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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SAN FRANCISCO - GENERAL [UNLIMITED] JURISDICTION**

16 MELVIN WILFREDO BONILLA
17 CARRANZA, an individual,

18 Plaintiffs,

19 vs.

20 NUBIA MIRANDA, an individual;
21 OSCAR GUATEMALA, an individual;
22 MARIO OREANA, an individual;
23 BERNZOMATIC CORPORATION, a
24 corporation of unknown form;
25 WESTERN INDUSTRIES, INC., a
26 corporation of unknown form;
27 WORTHINGTON INDUSTRIES,
28 INC., a corporation of unknown form;
29 WORTHINGTON CYLINDERS, an
30 entity of unknown form; and DOES 1
31 through 100, Inclusive,

32 Defendants.

Case No. **03C06-457381**

**COMPLAINT FOR DAMAGES
(PERSONAL INJURIES)**

1. NEGLIGENCE
2. PREMISES LIABILITY
3. STRICT LIABILITY
4. NEGLIGENCE -PRODUCT LIABILITY
5. BREACH OF EXPRESS AND IMPLIED WARRANTY

33 **GENERAL ALLEGATIONS AS TO EACH CAUSE OF ACTION**

34 Plaintiff, MELVIN WILFREDO BONILLA CARRANZA, an individual, alleges, as
35 follows:

- 36 1. At all times herein relevant, Plaintiff, MELVIN WILFREDO BONILLA
37 CARRANZA, is and was a resident of the State of California.

38 COMPLAINT

**ENDORSED
FILED**
San Francisco County Superior Court

OCT 27 2006

CASE MANAGEMENT CONFERENCE SET
GORDON PARK-LI, Clerk

BY: CRISTINA E. BAUTISTA

Deputy Clerk
APR 6 2007 9:10 AM

DEPARTMENT 212

1 2. Plaintiff is informed and believes and based thereon alleges that, at all
2 times herein relevant, defendant BERNZOMATIC CORPORATION, was, and still is, a
3 partnership, corporation, association or other business organization of unknown form
4 that is qualified to do business in the State of California, with its principal place of
5 business in the State of New York.

6 3. Plaintiff is informed and believes and based thereon alleges that, at all
7 times herein relevant, defendant WESTERN INDUSTRIES, INC., was, and still is, a
8 partnership, corporation, association or other business organization of unknown form
9 that is qualified to do business in the State of California, with its principal place of
10 business in the State of Wisconsin.

11 4. Plaintiff is informed and believes and based thereon alleges that, at all
12 times herein relevant, defendant WORTHINGTON INDUSTRIES, INC., was, and still is,
13 a partnership, corporation, association or other business organization of unknown form
14 that is qualified to do business in the State of California, with its principal place of
15 business in the State of Ohio, and is the parent corporation of Defendant,
16 WORTHINGTON CYLINDERS.

17 5. Plaintiff is informed and believes and based thereon alleges that, at all
18 times herein relevant, defendant WORTHINGTON CYLINDERS, was, and still is, a
19 partnership, corporation, association or other business organization of unknown form
20 that is qualified to do business in the State of California, with its principal place of
21 business in the State of Ohio, and is a subsidiary of Defendant, WORTHINGTON
22 INDUSTRIES, INC..

23 6. Plaintiff is informed and believes and based thereon alleges that at all
24 times herein mentioned, defendant NUBIA MIRANDA was and is a residents of the
25 State of California, and, at all times herein relevant, resided at 2900 Jennings Street,
26 San Francisco, California 94124.

27 7. Plaintiff is informed and believes and based thereon alleges that at all
28 times herein mentioned, defendant OSCAR GUATEMALA was and is a residents of the

1 State of California, and, at all times herein relevant, resided at 2900 Jennings Street,
2 San Francisco, California 94124.

3 8. Plaintiff is informed and believes and based thereon alleges that at all
4 times herein mentioned, defendant MARIO OREANA was and is a residents of the
5 State of California, and, at all times herein relevant, resided at 2900 Jennings Street,
6 San Francisco, California 94124.

7 9. The full extent of the facts linking the fictitiously designated defendants
8 with the causes of action stated herein is unknown to plaintiff, and/or the true names
9 and/or capacities, whether individual, plural, corporate, partnership, associate, or
10 otherwise, of defendants Does 1 through 100, are unknown to plaintiff. Therefore
11 plaintiffs sue said defendants by such fictitious names, and when the true names and
12 capacities of said defendants are ascertained, plaintiff will amend this complaint
13 tortuously.

14 10. Plaintiff is informed and believes and based thereon alleges that, at all
15 times herein relevant, each defendant was the agent, servant, employee and/or joint
16 venturer of each and all of the other defendants, was acting within the course and
17 scope of said agency, servitude, employment, and/or joint venture, and ratified the
18 conduct of each other defendant. If any defendant herein is a corporation, partnership,
19 association, or public entity, an officer, director, managing agent, partner or employee,
20 the same acted and/or failed to act as alleged in this complaint, and/or ratified the
21 conduct of other defendants alleged in this complaint.

