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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ORANGE

13 JOSEPH CAVINS, an individual;
14 PATRICIA CAVINS, an individual,

15 Plaintiffs,

16 v.

17 THE VAPOR LOFT, LLC, a California
18 limited liability company; VAPEITUP,
19 LLC, a California limited liability
20 company; LAN & MIKE
21 INTERNATIONAL TRADING INC.
22 DBA VAPOR DNA, a California
23 corporation; VAPING AMERICAN
24 MADE PRODUCTS, LLC; and DOES 1-
25 100 inclusive,

26 Defendants.

Case No.: 30-2016-00853453-CU-PL-CJC
Judge David Chaffee

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

1. Strict Products Liability
2. Negligent Products Liability
3. Loss of Consortium

I.

INTRODUCTION

1
2
3 1. Plaintiff Joseph Cavins (“Joseph”) purchased an electronic cigarette and
4 related parts. The Defendants are the manufacturers, wholesalers, distributors, and
5 retailers of the electronic cigarette and related parts. On April 15, 2016, as Joseph was
6 sitting at his computer desk with the electronic cigarette next to him, it suddenly
7 exploded, striking Joseph in the left eye, continuing past his head, hitting the ceiling,
8 ricocheting off the wall and landing on top of the computer station where it started a
9 fire. The electronic cigarette exploded with such force it left Joseph with a smashed
10 orbital & sinus bones, and left several pieces of shrapnel inside the eyeball itself. Joseph
11 lost his left eyeball as a result.

12 2. Electronic cigarettes, or e-cigarettes¹ as they are more commonly known,
13 claim to provide a tobacco free alternative to the traditional cigarette. E-cigarettes offer
14 doses of nicotine with a vaporized solution, providing a physical sensation similar to
15 tobacco smoke, supposedly without the harmful effects of actual tobacco or smoke. E-
16 cigarettes also offer non-nicotine flavors, coming in enticing varieties such as gummy
17 bear, vanilla, and blueberry pancake. Using e-cigarettes is known as “vaping”, and
18 users are known as “vapers”. In addition to the e-cigarette used by Joseph, Defendants
19 manufacture, design, and sell a variety of other e-cigarette products sold across
20 California.

21 3. All e-cigarettes work basically the same way. They consist of three parts: a
22 tank or cartridge, a battery, which works to heat the liquid nicotine or other chemicals
23 (often called “juices” or “e-liquids”) contained in the tank or cartridge, and an atomizer,
24 which converts the contents of the liquid filled cartridge to vapor that the user then
25 inhales. Some batteries are rechargeable, some are disposable. The batteries are cylinder
26 lithium-ion batteries. Some e-cigarettes are closed systems, in which prefilled cartridges

27
28 ¹ These products are also referred to as electronic nicotine delivery systems (ENDS), personal vaporizers (PVs), electronic smoking devices, vapor products, and alternative nicotine delivery devices, among others.

1 are used. There are open systems where a user can manually refill a cartridge. E-
2 cigarettes come in pen form (modeled after a traditional cigarette) and mods—devices,
3 either mechanical or electrical, that are heavier and carry a much higher capacity for
4 juice and vapor. There are many different types of mods, some of which require the use
5 of coils—coils that require installation before or after purchase.

6
7 **II.**

8 **THE PARTIES**

9 4. Plaintiff Joseph Cavins is and at all relevant times was, a resident of the
10 County of Orange, State of California.

11 5. Plaintiff Patricia Cavins ("Pat") is and at all relevant times was, a resident
12 of the County of Orange, State of California. Pat is Joseph's wife.

13 6. Plaintiffs allege that defendant, The Vapor Loft, LLC ("Vapor Loft"), is and
14 at all relevant times mentioned herein was, a California limited liability corporation
15 licensed to conduct business or conducting business in California, through its agents
16 and/or employees, and is the alter ego and/or joint venturer of other corporations,
17 entities and business interests, each of which is conducting business in the County of
18 Orange, the State of California. Defendant Vapor Loft sells e-cigarette products,
19 including, but not limited to, the battery and atomizer purchased by Joseph that are the
20 subject of this lawsuit.

21 7. Plaintiffs allege that defendant, VAPEITUP, LLC ("Vape It Up"), is and at
22 all relevant times mentioned herein was, a California limited liability corporation
23 licensed to conduct business or conducting business in California, through its agents
24 and/or employees, and is the alter ego and/or joint venturer of other corporations,
25 entities and business interests, each of which is conducting business in the County of
26 Orange, the State of California. Defendant Vape It Up sells e-cigarette products,
27 including, but not limited to, the charger purchased by Joseph that is the subject of this
28 lawsuit.

