

Christopher A. Seeger, Esq.  
Scott Alan George, Esq.  
SEEGER WEISS LLP  
550 Broad Street  
Newark, NJ 07102  
Telephone: (973) 639-9100

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

STEPHEN LANEY, on behalf of himself  
and all others similarly situated,

Plaintiff,

vs.

AMERICAN STANDARD  
COMPANIES, INC.,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, by and through his undersigned attorneys, brings this complaint against Defendant American Standard Companies, Inc. (“American Standard”), on knowledge as to himself and his own acts, and as to all other matters on information and belief, on behalf of himself and the proposed class defined herein, and in support thereof alleges the following:

**NATURE OF THE ACTION**

This is a proposed class action for damages and equitable relief for harm suffered as a result of purchasing defective toilets manufactured and by Defendant, American Standard Companies, Inc.

**PARTIES**

1. Stephen Laney is a resident of Houston, Texas, who purchased American Standard Champion toilets, which toilets manifested the defects alleged herein.

2. Defendant American Standard Companies, Inc. is a Delaware corporation with its corporate headquarters located in Piscataway, New Jersey.

### **JURISDICTION**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act, Pub. L. 109-2, 119 Stat. 14 (2005).

4. The amount in controversy exceeds \$5 million, exclusive of interests and costs.

5. Venue in this judicial district is proper under 28 U.S.C. § 1391(b), because Defendant is located in the State of New Jersey, and because a substantial part of the events giving rise to the claims raised here occurred in this judicial district.

### **FACTUAL ALLEGATIONS**

6. In 2003, American Standard introduced to the market the Champion line of toilets. American Standard hailed the Champion line of toilets as revolutionary.

7. The Champion line of toilets replaces the traditional flapper with a silicone rubber seal. According to Gary Uhl, American Standard's design director, American Standard "completely redesigned the inside of the toilet to make flushing virtually maintenance-free... This is the best thing to happen to toilets since indoor plumbing." (December 9, 2003 press release)

8. American Standard explicitly warrants the Champion for 10 years: "America's Best Flushing System is so advanced, American Standard backs Champion – inside, outside and everything in the tank – with an unheard-of 10-year Worry-Free™ Decade Warranty. This is the most comprehensive warranty in the industry." (April 2, 2004 press release) The warranty is attached as Exhibit A.

9. The warranty states in part, “If inspection of this American Standard plumbing product, inclusive of china and all mechanical components, within ten years after its initial purchaser, confirms that it is defective in materials or workmanship, American Standard will repair or, at its option, exchange the product for a similar model.”

10. Despite the representation that the Champion is a maintenance-free toilet, the Champion is, in fact, defective in several ways. Most significantly, due to a design defect, the flush valve seal between the tank and the bowl fails to create an adequate seal. As a result, the toilet leaks and refills itself constantly, wasting water and increasing customers’ water bills. Customers also report that the flushing mechanism comes apart and must be fixed and/or replaced, but that no fix is available.

11. Frustrated owners have posted their stories on Internet message boards. The following are typical posts from dissatisfied customers:

bought 2 [sic] champion toilets and both have leaked for a long time. We have to turn the water valve on every time you want to flush because the red gasket comes off on almost every flush. Finally called AS today because no where we looked carried replacement parts, they said they would send us new gaskets (but still I'm out plumber bills) said I should receive in 7 to 12 business days. They acted so surprised like I was the first one to call. I can't afford to go buy 2 new toilets after paying for these but wish I could but guess I will still be out for the plumber. This toilet [expletive]!!

\*\*\*\*\*

my wife and I [sic] just built our dream home and decided to install the champion toilet because the commercial show it flushing down golf balls. we [sic] thought, wow, this is the toilet for our master bathroom. needless [sic] to say after a year it has begun to leak at the red gasket. we went to Lowes today to see if they had a replacement part. No they don't. we [sic] may in the near future just replace it with some other toilet. in [sic] the mean time we just keep taking the lid off and trying to get that damn gasket seated properly. HELP!