22 11. Plaintiff is informed and believes and based thereon alleges that each of
23 the defendants designated herein as a DOE is negligently, wantonly, recklessly,
24 tortuously, unlawfully or otherwise responsible in some manner for the events and
25 happenings herein referred to and negligently, wantonly, recklessly, tortuously,
26 unlawfully and/or otherwise legally and proximately caused injury and damages to the
27 plaintiff as herein alleged. Plaintiff will hereafter ask leave of Court to amend this
28 complaint to show the true names and capacities of defendants after the same have

1 been ascertained.

2 12. The events giving rise to this action occurred on or about June 13, 2005,
3 at 2900 Jennings Street, San Francisco, California 94124, which, at all times herein
4 relevant, was owned, possessed, controlled, leased, rented, or otherwise occupied by
5 Defendants, NUBIA MIRANDA, OSCAR GUATEMALA, and MARIO OREANA.

6
7 **FIRST CAUSE OF ACTION BY PLAINTIFF AGAINST DEFENDANTS**

8 **NUBIA MIRANDA, OSCAR GUATEMALA, MARIO OREANA,**

9 **AND DOES 1 through 50, FOR PREMISES LIABILITY**

10 13. Plaintiffs incorporate by reference herein the allegations of paragraphs 1
11 through 12, inclusive, of this Complaint as though fully set forth herein.

12 14. At all times herein mentioned, Plaintiff, MELVIN WILFREDO BONILLA
13 CARRANZA was a guest of Defendants NUBIA MIRANDA, OSCAR GUATEMALA,
14 MARIO OREANA and Does 1 through 50, and was lawfully upon the premises located
15 at 2900 Jennings Street, San Francisco, California 94124.

16 15. Plaintiff is informed and believes and based thereon alleges that at all
17 times herein relevant, defendants, NUBIA MIRANDA, OSCAR GUATEMALA, MARIO
18 OREANA, and Does 1 through 50, were responsible for keeping the premises located
19 at 2900 Jennings Street, San Francisco, California 94124, which they owned,
20 controlled, possessed, leased, rented, maintained, cared for and/or managed, in a safe
21 and hazard-free events, occurrences and/or condition so as to protect from injury and
22 unreasonable risks of harm all foreseeable persons upon the premises, including, but
23 not limited to, persons such as the plaintiff MELVIN WILFREDO BONILLA CARRANZA,
24 from hazards or hazardous and/or dangerous activities upon said premises of said
25 defendants, and each of them. Said defendants, and each of them, are further
26 responsible for the actions of those individuals cohabitating and/or living, or otherwise
27 present upon said premises to provide any upkeep, maintenance, and management of
28 their herein-described premises and its contents in a safe and hazard-free condition so

1 as to protect from injury and unreasonable risks of harm all foreseeable persons upon
2 the premises, including, but not limited to, persons such as the plaintiff, from hazards or
3 hazardous and/or dangerous activities upon said premises of said defendants, and
4 each of them.

5 16. Plaintiff is informed and believes and based thereon alleges, that at all
6 times herein relevant, defendants, and each of them, including Does 1 through 50,
7 inclusive, owned, possessed, controlled, leased, rented, operated, maintained, cleaned,
8 repaired, managed, and supervised the herein described premises and its contents, so
9 that defendants, and each of them, owed a duty of due care to plaintiff, MELVIN
10 WILFREDO BONILLA CARRANZA. This duty included a duty to exercise ordinary and
11 due care in owning, designing, leasing, operating, maintaining, cleaning, repairing,
12 refurbishing, equipping, managing, controlling, possessing and supervising the
13 aforementioned premises **and its contents which included a Bernzomatic 16 ounce**
14 **MAPP Gas Torch (ID#:5D48E)**, including, but not limited to, cleaning, repairing,
15 maintaining, managing, controlling, possessing and supervising the presence and use
16 of said **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)**. The defendants, and
17 each of them, were also responsible to, and were required to, eliminate and/or prevent
18 any hazardous and/or dangerous activities, including those acts and/or activities
19 involving the use of the **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** upon
20 the premises, and to manage the herein-described premises in such a manner so as to
21 prevent and/or eliminate all dangerous and/or hazardous conditions and/or activities on
22 their property, most particularly in the location where Plaintiff, MELVIN WILFREDO
23 BONILLA CARRANZA, was injured. Said defendants, and each of them, including
24 DOES 1 through 50, inclusive, breached their duty of ordinary and due care and failed
25 to properly maintain their herein-described premises and its contents, failed to eliminate
26 a dangerous and/or hazardous activity/occurrence at or upon the herein-described
27 premises, and failed to stop or eliminate said hazardous activity, and failed to warn the
28 plaintiff of said dangerous and hazardous activity and/or that said hazard existed at the

1 time Plaintiff was upon the said premises, all of which proximately caused serious injury
2 and damage to the plaintiff.

