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14 *Attorneys For Plaintiffs*

15
16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18 Justin Kasper, an individual, Alexis
19 Duran, an individual, Justin Kasper Jr.,
20 a minor, by and through his Natural
21 Parents and Next Friends, Alexis Duran
22 and Justin Kasper,

23 Plaintiffs,

24 vs.

25 Samsung SDI Co., Ltd; Red Star Vapor,
26 LLC and Does 1-50, Inclusive,

27 Defendants.

Case No.:

COMPLAINT FOR DAMAGES

- 1. STRICT LIABILITY – MANUFACTURING DEFECT
- 2. STRICT LIABILITY – DESIGN DEFECT
- 3. STRICT LIABILITY – FAILURE TO WARN
- 4. NEGLIGENCE
- 5. NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
- 6. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
- 7. VIOLATION OF THE MAGNUSON-MOSS ACT

DEMAND FOR JURY TRIAL

28 Plaintiffs, Justin Kasper, an individual, Alexis Duran, an individual, Justin Kasper Jr., a
minor, by and through his Natural Parents and Next Friends, Alexis Duran, Justin Kasper, and by

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL - 1

1 their undersigned attorneys, brings claims against Defendants Samsung SDI Co. Ltd., a Korean
2 corporation, and Red Star Vapor, LLC and alleges as follows:

3 **PARTIES**

4 1. Plaintiffs, Justin Kasper, an individual, Alexis Duran, an individual, Justin Kasper
5 Jr., a minor, by and through his Natural Parents and Next Friends, Alexis Duran, Justin Kasper
6 are individuals and are now, and at all times relevant, are residents of and domiciled in Maricopa
7 County.
8

9 2. Defendant Samsung SDI Co. Ltd., (hereinafter “Samsung Korea”) is a South
10 Korean corporation with its principal place of business at Giheung Headquarters, 150-20,
11 Gongse-ro Giheung-gu, Yongin-si, Gyeonggi-do. Upon information and belief, Samsung SDI
12 Co. Ltd. at all times relevant was, authorized to do business in the State of Arizona and was and
13 is engaged in substantial comings and business activities in Arizona.

14 3. Defendant Samsung Korea was and is engaged in the business of manufacturing,
15 marketing, testing, promoting, selling, and/or distributing lithium-ion batteries, including the
16 battery that is the subject of this lawsuit (the “Subject Battery”).

17 4. Samsung Korea does not maintain any physical presence in the United States. It
18 has a network of wholly owned subsidiaries in and throughout the United States that work
19 together to sell various products nationwide.

20 5. Defendant Red Star Vapor, LLC, (hereinafter “Red Star Vapor”) is a limited
21 liability company organized under the laws of the State of Arizona. Plaintiff purchased the e-
22 cigarette device and subject battery from Red Star Vapor’s place of business located in Mesa,
23 Arizona. It can be served via its’ statutory agent, Harrison Law PLLC, at 436 East Pecos Road,
24 Suite 139 in Gilbert, Arizona 85295.

25 6. The instant case involves the explosion of a lithium-ion battery and the subject
26 battery, and other similar/identical batteries, was advertised, marketed, sold, distributed, and
27 placed into the stream of commerce through the engagement of the Samsung Defendants and
28

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL - 2

1 one or more distributors and/or retailers who sell and distribute Samsung products, including the
2 subject battery and similar batteries to consumers.

3 7. At all pertinent times, Samsung Korea derived substantial revenue from the sale
4 of lithium-ion batteries such as the Subject Battery in the State of Arizona.

5 8. The true names and capacities of the Defendants Does 1 through 50, whether
6 individual, corporate, associate, or otherwise, are unknown to Plaintiff at the time of filing this
7 Complaint. Therefore, Plaintiff sues said Defendants by sch fictious names and will ask leave
8 of Court to amend this Complaint to show their true names or capacities when the same have
9 been ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the Doe
10 Defendants is, in some manner, responsible for the events and happenings herein and
11 proximately caused he injuries and damages to Plaintiff as alleged in this Complaint.
12

13 **JURISDICTION AND VENUE**

14 9. Subject matter jurisdiction in this Court is appropriate because there is complete
15 diversity and the amount in controversy exceeds seventy-five thousand (\$75,000) dollars,
16 pursuant to 28 U.S.C. § 1332.

17 10. This Court has personal jurisdiction over Defendant Samsung SDI Co. Ltd
18 because of its this case arises under federal law, and Defendant Samsung SDI Co. Ltd. has
19 maintained purposeful, continuous, and systematic contacts with Arizona entities and the
20 Arizona market.