1 8. Plaintiffs allege that defendant Lan & Mike International Trading Inc dba
2 Vapor DNA ("Vapor DNA"), is and at all relevant times mentioned herein was, a
3 California limited liability corporation licensed to conduct business or conducting
4 business in California, through its agents and/or employees, and is the alter ego and/or
5 joint venturer of other corporations, entities and business interests, each of which is
6 conducting business in the County of Los Angeles, the State of California. Defendant
7 Vapor DNA sells e-cigarette products, including, but not limited to, the mod purchased
8 by Joseph that is the subject of this lawsuit.

9 9. Plaintiffs allege that Defendant, Vaping American Made Products, LLC
10 ("Vaping American Made Products") is a California limited liability company licensed
11 to conduct business or conducting business in California, through its agents and/or
12 employees, and is the alter ego and/or joint venturer of other corporations, entities and
13 business interests, each of which is conducting business in the State of California.
14 Plaintiff alleges that American Made Products, LLC is the distributor and/or
15 manufacturer of one of the products at issue in this lawsuit.

16 10. The true names and capacities, whether individual, corporate, associate or
17 otherwise, of Defendants Does 1-100, inclusive, and each of them, are unknown to
18 Plaintiff, who thereby sues these Defendants by such fictitious names, and will ask
19 leave of this court to amend this complaint when the true names are ascertained.

20 11. Plaintiffs are informed and believe and on that basis allege that each
21 Defendant named herein as a Doe is responsible in some manner for the events and
22 happenings referred to herein which proximately caused injury to Plaintiff as
23 hereinafter alleged.

24 12. Plaintiffs are informed and believe and on that basis allege that at all times
25 mentioned herein the Defendants, and each of them, were the agents, servants,
26 employees, and joint venturers of each other, and were as such acting within the course,
27 scope and authority of said agency and employment and or joint venture, and that each
28 and every Defendant, when acting as a principal, was negligent and reckless in the

1 selection, hiring, entrustment and supervision of each and every other Defendant as an
2 agent, servant, employee, or joint venturer.

3
4 III.

5 FACTUAL BACKGROUND

6 A. Background of e-cigarettes

7 13. While e-cigarettes were first patented in 2003, they entered the market
8 solely in China in 2004 and did not first appear in the United States of America (“United
9 States”) until 2007. Since their introduction into the United States, sales have risen
10 dramatically from approximately \$20 million in 2008 to \$2.5 billion in 2014. Some media
11 sources report that industry experts predict that the e-cigarette industry will become an
12 \$85 billion industry within a decade and surpass the tobacco industry. (*See* Clarke, Toni,
13 *Reports of e-cigarette injury jump amid rising popularity*, United States data show,
14 Reuters.com, April 17, 2014.)

15 14. E-cigarettes carry mass appeal to consumers, as they are heavily
16 advertised and offer a cheaper alternative to smoking. There are currently hundreds of
17 brands of e-cigarettes on the market, and since e-cigarette marketing is completely
18 unfettered and unregulated, e-cigarette products reach minors and people who would
19 never smoke a traditional cigarette, but who are nevertheless intrigued by e-cigarettes.
20 The variety of flavors offered, including root beer float, bubble gum, and cotton candy,
21 further target and spark the intrigue of minors. (California Department of Public
22 Health, California Tobacco Control Program, *State Health Officer’s Report on E-Cigarettes:
23 A Community Health Threat*, Sacramento, CA 2015, at 3.) Finally, e-cigarette
24 advertisements are unrestricted, appearing on television and radio, where tobacco
25 advertisements have been banned for more than 40 years. (California Department of
26 Public Health, California Tobacco Control Program, *State Health Officer’s Report on E-
27 Cigarettes: A Community Health Threat*, Sacramento, CA 2015, at 7.) E-cigarettes simply
28 have the ability to reach a broader consumer base than traditional cigarettes.

1 15. E-cigarettes differ from traditional cigarettes in a critical way: the e-
2 cigarette is battery-operated and uses a heating element to produce vapor, and the
3 traditional cigarette has no electronic component. While both products may produce a
4 similar physical sensation, e-cigarettes pose an additional danger—the battery-powered
5 heating element can cause, and has caused, explosions, fires, and serious injury.