3 17. That at all times herein mentioned defendants NUBIA MIRANDA, OSCAR
4 GUATEMALA, MARIO OREANA and DOES 1 through 50, Inclusive, and each of them,
5 had a duty to properly test, maintain, repair, inspect and warn regarding said
6 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** and/or its component parts.

7 18. On or about June 13, 2005, defendants, and each of them, so negligently
8 owned, possessed, maintained, inspected, controlled, and/or managed their herein-
9 described premises, by allowing a hazardous and dangerous act/activity involving said
10 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** to take place upon their said
11 premises and in close proximity to the Plaintiff and for an unreasonable length of time.
12 The hazardous and/or dangerous activity was allowed to occur or take place upon the
13 defendants' property, and in the presence of the Defendants, and each of them. On or
14 about June 13, 2005, plaintiff, MELVIN WILFREDO BONILLA CARRANZA, while
15 lawfully upon the Defendants' herein described premises, and while in their presence,
16 was severely and seriously burned, receiving second and third degree burns to various
17 parts of his body, when the **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)**
18 ruptured while it was being used and/or misused in a reasonably foreseeable manner,
19 causing him to suffer injuries and damages hereinafter complained of.

20 19. At no time prior to plaintiff's herein-described incident did plaintiff know of
21 or appreciate the presence of the hazard upon the Defendants' herein described
22 premises.

23 20. Plaintiff is informed and believes and based thereupon alleges that, at all
24 times herein relevant, defendants NUBIA MIRANDA, OSCAR GUATEMALA, MARIO
25 OREANA and Does 1 through 50, Inclusive, and each of them, knew or, in the exercise
26 of due care, should have known that said premises and/or its contents were in a
27 dangerous, defective and unsafe condition when they negligently, wantonly, carelessly,
28 recklessly, tortuously and unlawfully:

- 1 (a) owned, controlled, used and possessed the premises and the
- 2 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)**
- 3 (b) managed, controlled operated, entrusted and maintained the
- 4 premises and the **Bernzomatic 16 ounce MAPP Gas Torch**
- 5 **(ID#:5D48E);**
- 6 (c) inspected, serviced and repaired the premises and the
- 7 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E);**
- 8 (d) instructed or failed to instruct the users of the premises and the
- 9 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E);**
- 10 (e) supervised or failed to supervise the users of the premises and the
- 11 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E);**
- 12 (f) trained or failed to train the users of the premises and the
- 13 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E);**
- 14 (g) advised or failed to advise the users of the premises and the
- 15 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E);**
- 16 (h) guarded or failed to guard users of the premises and the
- 17 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E);**
- 18 (i) warned or failed to warn the users of the premises and the
- 19 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E);**
- 20 (j) protected or failed to protect the users of the premises and the
- 21 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E); and**
- 22 (k) conducted themselves with reference to the premises and the
- 23 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E) and users**
- 24 **of it so as to cause it to be in a dangerous, defective, hazardous**
- 25 **and unsafe condition.**

26 21. As a direct result of the negligence, carelessness and/or unlawful conduct
27 of defendants NUBIA MIRANDA, OSCAR GUATEMALA, MARIO OREANA, and Does 1
28 through 50, Inclusive, and each of them, the subject **Bernzomatic 16 ounce MAPP**

1 Gas Torch (ID#:5D48E) was allowed to be used and/or misused by the defendants,
2 and each of them, upon the herein described premises, in a reasonably foreseeable
3 manner, and in close proximity to the Plaintiff, so that Plaintiff, while lawfully upon the
4 Defendants' herein described premises, and while in their presence, was severely and
5 seriously burned, receiving second and third degree burns to various parts of his body,
6 when the Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E) ruptured and
7 exploded, causing him to suffer injuries and damages hereinafter complained of.

8 22. That as a proximate result of the said acts/omissions of the Defendants,
9 and each of them, plaintiff was hurt and injured in his health, strength and activity,
10 sustaining injury to his body and shock and injury to his nervous system and person, all
11 of which have caused and continue to cause plaintiff great mental and physical pain
12 and suffering and nervousness, including, but not limited to, shock, fright, fear, anxiety
13 and helplessness, causing severe anguish, depression, anxiety, pain, humiliation and
14 suffering from both physical and mental standpoints. Plaintiff is informed and believes
15 and thereupon alleges that the injuries will result in some permanent disability to the
16 plaintiff, all to plaintiff's general damage in an amount which will be shown according to
17 proof at the time of trial. Since the subject incident occurred at 2900 Jennings Street,
18 San Francisco, California 94124, this Superior Court has proper jurisdiction over the
19 present action.

