

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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BERNARDINO AUGUSTO MANUEL,

Civil Action No.: \_\_\_\_\_

Plaintiff,

v.

**COMPLAINT AND DEMAND  
FOR JURY TRIAL**

SONY CORPORATION OF AMERICA, and  
SONY ENERGY DEVICES  
CORPORATION,

Defendants.

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**COMPLAINT**

Plaintiff, **BERNARDINO AUGUSTO MANUEL** (hereafter referred to as “Plaintiff”), by and through his undersigned counsel, **JOHNSON BECKER, PLLC** and **SANDERS PHILLIPS GROSSMAN, LLC**, hereby submits the following Complaint and Demand for Jury Trial against **SONY CORPORATION OF AMERICA** (“Sony America”) and **SONY ENERGY DEVICES CORPORATION**. (“Sony Japan”), and alleges the following upon personal knowledge and belief, and investigation of counsel:

**NATURE OF THE ACTION**

1. This is a product liability action seeking recovery for substantial personal injuries and damages suffered by Plaintiff after Plaintiff was supplied and used a Sony 18650 battery (hereafter referred to as “Subject Battery”) marketed, sold, and distributed by Defendant Sony America by and through its officers, employees and agents. The Subject Battery was designed, manufactured, marketed, and sold by Sony Japan.

2. On or about October 5, 2017, the Subject Battery exploded while in Plaintiff's front-right pants pocket. As a result, Plaintiff's clothing caught fire, causing him to suffer serious burn injuries including, but not limited to, partial and full thickness burn injuries to his right thigh and both hands.

3. As a direct and proximate result of the Defendants' collective conduct, Plaintiff has incurred significant and painful bodily injuries, physical pain, mental anguish, and diminished enjoyment of life.

### **PARTIES, JURISDICTION & VENUE**

4. At all times relevant, Plaintiff was a citizen and resident of the City of Fremont, County of Dodge, State of Nebraska. Plaintiff currently resides in Yuba City, County of Sutter, State of California.

5. Sony America is a New York Corporation, which has its principal place of business at 25 Madison Avenue, New York, New York 12207.

6. Upon information belief, Sony America is engaged in the business of supplying, selling and distributing lithium ion battery including but not limited to the Subject Battery purchased by Plaintiff. In addition, Sony America has conducted substantial, ongoing business in this state and has extensive, ongoing, and specific contacts with New York that include, but are not limited to, the following:

- a. At all times relevant herein, and upon information belief, Sony America has had continuing contacts with this District by selling, importing and distributing goods, including but not limited to the Subject Battery, with the actual knowledge and/or reasonable expectation that they will be used in this county and which are in fact used, sold, distributed, and retailed in this county;
- b. At all times relevant herein, Sony America has had continuing contacts with the State of New York by transacting substantial business in this state via supplying, selling, importing and distributing goods, including but not limited to the Subject Battery, with the actual knowledge and/or reasonable expectation that they will be

used in this state and which are in fact used in this state;

- c. Upon information and belief, Sony America distributed, sold or otherwise placed into its distribution chain the Subject Battery that caused the injuries at issue in this matter; and
- d. Sony America has received substantial compensation from the sale of its products in this state, including but not limited to Sony Batteries.

7. Sony Japan is corporation and/or business entity organized and existing under the laws of Japan, with its principal place of business at 1-7-1 Konan Minato-ku, Tokyo, 108-0075 Japan.

8. Sony Japan is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing lithium ion Battery including but not limited to the Subject Battery that was supplied to Plaintiff. In addition, Sony Japan has conducted substantial, ongoing business in this state and has extensive, ongoing, and specific contacts with New York that include, but are not limited to, the following:

- a. At all times relevant herein, Sony Japan has had continuing contacts with this County by manufacturing designing, testing, marketing, certifying, supplying, selling, importing and distributing goods, including but not limited to the Subject Battery, with the actual knowledge and/or reasonable expectation that they will be used in this county and which are in fact used, sold, distributed, and retailed in this county;
- b. At all times relevant herein, Sony Japan has had continuing contacts with the State of New York by transacting substantial business in this state via manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing goods, including but not limited to the Subject Battery, with the actual knowledge and/or reasonable expectation that they will be used in this state and which are in fact used in this state;
- c. Sony Japan designed, manufactured, sold or otherwise placed into its distribution chain the Subject Battery that caused the injuries at issue in this matter;
- d. Sony Japan has received substantial compensation from the sale of its products in this state, including but not limited to 18650 batteries;

9. In addition, Sony Japan's contacts with New York principally relate to the placement of electronic devices, including lithium ion batteries, into the stream of commerce, and all of the

conduct associated with placing those products into the stream of commerce in New York and associated with this civil action are related to and connected with the placement of Subject Battery used in electronic cigarette devices into the stream of commerce.