6 16. Lithium-ion batteries, commonly used in all types of e-cigarettes, have an
7 inherent risk of fire and explosion.² Combining lithium-ion batteries with a heating
8 element, as done in e-cigarettes, poses serious dangers and risks. According to a
9 medical case report, a man in New Jersey had an e-cigarette explode in his pocket,
10 ignite his pants on fire, and cause him severe burns. The case report further highlighted
11 the inherent danger of lithium-ion batteries and pointed to research that recognized that
12 the “poor design, use of low-quality materials, manufacturing flaws and defects, and
13 improper use and handling can all contribute to a condition known as ‘thermal
14 runaway’, whereby the internal battery temperature can increase to the point of causing
15 a battery fire or explosion.” (*Id.* citing Brown CM, Cheng JM. *Electronic Cigarettes:
16 Product Characterization and Design Considerations*, Tobacco Control, 2014.) The medical
17 case report noted that as the industry grows, “the potential for serious burn injuries
18 related to device malfunction is of concern.” (*Spontaneous Electronic Cigarette Explosion:
19 A Case Report*, American Journal of Medical Case Reports, 2015, Vol. 3, No. 4, 93-94, 94.)

20 17. There has been much debate over the supposed “safety” of e-cigarettes.
21 Many tout e-cigarettes as the safer alternative to traditional cigarettes because e-
22 cigarettes (1) do not contain tobacco; (2) do not create smoke for a person to inhale; and
23 (3) do not pose as high of a risk for second-hand smoke inhalation. This supposed
24 “safer” alternative to traditional cigarettes is still under debate because e-juice contains
25 nicotine—a neurotoxin which is extremely addictive—and other chemicals which may
26 have long-term effects that are still unknown since e-cigarette technology is relatively

27
28 ² Lithium-ion batteries have been referred to as the “mini bomb in your pocket” due to its known ability to spontaneously ignite (*See* Ben D., Ma B., Liu L, et al, *Unusual Burns with Combined Injuries Caused by Mobile Phone Explosion: Watch Out for the “Mini Bomb!”*, J Burn Care Res 2009 Nov-Dec; 30(6): 1048.)

1 new. Additionally, the vapor that users inhale has been found to contain toxic chemicals
2 such as formaldehyde, lead, nickel, and acetaldehyde, all of which are on California's
3 Proposition 65 list of chemicals known to cause cancer and birth defects. (California
4 Department of Public Health, California Tobacco Control Program, *State Health Officer's*
5 *Report on E-Cigarettes: A Community Health Threat*, Sacramento, CA 2015, at 3.) Finally,
6 when non-vapers inhale second-hand vapor, they also report increased coughing and
7 wheezing.

8 18. The e-cigarette industry carries mass appeal to manufacturers,
9 distributors, and sellers because the cost of production is low and the return on profits
10 is high. Manufacturers, distributors, and sellers also profit from these products because
11 of the lack of regulatory oversight at the federal, state, and local level. (See Tobacco
12 Control Legal Consortium, *Regulating Electronic Cigarettes and Similar Devices*, Updated
13 August 2015; California Department of Public Health, California Tobacco Control
14 Program, *State Health Officer's Report on E-Cigarettes: A Community Health Threat*,
15 Sacramento, CA 2015.) Historically, manufacturers, distributors, and sellers have not
16 required to spend *any* money on testing or to otherwise ensure the safety of the
17 products. This unregulated environment creates an industry that is full of lucrative
18 business opportunities. And injured consumers.

19 19. China continues to be a major source of e-cigarettes. It was estimated that
20 more than 300 million e-cigarettes would be shipped from China to the United States
21 and Europe in 2015. (Barboza, David, *China's E-Cigarette Boom Lacks Oversight for Safety*,
22 *New York Times*, Dec. 13, 2014.) Most United States' distributors choose to import e-
23 cigarettes from China because of the low cost and non-existent quality control.

24 20. Only a few federal regulations have been proposed regarding the use of e-
25 cigarettes. Still, none of these regulations deal with the safety of the actual device itself.
26 *Currently, e-cigarettes are not subject to any manufacturing or quality control standards at the*
27 *federal, state, or local level.* Many of these products are shipped from China and placed
28

1 directly into the stream of commerce without any knowledge as to the composition,
2 design, or safety of the products.