20 23. As a further proximate result of said negligence of the defendants, and
21 each of them, plaintiff has already incurred medical and surgical expenses greater than
22 \$380,000.00, and will continue to incur medical and surgical related health care
23 expenses, the exact full amount of which is currently unknown but which will be shown
24 according to proof at the time of trial.

25 24. That as a further proximate result of the said acts of the defendants, and
26 each of them, plaintiff was prevented from attending to his usual occupation for a period
27 of time, had to modify his employment and sustained loss of earnings in an amount that
28 will be shown according to proof at time of trial.

1 SECOND CAUSE OF ACTION BY PLAINTIFF AGAINST DEFENDANTS

2 NUBIA MIRANDA, OSCAR GUATEMALA, MARIO OREANA,

3 AND DOES 1 through 50, FOR NEGLIGENCE

4 25. Plaintiffs incorporate by reference herein the allegations of paragraphs 1
5 through 24, inclusive, of this Complaint as though fully set forth herein.

6 26. At all times herein mentioned, Plaintiff, MELVIN WILFREDO BONILLA
7 CARRANZA was a guest of Defendants NUBIA MIRANDA, OSCAR GUATEMALA,
8 MARIO OREANA and Does 1 through 50, and was lawfully upon the premises located
9 at 2900 Jennings Street, San Francisco, California 94124.

10 27. Plaintiff is informed and believes and based thereon alleges, that at all
11 times relevant herein, defendants, and each of them, including Does 1 through 50,
12 inclusive, owned, possessed, controlled, leased, rented, operated, maintained, cleaned,
13 repaired, managed, and supervised the herein described premises and its occupants
14 and contents, so that defendants, and each of them, owed a duty of due care to
15 plaintiff, MELVIN WILFREDO BONILLA CARRANZA who was lawfully present upon
16 said premises. This duty included a duty to exercise ordinary and due care in owning,
17 designing, leasing, operating, maintaining, cleaning, repairing, refurbishing, equipping,
18 managing, controlling, possessing and supervising the aforementioned premises and
19 **its contents**, including, but not limited to, cleaning, repairing, maintaining, managing,
20 controlling, possessing and supervising the presence and use of a **Bernzomatic 16**
21 **ounce MAPP Gas Torch (ID#:5D48E)**. The defendants, and each of them, were also
22 responsible to, and were required to, eliminate and/or prevent any hazardous and/or
23 dangerous acts/activities, including those acts/activities involving the use of the
24 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** upon the premises, and to
25 manage the herein-described premises and its contents in such a manner so as to
26 prevent and/or eliminate all dangerous and/or hazardous conditions and/or activities on
27 their property, most particularly in the location where Plaintiff, MELVIN WILFREDO
28 BONILLA CARRANZA, was injured. Said defendants, and each of them, including

1 DOES 1 through 50, Inclusive, breached their duty of ordinary and due care and failed
2 to properly maintain their herein-described premises and its contents, failed to eliminate
3 a dangerous and/or hazardous activity/occurrence at or upon the herein-described
4 premises, and failed to stop or eliminate said hazardous activity, and failed to warn the
5 plaintiff of said dangerous and hazardous activity and/or that said hazard existed at the
6 time Plaintiff was upon the said premises, all of which proximately caused serious injury
7 and damage to the plaintiff.

8 28. That at all times herein mentioned defendants NUBIA MIRANDA, OSCAR
9 GUATEMALA, MARIO OREANA and DOES 1 through 50, Inclusive, and each of them,
10 had a duty to properly test, maintain, repair, inspect and warn regarding said
11 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** and/or its component parts.

12 29. On or about June 13, 2005, defendants, and each of them, so negligently
13 owned, possessed, maintained, inspected, controlled, and/or managed their herein-
14 described premises, by allowing the use and/or misuse of said **Bernzomatic 16 ounce**
15 **MAPP Gas Torch (ID#:5D48E)** to take place upon their said premises and in very
16 close proximity to the Plaintiff and for an unreasonable length of time. The hazardous
17 and/or dangerous activity was allowed to occur or take place up on the defendants'
18 property, and in the presence of the Defendants, and each of them. On or about June
19 13, 2005, plaintiff, MELVIN WILFREDO BONILLA CARRANZA, while lawfully upon the
20 Defendants' herein described premises, and while in their presence, was severely and
21 seriously burned, receiving second and third degree burns to various parts of his body,
22 when the **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** ruptured and
23 exploded while it was being used and/or misused in a reasonably foreseeable manner,
24 causing him to suffer injuries and damages hereinafter complained of.

25 30. At no time prior to plaintiff's herein-described incident did plaintiff know of
26 or appreciate the presence of the hazard upon the Defendants' herein described
27 premises.

