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12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
14 AT SEATTLE

15 GREGORY RAAB, as personal representative
16 of the estate of Shirley Rux, deceased; and
17 GREGORY RAAB as personal representative
18 of the estate of Robert Rux, deceased,

19 Plaintiff,

20 vs.

21 THE PROCTER AND GAMBLE COMPANY,
22 an Ohio corporation; THE PROCTER &
23 GAMBLE MANUFACTURING COMPANY,
24 an Ohio Corporation; THE PROCTER &
25 GAMBLE DISTRIBUTING COMPANY, an
Ohio Corporation; THE PROCTER &
GAMBLE DISTRIBUTING LLC, a Delaware
Corporation; and "DOE CORPORATION", an
entity associated with the Procter and Gamble
Company;

Defendants.

Case No.: C-07-1239

AMENDED COMPLAINT FOR
DAMAGES

Demand For Jury Trial

Plaintiff Gregory Raab, as personal representative and administrator of the Estates of Shirley Rux and Robert Rux, by and through his attorneys, brings this Complaint for Damages against The Procter and Gamble Company, The Procter & Gamble Manufacturing Company,

AMENDED COMPLAINT FOR DAMAGES

- 1

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1 The Procter & Gamble Distributing Company, The Procter & Gamble Distributing LLC, and
2 “Doe Corporation,” an entity associated with the Procter and Gamble Company, and he
3 alleges, based upon personal knowledge as to himself and his own acts, and as to all other
4 matters upon information and belief, as follows:

5 **I. NATURE OF ACTION**

6 1.1 This action is brought on behalf of the estates of Robert Rux and Shirley Rux
7 for the benefit of those estates and their statutory beneficiaries, for personal injuries and
8 wrongful death under the causes of action as described below.

9 1.2 Plaintiff Gregory Raab brings this lawsuit as personal representative and
10 administrator of the Estates of Robert Rux and Shirley Rux on behalf of those estates, all
11 beneficiaries of those estates, the statutory beneficiaries of Robert and Shirley Rux under
12 Washington’s wrongful death statute, general survival statute, and special survival statute, and
13 all beneficiaries of all claims that may exist by and through those estates against defendants
14 named above for damages and injuries related to the death of Shirley Rux and the personal
15 injuries of Robert Rux. Such beneficiaries include, but are not limited to, the estate of Robert
16 Rux, Lisa Raab, the legal daughter of Robert and Shirley Rux, and Richard Rux, the legal son
17 of Robert and Shirley Rux.

18 1.3 The claims are for all remedies available under law arising out of or related to
19 the fire that killed Shirley Rux and injured Robert Rux, including but not limited to claims for
20 personal injury, wrongful death, violations of the Washington Products Liability Act,
21 violations of the Washington Consumer Protection Act, breach of express and implied
22 warranties, negligent infliction of emotional distress, and general negligence.

23 1.4 Plaintiffs seek both money damages and injunctive relief, as described below.
24
25

1 **II. PARTIES**

2 **A. Plaintiffs**

3 2.1 At all times relevant herein, plaintiff Gregory Raab was a resident of King
4 County, Washington, and he is currently the personal representative of the estate of Shirley
5 Rux, which is currently open in King County Superior Court.

6 2.2 At all times relevant hereto, plaintiff Gregory Raab was a resident of King
7 County, Washington, and he is currently the personal representative of the estate of Robert
8 Rux, which is currently open in King County Superior Court.

9 2.3 At all times relevant hereto, decedent Shirley Rux (“Mrs. Rux”) was a resident
10 of King County, Washington.

11 2.4 At all times relevant hereto, decedent Robert Rux (“Mr. Rux”) was a resident of
12 King County, Washington.

13 **B. Defendants**

14 2.5 The Procter and Gamble Company is and at all material times was an Ohio
15 corporation doing business in King County, Washington.

16 2.6 The Procter and Gamble Manufacturing Company is and at all material times
17 was an Ohio corporation doing business in King County, Washington.