21 11. This Court is an appropriate venue for the cause of action because substantial acts
22 or omissions took place in this district.

23 **FACTUAL ALLEGATIONS**

24 12. E-cigarettes, also known as e-cigs, vapes, vape pens, and mods (customizable,
25 more powerful vaporizers) are battery operated devices that deliver nicotine through flavoring
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1 and other chemicals to users in the form of vapor instead of smoke.¹ They were first patented in
2 2003 and have been available for sale in the United States since 2007.²

3 13. E-cigarettes are designed to simulate the act of smoking traditional tobacco,
4 allegedly with less of the toxic chemicals produced by the burning of tobacco leaves and other
5 chemicals contained in traditional, combustible cigarettes.³ E-cigarettes offer doses of nicotine
6 with a vaporized solution, often referred to as “juice,” “e-liquid,” or “pods,” providing a physical
7 sensation similar to tobacco smoke.

8 14. Generally, electronic cigarettes operate the same way regardless of the model in
9 that they typically consist of at least three (3) component parts: a tank, a battery that works to
10 heat the juices or e-liquid contained in the tank, and an atomizer that converts the liquid into
11 vapor that the user inhales.

12 15. E-cigarettes differ from traditional cigarettes in a critical way: the e-cigarette is
13 battery-operated and uses a heating element to produce vapor, and the traditional cigarette has
14 no electronic component. While both products may produce a similar physical sensation, e-
15 cigarettes pose an additional danger - the battery-powered heating element, as well as the battery
16 itself - that can and have caused explosions, fires, and serious injury.

17 16. E-cigarettes are more dangerous than other products that contain lithium batteries
18 because the e-cigarette is most often designed as a cylindrical device, requiring a lithium-ion
19 battery of a similar shape. When the device malfunctions or fails, the battery can be shot out
20 like a bullet or rocket.⁴

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25 ¹ See generally, *Electronic Cigarettes*, National Institute on Drug Abuse, Rev. March 2018, available at
26 <https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes>.

27 ² McKenna, L., *Electronic Cigarette Fires and Explosions in the United States 2009-2016*, U.S. Fire Administration,
28 July 2017 available at https://www.usfa.fema.gov/downloads/pdf/publications/electronic_cigarettes.pdf

³ See generally, *Electronic Cigarettes*, National Institute on Drug Abuse, Rev. March 2018, available at
<https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes>.

⁴ United States Fire Administration, *Electronic Cigarette Fires and Explosions*, October 2012, at p. 5.

1 17. At least two deaths have been reported in relation to an exploding e-cigarette.⁵

2 18. E-cigarettes have become increasingly popular. They have been marketed as
3 smoking-cessation aids and as a healthier alternative to traditional tobacco cigarettes. The
4 selection of products has grown at an extremely rapid rate.

5 19. Since their introduction into the United States, sales have risen dramatically from
6 approximately \$20 million in 2008 to \$2.5 billion in 2012. Industry experts predict the e-
7 cigarette industry will become an \$85 billion business within a decade and surpass the tobacco
8 industry.⁶

9 20. In January 2014, there were 466 brands of e-cigarettes and over 7,000 unique e-
10 cigarette juice flavors available for sale.⁷

11 21. Until recently, e-cigarette marketing has been unfettered and unregulated.
12 Whereas tobacco advertisements have been banned on radio and television for more than 40
13 years, no such restrictions have been instituted in the e-cigarette arena. Manufacturers,
14 distributors, and sellers of e-cigarettes therefore reach a broader consumer base than the tobacco
15 industry and have the freedom to utilize the same marketing tactics previously employed by big
16 tobacco. Namely, to tout the supposed health benefits of their products absent scientific and
17 medical data to support such claims; to portray e-cigarette smoking as a harmless pastime on TV,
18 radio, and in print; capitalize on individuals already addicted to nicotine; and/or encourage
19 nicotine newcomers (mainly youths and young adults) to pick up the habit.
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26 ⁵ See <https://www.washingtonpost.com/health/2019/02/05/vape-pen-kills-man-after-exploding-his-mouth/>.

27 ⁶ Clarke, T., *Reports of E-Cigarette Injury Jump Amid Rising Popularity, United States Data Show*, Reuters.com
28 April 17, 2012.

⁷ Zhu, S. H., Sun, J. Y., Bonnevie, E., Cummins, S., Gamst, A., Yin, L., & Lee, M. (2014). Four hundred and sixty
brands of e-cigarettes and counting: Implications for product regulation. *Tobacco Control Act 2014*, 23: iii3-iii9.

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