3 21. E-cigarettes are more dangerous than other products that contain lithium
4 batteries because the e-cigarette is most often a cylindrical device. Thus, when the
5 device malfunctions or fails, the battery can be propelled like a bullet or rocket. (United
6 States Fire Administration, *Electronic Cigarette Fires and Explosions*, October 2014, at 5.)
7 There are different methods to protect against these batteries, but because of a lack of
8 regulation, the protections are left up to the e-cigarette manufacturers. (*Id.* at 6.)

9 22. E-cigarettes have caused fires and explosions which have injured many
10 consumers. Federal, state, and local efforts have been primarily aimed at protecting
11 public health via regulations on the sale and use of e-cigarettes, but unfortunately, not
12 on the safety hazards posed by the products themselves.

13 23. There is mounting evidence that the explosions and fires caused by e-
14 cigarettes are increasing in occurrence. The United States Department of Transportation
15 (“DOT”) issued a rule banning e-cigarettes from checked baggage on airplanes because
16 they have been known to catch fire. The DOT has also banned e-cigarette use during
17 flights.

18 24. The explosion of Joseph’s e-cigarette product is not a novel occurrence; a
19 man from Florida suffered internal and external burns from an e-cigarette explosion,
20 and was forced into a medically induced coma to recover. Responding firefighters
21 indicated that the explosion was likely caused by the lithium battery. A Southern
22 California woman was set on fire after an e-cigarette exploded while she was a
23 passenger in a car. An Atlanta woman’s couch and rug caught on fire after an e-
24 cigarette exploded, almost burning down her house.

25 25. Complaints of injury caused by e-cigarettes continue to rise as the devices
26 become more popular. These products continue to be placed into the stream of
27 commerce despite being untested and unsafe. E-cigarettes will continue to cause these
28 types of injuries unless and until those placing them in the stream of commerce are held

1 accountable. Even industry proponents, such as the Electronic Cigarette Industry
2 Group, acknowledge that no universal method of testing e-cigarettes has been adopted.

3
4 **B. The explosion that changed Joseph's life**

5 26. Joseph works as a therapist both in private practice and for the Santa Ana
6 Unified School District. Through his role with the Santa Ana Unified School District,
7 Joseph counsels and works with kids with special needs. Joseph enjoys his work and
8 finds it incredibly rewarding.

9 27. Joseph also has a passion for horses and loves to trail ride in his free time.
10 He is an avid music fan and enjoys listening to music and playing his guitar. He is also
11 an avid hockey fan, and enjoys watching and playing hockey, as well as off-roading and
12 target shooting with friends. He is a former chef and still enjoys cooking and grilling
13 meals for his friends and family, and is known for inviting others who do not have
14 families to spend holidays with his family. Joseph also loves to visit his daughter, son-
15 in-law, and three grandchildren (ages 14, 12, and 10) in Tennessee as often as possible.
16 Joseph has a true passion caring for others, as evidenced by his career choices and his
17 tendency to go out of his way to ensure his friends and family are safe and living their
18 lives to the fullest.

19 28. Pat and Joseph have been happily married for 32 years. Pat is the costume
20 manager for the renowned theatre at Chapman University.

21 29. In 2014, Joseph turned to e-cigarettes as a way to stop using chewing
22 tobacco. He thought, like many others, it might be safer and healthier. In or around fall
23 2014, Joseph purchased the Nitecore Intellicharger i2 ("Nitecore Charger") from
24 Defendant Vape It Up, and the LE Black Nickel Rig Mod by Vaping American Made
25 Products ("VAMP Mod") from Defendant Vapor DNA. In or around May 2015, Joseph
26 purchased the Aspire Atlantis tank ("Aspire Tank") from Defendant Vapor Loft.
27 Sometime in 2015, Joseph purchased the red 18650 3.7V 2500mAh battery ("Red 18650
28 Battery") from Defendant Vapor Loft. The Nitecore Charger, VAMP Mod, Aspire Tank,

1 and Red 18650 Battery will be referred to collectively as the "E-Cig Products", as they
2 are all reasonably foreseeably used in conjunction with one another. The E-Cig Products
3 were manufactured, wholesaled, distributed, and retailed by Defendants and Does 1-
4 100.

5 30. On April 15, 2016, Joseph was using the E-Cig Products in a reasonably
6 foreseeable way. Around two to three minutes later, as Joseph was sitting at his
7 computer around 10:30 pm, the E-Cig Products suddenly exploded, striking Joseph in
8 the left eye, continuing past his head, hitting the ceiling, ricocheting off the wall and
9 landing on top of the computer station where it started a fire. The computer table,
10 keyboard, speaker, speaker wires, and neighboring papers were burned.