18 2.7 The Procter and Gamble Distributing Company at all material times was an
19 Ohio corporation doing business in King County, Washington.

20 2.8 The Procter and Gamble Distributing LLC is a Delaware corporation who is a
21 successor in liability to The Procter and Gamble Distributing Company.

22 2.9 “Doe Corporation” is associated with or owned by Procter & Gamble and
23 designed, manufactured, and/or sold Downy brand liquid fabric softener, and at all material
24 times was doing business in King County, Washington.

1 in King County, Washington, and the defendants have transacted or continue to transact
2 business in King County, Washington.

3 3.3 This Court has personal jurisdiction over the out-of-state defendants because
4 they are authorized to do business in this state; they have transacted and continue to transact
5 business in this state; they have intentionally availed themselves of the markets in this state
6 through the marketing, promotion, and sale of their products in this state; and they have
7 sufficient minimum contacts with this state to render the exercise of jurisdiction by this Court
8 permissible under traditional notions of fair play and substantial justice.

9 IV. BACKGROUND FACTS

10 4.1 Plaintiffs incorporate by reference the preceding paragraphs as if they were
11 fully set forth herein.

12 A. The accident.

13 4.2 On or about the morning of September 25, 2004, Shirley Rux had gotten out of
14 bed and was in her kitchen. On that morning, Mrs. Rux had a votive candle burning in her
15 kitchen.

16 4.3 At some point, her clothing came into contact with that candle and instantly
17 ignited. The clothing burned so quickly that she was unable to get it off. She screamed for
18 help, and her screams were heard by her husband, Robert Rux, who was upstairs in their home.

19 4.4 When Mr. Rux heard her screams, he ran to assist. When he arrived at the top
20 of the stairs of their home, he witnessed his wife at the bottom of the stairs fully engulfed in
21 flames. He rushed to her aid and attempted to put the fire out.

22 4.5 By the time the fire was extinguished, Mr. Rux had suffered severe burns on his
23 hands and feet, and Mrs. Rux had suffered third degree burns over 90 percent of her body.¹

24
25 ¹ Mr. Rux subsequently died of causes unrelated to this claim.

1 4.6 When firefighters arrived at the scene, they found Mrs. Rux standing nude on
2 her front porch and severely burned, her clothing having burned away completely. Mrs. Rux
3 walked the length of the driveway to the ambulance which transported her to the hospital. She
4 went into cardiac arrest on the way to the hospital, but was revived. She again went into
5 cardiac arrest shortly after arriving at the hospital. The hospital staff was unable to revive her
6 a second time, and she died.

7 4.7 The King County Medical Examiner determined the cause of Mrs. Rux's death
8 to be thermal burns involving at least 90 percent of her total body surface area.

9 **B. Mrs. Rux's clothing.**

10 4.8 At the time of the fire, Shirley Rux was wearing sleepwear including cotton
11 pajamas and a yellow terry cloth robe.

12 4.9 The clothing worn by Mrs. Rux on the morning of the fire, which ignited
13 instantly as soon as it came into contact with the votive candle, was made of terry cloth and
14 other fluffy fabrics.

15 4.10 The use of liquid fabric softener when laundering terry cloth and other fluffier
16 fabrics greatly increases their flammability.

17 4.11 The use of liquid fabric softener has been found by Consumers Union, the
18 publisher of *Consumer Reports Magazine*, to make terry cloth, fleece, and velour up to seven
19 times more flammable than the same material laundered without liquid fabric softener.