28 31. Plaintiff is informed and believes and based thereupon alleges that, at all

1 times herein relevant, defendants NUBIA MIRANDA, OSCAR GUATEMALA, MARIO
2 OREANA and Does 1 through 50, Inclusive, and each of them, knew or should have
3 known that their acts and/or conduct was dangerous, defective and unsafe when they
4 negligently, wantonly, carelessly, recklessly, tortuously and unlawfully:

- 5 (a) owned, controlled, used and possessed the **Bernzomatic 16**
6 **ounce MAPP Gas Torch (ID#:5D48E)**
- 7 (b) managed, controlled operated, entrusted and maintained the
8 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E);**
- 9 (c) inspected, serviced and repaired the **Bernzomatic 16 ounce**
10 **MAPP Gas Torch (ID#:5D48E);**
- 11 (d) instructed or failed to instruct the users of the **Bernzomatic 16**
12 **ounce MAPP Gas Torch (ID#:5D48E);**
- 13 (e) supervised or failed to supervise the users of the **Bernzomatic 16**
14 **ounce MAPP Gas Torch (ID#:5D48E);**
- 15 (f) trained or failed to train the users of the **Bernzomatic 16 ounce**
16 **MAPP Gas Torch (ID#:5D48E);**
- 17 (g) advised or failed to advise the users of the **Bernzomatic 16 ounce**
18 **MAPP Gas Torch (ID#:5D48E);**
- 19 (h) guarded or failed to guard users of the **Bernzomatic 16 ounce**
20 **MAPP Gas Torch (ID#:5D48E)** and others in close proximity to it;
- 21 (i) warned or failed to warn the users of the **Bernzomatic 16 ounce**
22 **MAPP Gas Torch (ID#:5D48E)** and other in close proximity to it;
- 23 (j) protected or failed to protect the users of the **Bernzomatic 16**
24 **ounce MAPP Gas Torch (ID#:5D48E)** and others in close
25 proximity to it; and,
- 26 (k) conducted themselves with reference to the premises and the
27 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** and users
28 of it so as to cause it to be in a dangerous, defective, hazardous

1 and unsafe condition.

2 32. As a direct result of the negligence, carelessness and/or unlawful conduct
3 of defendants NUBIA MIRANDA, OSCAR GUATEMALA, MARIO OREANA, and Does 1
4 through 50, Inclusive, and each of them, the subject **Bernzomatic 16 ounce MAPP**
5 **Gas Torch (ID#:5D48E)** was allowed to be used and/or misused by the defendants,
6 and each of them, upon the herein described premises, in a dangerous and/or
7 hazardous manner, and in close proximity to the Plaintiff, so that Plaintiff, while lawfully
8 upon the Defendants' herein described premises, and while in their presence, was
9 severely and seriously burned, receiving second and third degree burns to various parts
10 of his body, when the **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** ruptured
11 and exploded, causing him to suffer injuries and damages hereinafter complained of.

12 33. That as a proximate result of the said acts/omissions of the Defendants,
13 and each of them, plaintiff was hurt and injured in his health, strength and activity,
14 sustaining injury to his body and shock and injury to his nervous system and person, all
15 of which have caused and continue to cause plaintiff great mental and physical pain
16 and suffering and nervousness, including, but not limited to, shock, fright, fear, anxiety
17 and helplessness, causing severe anguish, depression, anxiety, pain, humiliation and
18 suffering from both physical and mental standpoints. Plaintiff is informed and believes
19 and thereupon alleges that the injuries will result in some permanent disability to the
20 plaintiff, all to plaintiff's general damage in an amount which will be shown according to
21 proof at the time of trial. Since the subject incident occurred at 2900 Jennings Street,
22 San Francisco, California 94124, this Superior Court has proper jurisdiction over the
23 present action.

24 34. As a further proximate result of said negligence of the defendants, and
25 each of them, plaintiff has already incurred medical and surgical expenses greater than
26 \$380,000.00, and will continue to incur medical and surgical related health care
27 expenses, the exact full amount of which is currently unknown but which will be shown
28 according to proof at the time of trial.

1 35. That as a further proximate result of the said acts of the defendants, and
2 each of them, plaintiff was prevented from attending to his usual occupation for a period
3 of time, had to modify his employment and sustained loss of earnings in an amount that
4 will be shown according to proof at time of trial.

5
6 **THIRD CAUSE OF ACTION BY PLAINTIFF AGAINST DEFENDANTS**

7 **BERNZOMATIC CORPORATION, WESTERN INDUSTRIES, INC.,**

8 **WORTHINGTON INDUSTRIES, INC., WORTHINGTON CYLINDERS**

9 **AND DOES 51 TO 100, INCLUSIVE, FOR STRICT LIABILITY**

10 36. Plaintiffs incorporate by reference herein the allegations of paragraphs 1
11 through 35, inclusive, of this Complaint as though fully set forth herein.