11 31. Joseph held his hands to his head and screamed for his wife to help. The
12 smoke detectors had gone off. Pat quickly woke up and put out the fire with a wet
13 towel while Joseph made his way to the bathroom to look at his face. Pat drove Joseph
14 to St. Joseph's hospital in Orange.

15 32. Shortly after their arrival at St. Joseph's, the Emergency Room staff
16 determined they did not have the skill set required to attend to Joseph's serious injuries,
17 and they sent him via ambulance over to University of California, Irvine Medical Center
18 ("UCI Medical Center") in Orange.

19 33. At UCI Medical Center, a team of doctors ran a series of tests and
20 determined the first objective was to tend to Joseph's eyeball. They wanted to perform
21 surgery immediately, but Joseph had last eaten around 10:00 p.m., so they had to wait.
22 Eventually, doctors operated on Joseph for seven hours. During the surgery, doctors
23 removed debris from Joseph's left eyeball and stitched it up in multiple places, trying to
24 close all wounds.

25 34. It was not until after the initial eye surgery that doctors stitched Joseph's
26 face. Joseph stayed the night in the hospital in incredible pain. Attached as Exhibit A are
27 true and correct copies of Joseph's injuries.

28

1 35. The next day, April 16, during Joseph's discharge exam with the surgeon
2 (around 2:00 PM), he was unable to see any light out of his left eye. The surgeon told
3 Joseph and his family that the amount of damage to the left eye ball was immense.
4 There were several cuts going through the iris and cornea, and some going to the very
5 back of the orbit. The doctor was 99% positive that she was able to close up all the
6 openings in the eye ball, but with Joseph not being able to see any light, there was a one
7 in 10,000 chance that Joseph's body could have a sympathetic reaction and attack the
8 right eye. The preventative measure for this, according to the doctor, was to remove the
9 left eye within two weeks of injury. With the removal of the eye the chances go down to
10 one in 1,000,000 for the good eye to be attacked. Her recommendation was to wait a few
11 days until the follow up appointment to see if Joseph was able to regain any vision. She
12 said during that appointment Joseph would also schedule the facial reconstruction with
13 an oculoplastic surgeon, so both procedures could be done at once.

14 36. Two days later, during the follow up appointment with the oculoplastic
15 surgeon, Joseph was still unable to see any light. The oculoplastic surgeon also
16 recommended removal of the left eyeball. Joseph was scheduled for surgery on April
17 22, but experienced issues with insurance approvals.

18 37. Joseph finally had his second surgery to remove the left eyeball on April
19 28. Dr. Tayani, his surgeon, said there was extensive damage to the orbit and scar tissue,
20 and he was able to salvage four of six major connections for eye movement. Dr. Tayani
21 said that the shrapnel actually went through the one inch wound on his nose and
22 through the sinus cavity to shatter the orb. Along with removal of the eyeball, Dr.
23 Tayani attached a plate with screws.

24 38. After the second surgery, Joseph experienced even more pain than after
25 the initial injury.

26 39. Joseph will have the stitches removed from his eye in a few weeks, and
27 only after further healing will Joseph be fit for a prosthetic eye.

28

1 40. Joseph also will also require treatment to fix his jaw and bite, as a dental
2 exam revealed his jaw is chipped. Joseph must return to his primary care provider in
3 order to referred to another specialist. He will likely need sinus reconstruction surgery
4 as well.

5 41. Pat was also forced to miss work as a result of caring for Joseph. She has
6 been under an enormous amount of emotional distress, and experiences recurring
7 nightmares after what happened to her husband. She has also lost the companionship of
8 her husband as she knew him.

9 42. A close-knit family, Joseph and Pat's daughter and Joseph's sisters also
10 missed work so they could help care for Joseph.

11 43. The explosion and Joseph's resulting injuries were caused by the defective
12 E-Cig Products, including the Nitecore Charger, VAMP Mod, Aspire Tank, and Red
13 18650 Battery, as well as the Defendants' negligence.

14 44. Joseph has experienced, and continues to experience, an immense amount
15 of pain. He is physically and emotionally scarred from the explosion, and has
16 devastatingly lost his left eye.