20 4.12 Indeed, after extensive tests regarding the effects of liquid fabric softener on
21 terry cloth, fleece, and velour, Consumer's Union concluded as follows:

22 Federal standards have greatly reduced the risk of burn injuries related to
23 flammable clothing. Today, between 3,000 and 4,000 people are treated for such
24 burns each year—a relatively small number, all things considered. Recalls, too,
25 are declining. ***But in our new tests, we discovered something consumers may not know, namely that clothing can become more flammable when laundered with liquid fabric softener.***

1 Federal standards limit flammability risks by banning the use of highly flammable
2 fabrics. But all fabrics burn at some point when exposed to a flame, some faster
3 than others. Napped fabrics with a fuzzy surface, such as cotton fleece, flannel,
4 and terry cloth, are particularly vulnerable. Sheer and very lightweight textiles,
including woven fabrics such as voile and T-shirt knits, ignite more easily and
burn more rapidly than their heavier-weight counterparts. Fleece and sheer
fabrics are two major fashion trends.

5 We bought a large selection of men's, women's, and children's clothing at stores
6 including Gymboree, Lord & Taylor, Old Navy, Sears, and Structure—fleece
7 sweatshirts, sheer blouses and skirts, pajamas, robes, chenille sweaters, and more.
8 Then we performed flammability tests on some 2,400 fabric swatches—the same
9 kind of tests the government mandates. We prepared some swatches according to
current, albeit arcane, government standards. But we also tested swatches
prepared the way consumers actually launder clothes, with and without fabric
softener. The findings can help you decide what to buy, what to consider
avoiding, and how best to launder your clothes.

10 * * *

11 THE FABRIC-SOFTENER FACTOR

12 Because many consumers use fabric softeners, we also investigated whether these
13 products affected flammability. We used a leading brand of liquid fabric softener
14 and a leading brand of dryer sheets, which are chemically representative of others
15 on the market. Liquid fabric softeners trail dryer sheets in sales, amounting to 46
percent of the market, but sales are steadily increasing, according to industry
estimates.

16 ***Liquid fabric softener added to the rinse water accelerated the speed with which
17 most of the tested fabrics burned. When clothing catches fire, seconds count:
18 The more time you have to stop, drop, and roll, the better.***

19 While all the fabrics burned somewhat faster after laundering with liquid fabric
20 softener, most remained within the legal limits. ***But three fabrics failed: those
21 used in the men's reverse-fleece sweatshirt, a women's all-cotton terry-cloth
22 robe, and a men's all-cotton velour robe.***

23 ***After using liquid fabric softener in the rinse water, we tested swatches from all
24 the garments after 5 launderings and again after 15, 30, and periodically up to
25 60 launderings, because fabric softener can build up. The fleece sweatshirt
fabric that failed our tests without fabric softener did even worse with liquid
fabric softener, burning a 5-inch path in under 2 seconds following 15
launderings. The robes showed similar results. Nappy fabric meets the
standard's highest safety level if it takes 7 seconds or longer to burn a 5-inch path;
for smooth fabrics, it's 312 seconds.***

* * *

1 RECOMMENDATIONS

2 Based on our tests, consumers may want to rethink the way they do laundry. *We*
3 *recommend avoiding liquid fabric softener with all-cotton clothing made of*
fleece, terry cloth, or velour.

4 * * *

5 We applaud the CPSC’s anticipated changes in the federal flammability standard.
6 Testing fabrics that have been machine-washed and-dried is more in line with
7 how consumers do their laundry. *In addition, based on our tests, we think the*
8 *CPSC should consider the effects of fabric softeners on fabric flammability and*
take whatever steps officials find necessary to minimize those effects. Clothing
fires are rare, but when they occur, they can lead to horrible injuries—injuries
that are mostly preventable.

9 **D. Laundering History**

10 4.13 Shirley Rux was a regular user of Downy brand liquid fabric softener when
11 laundering clothes. At no time relevant herein did Mrs. Rux use any other brand of liquid
12 fabric softener on her clothing.

13 4.14 Downy brand liquid fabric softener is manufactured by Procter & Gamble.

14 4.15 Shirley Rux had repeatedly used Downy brand liquid fabric softener on the
15 clothing she was wearing at the time of the fire that caused her death.