12 37. Plaintiff is informed and believes and based thereon alleges that the
13 aforementioned **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** and/or its
14 component parts was not properly manufactured, designed, assembled, packaged,
15 tested, fabricated, analyzed, inspected, merchandised, marketed, distributed, labeled,
16 advertised, promoted, sold, supplied, maintained, repaired and used with inherent
17 defects both in design and manufacture which made it dangerous, hazardous and
18 unsafe both for its intended use or for reasonably foreseeable misuses.

19 38. Defendants **BERNZOMATIC CORPORATION, WESTERN INDUSTRIES,**
20 **INC., WORTHINGTON INDUSTRIES, INC., WORTHINGTON CYLINDERS;** and **DOES**
21 **51 TO 100,** and each of them, knew that said product and/or its component parts, was
22 to be purchased, and used without inspection for defects by the user and consumer.

23 39. Plaintiff is informed and believes and based thereon alleges that said
24 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** and/or its component parts,
25 was unsafe for its intended use by reasons of defects in its design and or manufacture
26 in that when the same was used as intended or in a reasonably foreseeable manner,
27 said product caused serious injuries and damages to Plaintiff, **MELVIN WILFREDO**
28 **BONILLA CARRANZA,** as herein above set forth. Plaintiff is informed and believes and

1 based thereon alleges that the defect in design and/or manufacture of said
2 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** was a consequence of
3 inappropriate and/or improper material selection, and/or inappropriate and/or improper
4 welding/braising, which resulted in the catastrophic failure at a connection point without
5 appropriate consideration for foreseeable stresses, and was designed and/or
6 manufactured without an appropriate factor of safety.

7 40. On or about June 13, 2005, the subject **Bernzomatic 16 ounce MAPP**
8 **Gas Torch (ID#:5D48E)** was being used and/or misused in a reasonably foreseeable
9 manner, and as a direct and legal result of the defects previously described, said
10 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** ruptured and exploded,
11 thereby causing the injuries and damages to the Plaintiff, MELVIN WILFREDO
12 BONILLA CARRANZA, as previously mentioned.

13 41. That as a proximate result of the said acts/omissions of the Defendants,
14 and each of them, plaintiff was hurt and injured in his health, strength and activity,
15 sustaining injury to his body and shock and injury to his nervous system and person, all
16 of which have caused and continue to cause plaintiff great mental and physical pain
17 and suffering and nervousness, including, but not limited to, shock, fright, fear, anxiety
18 and helplessness, causing severe anguish, depression, anxiety, pain, humiliation and
19 suffering from both physical and mental standpoints. Plaintiff is informed and believes
20 and thereupon alleges that the injuries will result in some permanent disability to the
21 plaintiff, all to plaintiff's general damage in an amount which will be shown according to
22 proof at the time of trial. Since the subject incident occurred at 2900 Jennings Street,
23 San Francisco, California 94124, this Superior Court has proper jurisdiction over the
24 present action.

25 42. As a further proximate result of said negligence of the defendants, and
26 each of them, plaintiff has already incurred medical and surgical expenses greater than
27 \$380,000.00, and will continue to incur medical and surgical related health care
28 expenses, the exact full amount of which is currently unknown but which will be shown

1 according to proof at the time of trial.

2 43. That as a further proximate result of the said acts of the defendants, and
3 each of them, plaintiff was prevented from attending to his usual occupation for a period
4 of time, had to modify his employment and sustained loss of earnings in an amount that
5 will be shown according to proof at time of trial.

6
7 **FOURTH CAUSE OF ACTION BY PLAINTIFF AGAINST DEFENDANTS**
8 **BERNZOMATIC CORPORATION, WESTERN INDUSTRIES, INC.,**
9 **WORTHINGTON INDUSTRIES, INC., WORTHINGTON CYLINDERS**
10 **AND DOES 51 TO 100, INCLUSIVE, FOR NEGLIGENCE - PRODUCT LIABILITY**

11 44. Plaintiffs incorporate by reference herein the allegations of paragraphs 1
12 through 43, inclusive, of this Complaint as though fully set forth herein.

13 45. Plaintiff is informed and believes and based thereon alleges that at all
14 times herein relevant, defendants BERNZOMATIC CORPORATION, WESTERN
15 INDUSTRIES, INC., WORTHINGTON INDUSTRIES, INC., WORTHINGTON
16 CYLINDERS; and DOES 51 TO 100, and each of them, provided the subject
17 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** for use by Defendants NUBIA
18 MIRANDA, OSCAR GUATEMALA, MARIO OREANA and Does 1 through 50, including
19 their invited guests, lessees, and renters, at the subject premises. As a consequence
20 of the herein described negligent acts/omissions of defendants, the subject
21 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** ruptured and exploded,
22 thereby causing the injuries and damages as herein described.

