts of Defendants and each of them. Said loss of consortium includes but is

1 not limited to the loss of love, companionship, comfort, care, assistance,
2 protection, affection, society, and moral support of his wife decedent
3 Astrid Elizabeth Marmont.
4

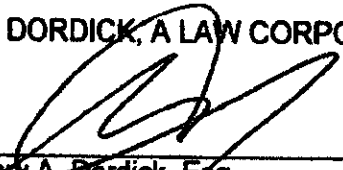
5 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of
6 them, as follows:

- 7 a. All general damages, including but not limited to future medical care and
8 treatment, future loss of earning and earning capacity, according to proof
9 at time of trial;
10 b. All special damages, including all medical care, loss of earnings,
11 treatment, consequential and incidental expenses incurred, and all
12 additional economic losses, according to proof at time of trial;
13 c. For prejudgment interest, as determined and accrued according to
14 applicable statutes;
15 d. Costs of bringing this suit; and
16 e. Such other and further relief as the Court deems just and proper.

17 **DATED:** August 31, 2015

GARY A. DORDICK, A LAW CORPORATION

18
19 By:


20 Gary A. Dordick, Esq.
21 Matthew P. Blair, Esq.
22 Attorneys for Plaintiffs
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