16 4.16 As a result, Mrs. Rux’s clothing was much more flammable than it would have
17 and should have been when it came into contact with the votive candle.

18 4.17 Indeed, as discovered by Consumer’s Union, Mrs. Rux’s use of Downy brand
19 liquid fabric softener on her clothing made that clothing much more flammable than it would
20 have been if it had been laundered without liquid fabric softener. At no time, however, did
21 defendants warn Mrs. Rux that Downy brand liquid fabric softener would make her clothing
22 more flammable.

1 4.18 The packaging on the Downy brand liquid fabric softener used by Mrs. Rux in
2 laundrying the clothing at issue did not contain any warnings regarding its tendency to make
3 such clothing more flammable.

4 **E. Failure to warn.**

5 4.19 Procter & Gamble manufactures a number of liquid fabric softeners bearing the
6 “Downy” brand name and markets and sells them through various retailers and wholesalers in
7 King County, Washington.

8 4.20 Shirley Rux had used Downy brand liquid fabric softeners for many years.

9 4.21 Mrs. Rux used Downy brand liquid fabric softener in every load of laundry she
10 did. Mrs. Rux did not use any other brand of liquid fabric softener on her clothes.

11 4.22 Mrs. Rux used Downy brand liquid fabric softener when washing the above-
12 mentioned robe and the rest of the clothing she was wearing at the time of the fire.

13 4.23 Procter & Gamble was aware that liquid fabrics softeners can increase the
14 flammability of terry cloth and fleece. Procter & Gamble was so concerned about this hazard
15 that they issued warnings on some of their products including a recommendation that liquid
16 fabric softener not be used on terry cloth or fleece. However, they did not provide a warning
17 on all of their liquid fabric softeners, including the bottles of Downy brand liquid fabric
18 softener used by Shirley Rux.

19 4.24 Despite its knowledge of the danger of using Downy brand liquid fabric
20 softener on such fabrics, Procter & Gamble often depicts terry cloth, fleece, and other fluffier
21 fabrics in its marketing for Downy brand liquid fabric softener and on Downy’s product labels.

22 **V. CAUSES OF ACTION AGAINST PROCTER & GAMBLE**

23 5.1 Plaintiffs incorporate by reference the preceding paragraphs as if they were fully
24 set forth herein.

1 5.2 Procter & Gamble designed, manufactured, and sold Downy brand liquid fabric
2 softener and continues to do so.

3 5.3 The use of Downy brand liquid fabric softener in laundering fabrics increases
4 the flammability of the fabric.

5 **A. Failure to Warn**

6 5.4 Mrs. Rux was not aware that the use of Downy brand liquid fabric softener in
7 laundering fabrics including terry cloth, fleece, and velour would increase the flammability of
8 those fabrics.

9 5.5 Mrs. Rux used Downy brand liquid fabric softener when laundering the clothing
10 that she was wearing at the time of the fire that caused her death. That clothing was made of
11 terry cloth and other fluffier cotton fabrics.

12 5.6 The laundering of the clothing Mrs. Rux was wearing at the time of the fire with
13 Downy brand liquid fabric softener increased the clothing's flammability.

14 5.7 Because of the increased flammability of the clothing she was wearing, her
15 clothing ignited more easily, ultimately resulting in her death.

16 5.8 Because of the increased flammability of the clothing she was wearing, the fire
17 spread over her clothing too fast for her to extinguish the fire prior to injury, resulting in her
18 death.

19 5.9 Because of the increased flammability of the clothing she was wearing, the fire
20 spread over her clothing too fast for her to disrobe prior to injury resulting in her death.

21 5.10 At the time of the fire, Procter & Gamble knew or should have known that
22 Downy liquid fabric softener when used in laundering fabrics including terry cloth, fleece and
23 other fluffier fabrics increased the flammability of the fabrics.