23 46. Plaintiff is informed and believes and based thereon alleges that at all
24 times herein relevant, defendants BERNZOMATIC CORPORATION, WESTERN
25 INDUSTRIES, INC., WORTHINGTON INDUSTRIES, INC., WORTHINGTON
26 CYLINDERS; and DOES 51 TO 100, and each of them, had a duty to properly design,
27 manufacture, sell, test, maintain, repair, inspect and warn of said defects and
28 dangerous conditions upon and regarding said **Bernzomatic 16 ounce MAPP Gas**

1 Torch (ID#:5D48E) and/or its component parts.

2 47. At all times herein mentioned, defendants BERNZOMATIC
3 CORPORATION, WESTERN INDUSTRIES, INC., WORTHINGTON INDUSTRIES,
4 INC., WORTHINGTON CYLINDERS; and DOES 51 TO 100, and each of them, knew,
5 or in the exercise of reasonable care should have known, that said **Bernzomatic 16**
6 **ounce MAPP Gas Torch (ID#:5D48E)** and/or its component parts, was negligently
7 designed, manufactured, sold, tested, inspected, maintained, repaired, contained
8 inadequate warnings and lacked appropriate safety guards and devices, and that it was
9 likely to injure the person who used said product in the absence of such appropriate
10 safety guards/devices. Plaintiff is informed and believes and based thereon alleges
11 that defendants BERNZOMATIC CORPORATION, WESTERN INDUSTRIES, INC.,
12 WORTHINGTON INDUSTRIES, INC., WORTHINGTON CYLINDERS; and DOES 51
13 TO 100, and each of them, knew, or in the exercise of reasonable care should have
14 known, that the defect in design and/or manufacture of said **Bernzomatic 16 ounce**
15 **MAPP Gas Torch (ID#:5D48E)** was a consequence of inappropriate and/or improper
16 material selection, and/or inappropriate and/or improper welding/braising, which
17 resulted in the catastrophic failure at a connection point without appropriate
18 consideration for foreseeable stresses, and was designed and/or manufactured without
19 an appropriate factor of safety.

20 48. Defendants BERNZOMATIC CORPORATION, WESTERN INDUSTRIES,
21 INC., WORTHINGTON INDUSTRIES, INC., WORTHINGTON CYLINDERS; and DOES
22 51 TO 100, and each of them, so negligently designed, tested, inspected, maintained,
23 repaired, and warned regarding the hazards and lack of appropriate safety devices on
24 said **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** so that the same was a
25 defective and dangerous product, unsafe for the respective use and purpose for which
26 it was intended when used by others.

27 49. As a direct result of the negligence, carelessness and/or unlawful conduct
28 of defendants BERNZOMATIC CORPORATION, WESTERN INDUSTRIES, INC.,

1 WORTHINGTON INDUSTRIES, INC., WORTHINGTON CYLINDERS; and DOES 51
2 TO 100, and each of them, the subject Bernzomatic 16 ounce MAPP Gas Torch
3 (ID#:5D48E) ruptured and exploded, thereby causing the injuries and damages as
4 herein described.

5 50. That as a direct result of the negligence, carelessness, and/or unlawful
6 conduct of defendants BERNZOMATIC CORPORATION, WESTERN INDUSTRIES,
7 INC., WORTHINGTON INDUSTRIES, INC., WORTHINGTON CYLINDERS; and DOES
8 51 TO 100, and each of them, Plaintiff was hurt and injured in his health, strength and
9 activity, sustaining injury to his body and shock and injury to his nervous system and
10 person, all of which have caused and continue to cause plaintiff great mental and
11 physical pain and suffering and nervousness, including, but not limited to, shock, fright,
12 fear, anxiety and helplessness, causing severe anguish, depression, anxiety, pain,
13 humiliation and suffering from both physical and mental standpoints. Plaintiff is
14 informed and believes and thereupon alleges that the injuries will result in some
15 permanent disability to the plaintiff, all to plaintiff's general damage in an amount which
16 will be shown according to proof at the time of trial. Since the subject incident occurred
17 at 2900 Jennings Street, San Francisco, California 94124, this Superior Court has
18 proper jurisdiction over the present action.

19 51. As a further proximate result of said negligence of the defendants, and
20 each of them, plaintiff has already incurred medical and surgical expenses greater than
21 \$380,000.00, and will continue to incur medical and surgical related health care
22 expenses, the exact full amount of which is currently unknown but which will be shown
23 according to proof at the time of trial.

24 52. That as a further proximate result of the said acts of the defendants, and
25 each of them, plaintiff was prevented from attending to his usual occupation for a period
26 of time, had to modify his employment and sustained loss of earnings in an amount that
27 will be shown according to proof at time of trial.