10. At all times relevant herein, Sony Japan has purposefully availed itself of the privilege of conducting business in the State of New York, has transacted business in the State of New York with and through Sony America, regularly caused its products to be sold in the State of New York. Therefore, general and specific personal jurisdiction is proper under Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 and the action is therefore proper in this Court.

12. Venue is proper pursuant to 28 U.S.C. §§ 1391(c) and is therefore proper in this court.

13. The amount in controversy exceeds the sum of seventy-five thousand (\$75,000.00) dollars, exclusive of interest and costs.

### **FACTUAL ALLEGATIONS**

14. Manufacturers, distributors, and sellers of electronic cigarettes, or “e-cigarettes,” as they are more commonly known, claim to provide a tobacco-free and smoke-free alternative to traditional cigarettes. E-cigarettes offer doses of nicotine via a vaporized solution.

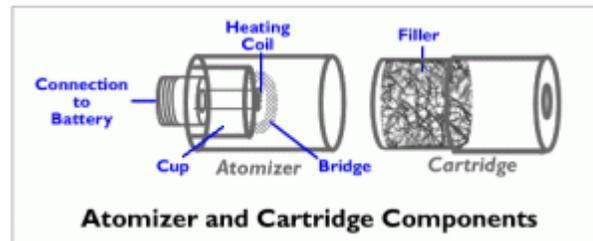
15. All e-cigarettes are designed and function in a similar way. They consist of three primary component parts: a tank or cartridge that is filled with a liquid (known as “juice” or “e-liquid”)<sup>1</sup> that usually contains a concentration of nicotine; an “atomizer” or “cartomizer”, which heats and converts the contents of the liquid-filled cartridge to a vapor that the user then inhales (hence the term, “vaping”); and a battery, which provides power for the atomizer. The atomizer itself

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<sup>1</sup> While the ingredients of the liquid vary from brand to brand, E-Juice typically contains 95% propylene glycol and glycerin. Hundreds of different types and brands of E-Juice exist, and come in flavors such as cherry, cheesecake and cinnamon.

typically contains three components: the casing; the wire (or "coil"); and the wicking material. The wire is wrapped around the wicking material (usually cotton) in a coil formation; the two ends of the coil are then connected to the casing in a way that permits contact with the battery. When e-liquid is added to the e-cigarette's tank, the wicking material absorbs it. When the user activates the e-cigarette's battery, the coil heats, vaporizing the e-liquid within the wicking material.

See



<http://vapingguides.com/blog/vapor-trails-2/atomizer-vs-cartomizer/> (last accessed September 22, 2020).

16. Heating coils feature a specific resistance,<sup>2</sup> which is measured in ohms.<sup>3</sup> In order for an e-cigarette to work effectively (and safely) the battery voltage must be carefully balanced with the heating coil resistance. If the battery voltage is too high and the resistance is too low, the heating coil can overheat and damage the battery, allowing for “thermal runaway”<sup>4</sup> to occur, whereby the internal battery temperature can cause a fire or explosion, and which is often the

<sup>2</sup> Specific resistance is the measure of the potential electrical resistance of a conductive material. It is determined experimentally using the equation  $\rho = RA/l$ , where  $R$  is the measured resistance of some length of the material,  $A$  is its cross-sectional area (which must be uniform), and  $l$  is its length.

<sup>3</sup> Ohms are the standard international unit of electrical resistance, expressing the resistance in a circuit transmitting a current of one ampere when subjected to a potential difference of one volt.

<sup>4</sup> Thermal runaway refers to a chemical reaction in which a repeating cycle of excessive heat causes more heat until an explosion occurs. According to the USFA, one of the main causes of thermal runaway is the battery overheating. *See generally*, U.S. Fire Administration, “Electronic Cigarette Fires and Explosions in the United States 2009 – 2016,” updated July 2017.

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