17
18 **FIRST CAUSE OF ACTION**

19 **(Strict Products Liability)**

20 PLAINTIFF JOSEPH CAVINS FOR A FIRST CAUSE OF ACTION AGAINST
21 DEFENDANT THE VAPOR LOFT, LLC; VAPEITUP, LLC; LAN & MIKE
22 INTERNATIONAL TRADING INC. DBA VAPOR DNA; VAPING AMERICAN MADE
23 PRODUCTS, LLC; AND DOES 1-100, INCLUSIVE, FOR STRICT PRODUCTS
24 LIABILITY, ALLEGES:

25 45. Plaintiff refers to each and every preceding paragraph and incorporates
26 those paragraphs as though set forth in full in this cause of action.

27 46. At all times mentioned herein, Defendants and Does 1-100, inclusive, were
28 engaged in the business of manufacturing, fabricating, designing, assembling,

1 distributing, selling, inspecting, warranting, leasing, renting, retailing, wholesaling, and
2 advertising the E-Cig Products Joseph purchased and used.

3 47. On April 15, 2016, as Joseph was using the E-Cig Products in a reasonably
4 foreseeable and intended manner, the E-Cig Products suddenly exploded next to
5 Joseph, causing severe and painful injuries to his left eye.

6 48. Defendants and Does 1-100, inclusive, knew that consumers would use
7 the E-Cig Products as Joseph did on April 15, 2016.

8 49. Defendants and Does 1-100, inclusive, manufactured, designed,
9 assembled, packaged, tested, fabricated, inspected, marketed, distributed, and sold the
10 E-Cig Products and each of their component parts with defects in both design and
11 manufacturing which made them dangerous, hazardous, and unsafe for their intended
12 and reasonably foreseeable use.

13 50. The design and manufacturing defects in the E-Cig Products included:
14 defective and unsafe design, which resulted in excessive overheating of the E-Cig
15 Products, causing them to explode and catch fire in the course of intended use.

16 51. The E-Cig Products contained a design and/or manufacturing defect when
17 the E-Cig Products were introduced into the stream of commerce by Defendants and
18 Does 1-100, inclusive.

19 52. The E-Cig Products were defective and unsafe for their intended use. Due
20 to the design and/or manufacturing defects, the E-Cig Products failed to perform as
21 safely as an ordinary consumer would expect when used in an intended or reasonably
22 foreseeable manner.

23 53. Furthermore, the risk of danger in the design of the E-Cig Products
24 outweighed any benefits of the design and safer alternative designs were available at
25 the time of manufacture. Therefore, the E-Cig Products presented a substantial and
26 unreasonable risk of serious injuries to users of said E-Cig Products or those in the
27 vicinity of use.

28

1 54. The defects in the design and manufacture of the E-Cig Products and its
2 component parts were a substantial factor in causing Joseph's severe injuries and
3 damages as herein alleged.

4 55. Defendants and Does 1-100, inclusive, had actual or constructive
5 knowledge of the risks inherent in the E-Cig Products at the time of their sale to Joseph,
6 and that they could cause explosion and fire.

7 56. The inherent risks and dangers in using the E-Cig Products in an intended
8 or reasonably foreseeable way presented a substantial danger to Joseph.

9 57. An ordinary consumer, such as Joseph, would not have recognized the
10 potential risks and dangers inherent in the E-Cig Products.

11 58. Defendants and Does 1-100, inclusive, failed to warn of the dangers in the
12 reasonably foreseeable use of the E-Cig Products. Nowhere do the products or
13 packaging warn of risk of explosion. There were simply no warnings about the hazards
14 inherent in the E-Cig Products.

15 59. Defendants' and Does 1-100s', inclusive, failure to warn of the risks and
16 instructions on safe use was a substantial factor in causing Joseph's severe injuries and
17 damages as herein alleged.

18 60. As a result of the defective E-Cig Products, and Defendants' and Does 1-
19 100s', inclusive, failure to warn, Joseph sustained severe personal injuries and damages,
20 as alleged herein:

- 21 1) Joseph has suffered, continues to suffer, and will in the future
22 suffer great mental, physical and emotional pain, in sums
23 according to proof at the time of trial;
- 24 2) Joseph was required to, and did, and will in the future, employ
25 physicians and surgeons to examine, treat and care for him, and
26 did and will in the future incur medical and incidental expenses for
27 such care and services, in a sum according to proof at the time of
28 trial; and

1 3) Joseph has incurred past and future loss of earnings and
2 diminished earning capacity, in an amount according to proof at
3 the time of trial.