\*\*\*\*\*

I'm another American Standard Champion owner whose flush valve is malfunctioning. Based on the pictures and descriptions posted here I have the new style gasket. The darned thing started off seemingly working fine. Then we started hearing it refill. The timing varies but sometimes at night when it's keeping me awake it refills as often as every ten minutes. However the refill cycle time varies considerably, apparently as a result how well the seal sets after a flush. I've made sure that it is the source of the leak. And I've tried to identify what the problem is by taking the trip lever and the refill tube off to make sure they weren't keeping the flush valve seal from seating properly. I've removed the flush valve seal, inspected it and turned it over even though it was in perfect condition. I'm trying to locate a new seal although I don't think it will help. Frankly after looking at the flush valve seal configuration I think it's a poor design. I'd bet it is leaking around the flush valve assembly which has very little contact area with the seal. American (non) Standard needs to address this issue and fix the seal problem. I'm getting tired of turning off the water supply after each use.

<http://terrylove.com/forums/showthread.php?t=4833>, retrieved on April 30, 2007.

12. Customers also report that the toilet tank does not install on the bowl securely, causing the toilet to wobble and leak.

13. On information and belief, the tank does not install on the bowl securely due to a defect in the design of the tower and/or O-rings of the toilet.

14. Purchasers have contacted American Standard for customer service, with varying degrees of success. Even when owners are able to obtain replacement parts from American Standard, these parts do not adequately remedy the underlying defect. Moreover, while Defendant may in some cases provides replacement parts, it does not perform the repair itself, nor does it reimburse the cost of installation or repairs, nor does it reimburse customers for excess water use charges.

15. As a result of the constant problems with the original design, in 2007, American Standard made available a redesigned tank and tower, which purported to correct the defective original design. However, it did not make this repair available to prior purchasers through a product recall program.

### **CLASS ACTION ALLEGATIONS**

16. Plaintiffs seek certification of the following Class pursuant to Fed. R. Civ. P. 23(b)(2) and/or (3):

All persons and entities who purchased a “Champion” model toilet manufactured by Defendant American Standard Companies, Inc., or its subsidiaries or affiliates, in the United States. Excluded from this Class are Defendant, its officers, directors, and employees, and any judicial official to whom this matter is assigned.

17. The Class is so numerous that joinder of all members is impracticable.

18. The claims of Plaintiff are typical of the claims of the Class.

19. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests antagonistic to those of the Class, and he has retained counsel experienced in consumer class action litigation.

20. Defendant has acted or refused to act on grounds generally applicable to the Class.

21. Questions of law or fact common to the Class predominate over questions affecting only individual Class members.

22. A class action is superior to all other forms of adjudication.

23. There are multiple questions of law or fact that are common to the class. These include, but are not limited to:

a. Whether the Champion toilet was defective in design or manufacture;

- b. Whether the Champion toilet was of merchantable quality;
- c. Whether Defendant violated express and/or implied warranties;
- d. Whether Defendant committed a breach of contract;
- e. Whether Defendant misrepresented the quality of the Champion toilet;
- f. Whether Defendant omitted material information regarding the Champion toilet;
- g. Whether Defendant violated the New Jersey Consumer Fraud Act, New Jersey Statutes Annotated, Title 56, Chapter 8;
- h. Whether Defendant's breaches of its warranty obligations constitute violations of the New Jersey Consumer Fraud Act and the Magnuson-Moss Warranty Improvement Act, 15 U.S.C. § 2301 *et seq.*

**COUNT I**  
**(Breach of Express Warranty)**

24. Plaintiff repeats and realleges the allegations set forth above as if set forth in full herein.

25. American Standard sold the Champion toilet under a warranty in which it warranted the toilet "inside, outside and everything in the tank – with an unheard-of 10-year Worry-Free™ Decade Warranty."

26. The warranty expressly promises, among other things, that American Standard will repair any defects in materials or workmanship, for ten years after initial purchase.