1 5.11 At the time of the fire, Procter & Gamble knew or should have known that
2 studies by independent research firms, including Consumers Union, had found that liquid
3 fabric softener when used in laundering terry cloth, fleece, and other fluffier fabrics increased
4 the flammability of those fabrics.

5 5.12 At the time of the fire, Procter & Gamble knew or should have known that
6 Consumers Union and other safety advocates were recommending that liquid fabric softener
7 not be used on terry cloth, fleece, or other fluffier fabrics.

8 5.13 Downy brand liquid fabric softener is not and was not reasonably safe because
9 adequate warnings or instructions were not provided with the product, including, but not
10 limited to warnings regarding its effect on the flammability of terry cloth, fleece, velour, and
11 other fluffier fabrics, or warnings that it should not be used on those fabrics.

12 5.14 The warnings and instructions provided with Downy brand liquid fabric softener
13 were not sufficient because adequate warnings or instructions were not provided after the
14 product was manufactured when the manufacturer learned or should have learned about the
15 product's effect on the flammability of terry cloth, fleece, and other fluffier fabrics and that it
16 should not be used on those fabrics.

17 5.15 The warnings and instructions provided with Downy brand liquid fabric softener
18 were not sufficient because any warnings contained on the packaging of Downy brand liquid
19 fabric softener were not in such form that they could be reasonably expected to catch the
20 attention of the user in the circumstances of its use and be of such a nature as to be reasonably
21 comprehensible to the average user.

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24 ////

1 **B. Unsafe Design.**

2 5.16 Downy brand liquid fabric softener is not and was not reasonably safe as
3 designed because, among other things, it increases the flammability of fabrics, including fleece,
4 terry cloth and other fluffier fabrics.

5 5.17 A safer design for fabric softener was known and available to the defendant at
6 the time of the fire.

7 5.18 Procter & Gamble produces dryer sheets under the Bounce and Downy brand
8 names.

9 5.19 Bounce and Downy brand dryer sheets are highly effective fabric softeners.

10 5.20 By fluffing, freshening, and softening fabrics, Bounce and Downy brand dryer
11 sheets perform the same function as Downy brand liquid fabric softener by providing good
12 results in fluffing, freshening, and softening laundry.

13 5.21 Bounce and Downy brand dryer sheets do not increase the flammability of terry
14 cloth, velour, fleece, or other fluffier fabrics.

15 **C. Breach of Express Warranty**

16 5.22 Procter & Gamble has included in its product marketing, advertising, or labeling
17 for Downy brand liquid fabric softener the phrase “Used as directed, Downy is safe for all
18 washable fabrics.”

19 5.23 The phrase “Used as directed, Downy is safe for all washable fabrics” is a
20 warranty regarding the safety of Downy liquid fabric softener.

21 5.24 Mrs. Rux relied on that warranty in her decision to purchase and use Downy
22 brand liquid fabric softener.

1 5.25 Downy brand liquid fabric softener was not and is not reasonably safe because it
2 does not conform to the express warranty of Procter & Gamble that “Downy is safe for all
3 washable fabrics.”

4 5.26 Downy brand liquid fabric softener was not and is not reasonably safe because it
5 does not conform to the express warranty of Procter & Gamble that Downy brand liquid fabric
6 softener is safe to use on terry cloth, fleece, and other fluffier fabrics.

7 5.27 Mrs. Rux used Downy brand liquid fabric softener as directed.

8 5.28 Despite using it as directed, Downy brand liquid fabric softener made her
9 clothing more flammable, thereby breaching the express warranty that it was safe for all
10 fabrics.

11 5.29 This breach of warranty was a proximate cause of the fire that killed Shirley
12 Rux and injured Robert Rux.

13 **D. Breach of Implied Warranty**

14 5.30 Procter & Gamble has included fleece, terry cloth, velour, and other fluffier
15 fabrics in its advertising and marketing of Downy brand liquid fabric softener, including its
16 product labels.