4 61. Does 51 - 100's, inclusive, conduct described herein was despicable
5 conduct carried out with a willful and conscious disregard of the risk of safety to
6 Joseph. Does 51 - 100, inclusive, failed to implement a safer alternative, or conduct any
7 testing or safety precautions on devices that have an inherent risk of explosion. Does 51
8 - 100, inclusive, knew of the risk that the e-cigarette would explode and knowingly
9 failed to take steps to design and manufacture a safer product, or warn consumers of
10 such known risks. Does 51 - 100, inclusive, placed profit over safety and knowingly
11 decided to forego safer designs because of decisions to cut corners and costs.

12 62. Said conduct by Does 51 – 100, subjected Joseph to cruel and unjust
13 hardship in conscious disregard of their rights and/or was an intentional
14 misrepresentation, deceit or concealment of material facts known to Does 51-100,
15 inclusive, with the intention to deprive Joseph of property, legal rights or to otherwise
16 cause injury. Said conduct thus constitutes malice, oppression or fraud under California
17 Civil Code section 3294, thereby entitling Joseph to punitive damages against Does 51-
18 100, inclusive, in an amount appropriate to punish or set an example of Does 51 - 100.

19 63. Does 51-100's, inclusive, conduct described herein was undertaken by its
20 officers or managing agents, who were responsible for the design, manufacture,
21 marketing, wholesaling, retailing, distributing, packaging, and warnings regarding use
22 of the E-Cig Products. The aforementioned conduct of said managing agents and
23 individuals was therefore undertaken on behalf of Does 51-100, inclusive. Said Does 51-
24 100, inclusive, further had advance knowledge of the actions and conduct of these
25 individuals whose actions and conduct were ratified, authorized, and approved by
26 managing agents.

27 64. Plaintiff reserves the right to seek leave of court to amend this Complaint
28 to allege punitive damages against defendants THE VAPOR LOFT, LLC; VAPEITUP,

1 LLC; LAN & MIKE INTERNATIONAL TRADING INC. DBA VAPOR DNA; VAPING
2 AMERICAN MADE PRODUCTS, LLC; and DOES 1-50, in the event specific facts that
3 may be learned during discovery justify such amendment.
4

5 **SECOND CAUSE OF ACTION**

6 **(Negligent Products Liability)**

7 PLAINTIFF JOSEPH CAVINS FOR A SECOND CAUSE OF ACTION AGAINST
8 DEFENDANTS THE VAPOR LOFT, LLC; VAPEITUP, LLC; LAN & MIKE
9 INTERNATIONAL TRADING INC. DBA VAPOR DNA; VAPING AMERICAN MADE
10 PRODUCTS, LLC; AND DOES 1-100, INCLUSIVE, FOR NEGLIGENCE PRODUCTS
11 LIABILITY, ALLEGES:

12 65. Plaintiff refers to each and every preceding paragraph and incorporates
13 those paragraphs as though set forth in full in this cause of action.

14 66. Defendants and Does 1-100, inclusive, negligently, recklessly and
15 carelessly manufactured, fabricated, designed, assembled, distributed, sold, inspected,
16 warranted, and advertised the E-Cig Products such that they were dangerous and
17 unsafe for their intended and/or reasonably foreseeable use.

18 67. Defendants and Does 1-100, inclusive, owed a duty to Joseph to exercise
19 reasonable care in the design, manufacture, and sale of the E-Cig Products, to ensure the
20 E-Cig Products were safe for their reasonably foreseeable use.

21 68. Defendants and Does 1-100, inclusive, failed to exercise the amount of care
22 in the design, manufacture, and sale of the E-Cig Products, that a reasonably careful
23 manufacturer, designer, seller, wholesaler, or distributor would have used in similar
24 circumstances to avoid exposing others to a foreseeable risk of harm.

25 69. Defendants and Does 1-100, inclusive, knew or reasonably should have
26 known that the E-Cig Products were dangerous when used or misused in a reasonably
27 foreseeable manner.
28

1 78. As alleged in Paragraphs 1 through 75 inclusive, defendants Vapor Loft,
 2 Vape It Up, Vapor DNA, Vaping American Made Products, and Does 1-100, inclusive,
 3 are liable for their negligent, careless, and tortious conduct causing injury to Joseph.