28 ///

1 FIFTH CAUSE OF ACTION BY PLAINTIFF AGAINST DEFENDANTS
2 BERNZOMATIC CORPORATION, WESTERN INDUSTRIES, INC., WORTHINGTON
3 INDUSTRIES, INC., WORTHINGTON CYLINDERS AND DOES 51 TO 100,
4 INCLUSIVE, FOR BREACH OF EXPRESS & IMPLIED WARRANTY

5 53. Plaintiffs incorporate by reference herein the allegations of paragraphs 1
6 through 52, inclusive, of this Complaint as though fully set forth herein.

7 54. Plaintiff is informed and believes and based thereon alleges that at all
8 times mentioned herein, on and prior to June 13, 2005, defendants BERNZOMATIC
9 CORPORATION, WESTERN INDUSTRIES, INC., WORTHINGTON INDUSTRIES,
10 INC., WORTHINGTON CYLINDERS; and DOES 51 TO 100, and each of them,
11 expressly and impliedly warranted to the users of the subject **Bernzomatic 16 ounce**
12 **MAPP Gas Torch (ID#:5D48E)** that said **Bernzomatic 16 ounce MAPP Gas Torch**
13 **(ID#:5D48E)** and/or its component parts, was of merchantable quality and safe for the
14 use for which it was intended.

15 55. Plaintiff relied on the skill and judgment of defendants BERNZOMATIC
16 CORPORATION, WESTERN INDUSTRIES, INC., WORTHINGTON INDUSTRIES,
17 INC., WORTHINGTON CYLINDERS; and DOES 51 TO 100, and each of them, and on
18 the express and implied warranties of the defendants, and each of them, for the
19 **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** and/or its component parts,
20 when said product was being used in a foreseeably intended manner, on or about June
21 13, 2005, when the **Bernzomatic 16 ounce MAPP Gas Torch (ID#:5D48E)** ruptured
22 and exploded while it was being used in a reasonably foreseeable manner, thereby
23 causing the injuries and damages as herein described..

24 56. Said product and/or its component parts, was not safe for its intended use,
25 or of merchantable quality as warranted by defendants BERNZOMATIC
26 CORPORATION, WESTERN INDUSTRIES, INC., WORTHINGTON INDUSTRIES,
27 INC., WORTHINGTON CYLINDERS; and DOES 51 TO 100, and each of them, in that
28 upon reasonably foreseeable use said product caused and/or contributed to the injuries

1 of the Plaintiff, as herein set forth. Defendants, and each of them, have been given
2 notice of said breach of warranties with the filing of this action.

3 57. As a proximate result of the breach of said express and implied
4 warranties, by the Defendants, and each of them, plaintiff was hurt and injured in his
5 health, strength and activity, sustaining injury to his body and shock and injury to his
6 nervous system and person, all of which have caused and continue to cause plaintiff
7 great mental and physical pain and suffering and nervousness, including, but not limited
8 to, shock, fright, fear, anxiety and helplessness, causing severe anguish, depression,
9 anxiety, pain, humiliation and suffering from both physical and mental standpoints.
10 Plaintiff is informed and believes and thereupon alleges that the injuries will result in
11 some permanent disability to the plaintiff, all to plaintiff's general damage in an amount
12 which will be shown according to proof at the time of trial. Since the subject incident
13 occurred at 2900 Jennings Street, San Francisco, California 94124, this Superior Court
14 has proper jurisdiction over the present action.

15 58. As a further proximate result of said negligence of the defendants, and
16 each of them, plaintiff has already incurred medical and surgical expenses greater than
17 \$380,000.00, and will continue to incur medical and surgical related health care
18 expenses, the exact full amount of which is currently unknown but which will be shown
19 according to proof at the time of trial.

20 59. That as a further proximate result of the said acts of the defendants, and
21 each of them, plaintiff was prevented from attending to his usual occupation for a period
22 of time, had to modify his employment and sustained loss of earnings in an amount that
23 will be shown according to proof at time of trial.

24 WHEREFORE, plaintiff, MELVIN WILFREDO BONILLA CARRANZA, prays for
25 judgment against Defendants, and each of them, as follows:

- 26 1. General damages in an amount in excess of the minimum jurisdictional
27 limits of this Court;
- 28 2. Special damages, including medical and related expenses, both past and

1 future, according to proof;

2 3. Loss of earnings, past, present and future;

3 4. Costs of suit;

4 5. Pre-Judgement interest; and

5 6. For such other and further relief as this court deems just and proper.

6 7. This is an action for the breach of an obligation not arising from contract,
7 and plaintiff therefore, pursuant to Civil Code Section 3288, seeks interest
8 in the discretion of the jury.

9
10 Dated: October 25, 2006

BRYMAN & APELIAN

11
12 By: 

13 ANDREW C. BRYMAN
Attorneys for Plaintiff

14 Dated: October 25, 2006

LAW OFFICES OF JILBER S. JAMGOCHYAN

15
16
17 By: 

18 JILBER S. JAMGOCHYAN
Attorneys for Plaintiff