27. When Plaintiff and other members of the Class have contacted Defendant about problems with the toilet, Defendant has failed to provide parts or service which corrected the problem, as required by the warranty.

28. Plaintiff and the class have suffered substantial economic loss as the direct and proximate result and consequence of defendant's breach.

29. Defendant's failure to repair or replace the toilet has caused the warranty on the toilet to fail of its essential purpose, as a result of which Plaintiff and the Class are entitled to damages flowing from the breach of express warranty.

**COUNT II  
(Breach of Implied Warranty of Merchantability)**

30. Plaintiff repeats and realleges the allegations set forth above as if set forth in full herein.

31. Defendant impliedly warranted that the Champion toilet was of merchantable quality and was fit for the ordinary purposes for which toilets are used.

32. By selling a Champion toilet that is defective, Defendant breached its implied warranty of merchantability.

33. Plaintiff and the Class are entitled to damages flowing from Defendant's breach of its implied warranty of merchantability.

**COUNT III  
(Breach of Contract)**

34. Plaintiff repeats and realleges the allegations set forth above as if set forth in full herein.

35. The transaction between Plaintiff and Defendant, and between other members of the Class and Defendant, involved a legally enforceable contract.

36. Defendant breached its contract with Plaintiff and other members of the Class by selling goods that were defective.

37. Defendant's actions constitute a breach of contract that has resulted in damages suffered by Plaintiff and other members of the Class.

**COUNT IV  
(New Jersey Consumer Fraud Act)**

38. Plaintiff repeats and realleges the allegations set forth above as if set forth in full herein.

39. Defendant is a “person” within the meaning of N.J.S.A. § 56:8-1(d).

40. The Champion toilet is “merchandise” within the meaning of N.J.S.A. § 56:8-1(c).

41. By selling defective Champion toilets and by failing to honor its warranties, Defendant engaged in “unconscionable commercial practices” within the meaning of N.J.S.A. § 56:8-2 and thus violated the New Jersey Consumer Fraud Act.

42. As a result of Defendant’s conduct, Plaintiff and all persons similarly situated suffered an ascertainable loss.

43. Plaintiff is entitled to treble damages and other relief as set forth in N.J.S.A. § 56:8-19.

**FOURTH CLAIM FOR RELIEF  
(Unjust Enrichment)**

44. Plaintiff repeats and realleges the allegations set forth above as if set forth in full herein.

45. As a direct and proximate result of Defendant’s conduct as set forth above, Defendant has been unjustly enriched.

46. Specifically, by failing to honor its warranty obligations and making misrepresentations and omissions of material facts, Defendant has wrongfully received and retained monies to which it is not entitled.

47. Defendant will be unjustly enriched unless ordered to disgorge these profits for the benefit of Plaintiff and the Class.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays:

- a. That this matter be certified as a class action with the Class defined as set forth above, and that Plaintiff be appointed Class Representative and his attorneys appointed Class Counsel;
- b. That judgment be entered against Defendants on all Claims for Relief;
- c. That Plaintiff and the Class be awarded money damages, including treble damages pursuant to N.J.S.A. § 56:8-19;
- d. That Defendant pay Plaintiff's reasonable attorney's fees and costs associated with the litigation of this action;
- e. That Defendant be enjoined from its wrongful conduct; and
- f. That other relief be granted as the Court deems just and proper.

### **JURY TRIAL DEMANDED**

Plaintiff requests a trial by jury as to all triable issues.

Date: August 20, 2007

By: \_\_\_/s/ Scott Alan George\_

Christopher A. Seeger, Esq.  
Scott Alan George, Esq.  
SEEGER WEISS LLP  
550 Broad Street  
Newark, NJ 07102  
Telephone: (973) 639-9100

Steven A. Skalet, Esq.  
Craig L. Briskin, Esq.  
MEHRI & SKALET, PLLC  
1250 Connecticut Ave., NW, Suite 300  
Washington, DC 20036  
Tel: (202) 822-5100  
Fax: (202) 822-4997

***Attorneys for Plaintiff***