17 5.31 The use of various images containing terry cloth, fleece, velour, and other
18 fluffier fabrics in its product marketing, advertising, or labeling would lead a reasonable
19 consumer to believe that the product is safe to use on those fabrics.

20 5.32 Procter & Gamble impliedly warranted that Downy brand liquid fabric softener
21 was safe to use on terry cloth, fleece, velour, and other fluffier fabrics.

22 5.33 Mrs. Rux relied on that warranty in her decision to purchase and use Downy
23 brand liquid fabric softener.

1 5.34 Downy brand liquid fabric softener was not and is not reasonably safe because it
2 does not conform to the implied warranty of Procter & Gamble that it is safe to use on terry
3 cloth, fleece, and other fluffier fabrics.

4 5.35 This breach of warranty was a proximate cause of the fire that killed Shirley
5 Rux and injured Robert Rux.

6 **E. Violation of Washington’s Consumer Protection Act.**

7 5.36 The decedents are persons within the meaning and coverage of the Washington
8 Consumer Protection Act, RCW Chapter 19.86 (“CPA”).

9 5.37 The Washington Consumer Protection Act provides, “Unfair methods of
10 competition and unfair or deceptive acts or practices in the conduct of commerce are hereby
11 declared unlawful.”

12 5.38 Based on the material facts alleged above, Procter & Gamble deceived Shirley
13 Rux and other citizens of Washington within the meaning of the CPA. Procter & Gamble’s
14 unfair and deceptive conduct occurred in the conduct of trade or commerce.

15 5.39 By using various images containing terry cloth, fleece, velour and other fluffier
16 fabrics in its product marketing, advertising, or labeling for Downy brand liquid fabric softener
17 and by expressly and impliedly warranting that Downy brand liquid fabric softener was safe for
18 use on all washable fabrics, Procter & Gamble intended that Shirley Rux and other citizens of
19 Washington rely on the safety of Downy brand liquid fabric softener on those fabrics, and
20 Shirley Rux and other citizens of Washington did rely on the safety of the product on those
21 fabrics.

22 5.40 By unlawfully failing to disclose and/or by concealing the true nature of Downy
23 brand liquid fabric softener and its effect on terry cloth, fleece, velour, and other fluffier
24 fabrics, Procter & Gamble intended that Shirley Rux and other citizens of Washington rely on

1 the safety of Downy brand liquid fabric softener on those fabrics and Shirley Rux other citizens
2 of Washington did rely on the safety of the product on those fabrics.

3 5.41 Procter & Gamble's use of fleece, terry cloth, velour and other fluffier fabrics in
4 its advertising and marketing of Downy brand liquid fabric softener, including its product
5 labels, is deceptive or misleading because Downy brand liquid fabric softener is not safe for
6 use on those fabrics.

7 5.42 Procter & Gamble's warranty that Downy brand liquid fabric softener is safe to
8 use on all washable fabrics is deceptive or misleading because Downy brand liquid fabric
9 softener is not safe for use on some washable fabrics, including fleece, terry cloth, velour, and
10 other fluffier fabrics.

11 5.43 Procter & Gamble's deceptive acts and practices impact the public interest and
12 have the capacity to deceive a substantial portion of the public. The acts are committed in the
13 course of Procter & Gamble's business; the acts are part of a pattern or generalized course of
14 business; the acts were committed repeatedly prior to the acts involving Shirley Rux, there is a
15 real and substantial potential for repetition of Procter & Gamble's conduct after the acts
16 involving Shirley Rux, and many consumers are affected or likely to be affected.

17 5.44 Defendants' unfair and deceptive acts have directly, foreseeably, and
18 proximately caused damages to plaintiff and other citizens of Washington making such
19 deceptive acts and practices illegal and requiring injunctive relief.

20 5.45 Each individual offending advertisement constitutes a separate and distinct
21 violation of the Washington Consumer Protection Act.

22 5.46 Each misleading label or marketing image constitutes a separate and distinct
23 violation of the Washington Consumer Protection Act.

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