4 79. Prior to the injuries, Joseph was able to and did perform his duties as a
 5 spouse. Subsequent to the injuries and as a proximate result of Defendants Vapor Loft,
 6 Vape It Up, Vapor DNA, Vaping American Made Products, and Does 1-100s', inclusive,
 7 conduct Joseph has been unable to or impaired from performing the necessary work,
 8 duties, and services of a spouse. Joseph will be unable to or impaired from performing
 9 such work, services, and duties in the future. By reason thereof, Pat has been deprived
 10 and will be deprived of the consortium of Joseph, including, but not limited to, the
 11 following deprivations: the loss of companionship, comfort, care, assistance, protection,
 12 affection, society, moral support, and the loss of the enjoyment of spousal relations, all
 13 to Pat Cavins' damage.

PRAYER

16 Wherefore, Plaintiffs Joseph Cavins and Patricia Cavins pray for judgment
 17 against the Defendants, and each of them as follows:

19 **AS TO JOESPH CAVINS FOR THE FIRST CAUSE OF ACTION AGAINST**
 20 **DEFENDANT, THE VAPOR LOFT, LLC; VAPEITUP, LLC; LAN & MIKE**
 21 **INTERNATIONAL TRADING INC. DBA VAPOR DNA; VAPING AMERICAN**
 22 **MADE PRODUCTS, LLC; AND DOES 1-100, INCLUSIVE, FOR STRICT**
 23 **PRODUCTS LIABILITY:**

- 24 1. General damages including damages for pain and suffering and
- 25 mental and emotional distress, in an amount to be determined at the
- 26 time of trial;

27
 28



- 1 2. Special damages including damages for past and future medical care,
2 lost earnings and lost earning capacity in an amount to be determined
3 at the time of trial;
- 4 3. For property damage according to proof;
- 5 4. Punitive damages as to Does 51-100 only, for the oppressive, malicious
6 or fraudulent conduct of Does 51-100 only, in an amount to be
7 determined at trial;
- 8 5. Prejudgment interest according to proof;
- 9 6. Costs of suit; and
- 10 7. Such other and further relief as the Court deems proper.

11
12 **AS TO JOSEPH CAVINS FOR THE SECOND CAUSE OF ACTION**
13 **AGAINST DEFENDANTS THE VAPOR LOFT, LLC; VAPEITUP, LLC; LAN & MIKE**
14 **INTERNATIONAL TRADING INC. DBA VAPOR DNA; VAPING AMERICAN**
15 **MADE PRODUCTS, LLC; AND DOES 1-100, INCLUSIVE, FOR NEGLIGENT**
16 **PRODUCTS LIABILITY;**

- 17 8. General damages including damages for pain and suffering and
18 mental and emotional distress, in an amount to be determined at the
19 time of trial;
- 20 9. Special damages including damages for past and future medical care,
21 lost earnings and lost earning capacity in an amount to be determined
22 at the time of trial;
- 23 10. For property damage according to proof;
- 24 11. Prejudgment interest according to proof;
- 25 12. Costs of suit; and
- 26 13. Such other and further relief as the Court deems proper.

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1 AS TO PATRICIA CAVINS FOR THE THIRD CAUSE OF ACTION
2 AGAINST DEFENDANTS THE VAPOR LOFT, LLC; VAPEITUP, LLC; LAN & MIKE
3 INTERNATIONAL TRADING INC. DBA VAPOR DNA; VAPING AMERICAN
4 MADE PRODUCTS, LLC; AND DOES 1-100, INCLUSIVE, FOR LOSS OF
5 CONSORTIUM:

6 14. General damages for loss of consortium in an amount to be
7 determined at the time of trial.

8
9 Dated: May 19, 2016

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP

10
11
12
13 By: _____


14 GREGORY L. BENTLEY
15 CLARE H. LUCICH
16 NATASHA AXELROD
17 Attorneys for Plaintiff Joseph Cavins



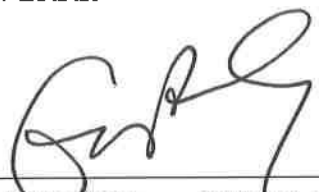
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JURY DEMAND

Plaintiffs hereby demand a jury trial on all legal causes of action that are triable to a jury.

Dated: May 19, 2016

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP

By:  _____

GREGORY L. BENTLEY
CLARE H. LUCICH
NATASHA AXELROD
Attorneys for Plaintiff Joseph Cavins

SHERNOFF BIDART
ECHEVERRIA BENTLEY
LAWYERS FOR INSURANCE POLICYHOLDERS



EXHIBIT A







