

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JOEL ADDISON STONE,

Plaintiff,

VERSUS

**LG CHEM AMERICA, INC., and LG
CHEM, LTD.**

Defendant.

Civil Action No.: _____

Section: Judge _____

Division: Magistrate Judge _____

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA AND THE JUDGES THEREOF:

The complaint of **JOEL ADDISON STONE** (“Plaintiff”), a person of the full age of majority, through undersigned counsel, alleges the following upon personal knowledge and belief, and investigation of counsel:

NATURE OF THE CASE

1. This is a product liability action seeking recovery for substantial personal injuries and damages suffered the Plaintiff, after Plaintiff purchased a LG 18650 battery (hereafter referred to as “Subject LG battery”) supplied, marketed, sold, and distributed by **DEFENDANT LG CHEM AMERICA, INC.** (hereafter referred to as “Defendant LGCA”) by and through its officers, employees and agents. The subject battery was designed, manufactured, marketed, distributed and sold by **DEFENDANT LG CHEM, LTD.** (hereafter referred to as “Defendant LGCL”).

PARTIES, JURISDICTION & VENUE

2. At all times relevant, Plaintiff, is and has been a citizen and resident of the City of Slidell, St. Tammany Parish, Louisiana.

3. Defendant LGCA is a corporation organized and existing under the laws of Delaware, with a principal place of business located in the State of Georgia at 3475 Piedmont Road Northwest, Suite 1200, Atlanta, Georgia 30305.

4. Upon information belief, Defendant LGCA is engaged in the business of supplying, selling and distributing lithium ion batteries including, but not limited to, the Subject LG battery purchased by Plaintiff. In addition, Defendant LGCA has conducted substantial, ongoing business in this state and has extensive, ongoing, and specific contacts with Louisiana that include, but are not limited to, the following:

- a. At all times relevant herein, and upon information and belief, Defendant LGCA has had continuing contacts with this District by selling, importing and distributing goods, including, but not limited, to the Subject LG battery, with the actual knowledge and/or reasonable expectation that they will be used in this District and which are in fact used, sold, distributed, and retailed in this District;
- b. At all times relevant herein, Defendant LGCA has had continuing contacts with the State of Louisiana by transacting substantial business in this state via supplying, selling, importing and distributing goods, including, but not limited to, the Subject LG 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, Defendant LGCA distributed, sold or otherwise placed into its distribution chain the Subject LG battery that caused the injuries at issue in this matter;
- d. Defendant LGCL has received substantial compensation from the sale of its products in this state, including but not limited to LG 18650 batteries;
- e. In addition, Defendant LGCL's contacts with Louisiana 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 Louisiana and associated

with this civil action are related to and connected with the placement of batteries used in electronic cigarette devices into the stream of commerce.

2. At all times relevant herein, Defendant LGCA has purposefully availed itself of the privilege of conducting business in the State of Louisiana and has continuously and systematically caused its products to be sold in the State of Louisiana. Defendant LGCA also caused injury or damage through an act or omission in this State. Therefore, jurisdiction is proper pursuant to 28 U.S.C. § 1332, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

3. Defendant LGCL is a foreign company organized and existing under the laws of Korea with its principal place of business at 128 Yeoui-Daero, Yeongdeungpo-Gu Seoul, Seoul, 07336 South Korea. Defendant LG Chem may be served via the Hague Convention on the *Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters*.

4. Defendant LGCL is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing lithium ion batteries, including, but not limited to, the Subject LG battery purchased by Plaintiff. In addition, Defendant LGCL has conducted substantial, ongoing business in this state and has extensive, ongoing, and specific contacts with Louisiana that include, but are not limited to, the following:

- a. At all times relevant herein, Defendant LGCL has had continuing contacts with this District by manufacturing designing, testing, marketing, certifying, supplying, selling, importing and distributing goods, including but not limited to the Subject LG 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, Defendant LGCL has had continuing contacts with the State of Louisiana 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 LG 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. Defendant LGCL designed, manufactured, sold or otherwise placed into its distribution chain the Subject LG battery that caused the injuries at issue in this matter;
- d. Defendant LGCL, upon succeeding “in developing a lithium-ion battery for the first time” in 1999, has continually targeted the United States of America, and the State of Louisiana via its distribution chain in order to “continue to increase its sales volume in the battery market;”¹
- e. Defendant LGCL has received substantial compensation from the sale of its products in this state, including but not limited to LG 18650 batteries;
- f. In addition, Defendant LGCL’s contacts with Louisiana 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 Louisiana and associated with this civil action are related to and connected with the placement of batteries used in electronic cigarette devices into the stream of commerce.

5. At all times relevant herein, Defendant LGCL has purposefully availed itself of the privilege of conducting business in the State of Louisiana and has continuously and systematically caused its products to be sold in the State of Louisiana. Defendant LGCL also caused injury or damage through an act or omission in this State. Therefore, jurisdiction is proper pursuant to 28 U.S.C. § 1332, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

6. Jurisdiction is also proper pursuant pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is complete diversity between the parties.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to this claim occurred in this district.

8. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391 because the Defendants have sufficient minimum contacts with the State of Louisiana and intentionally

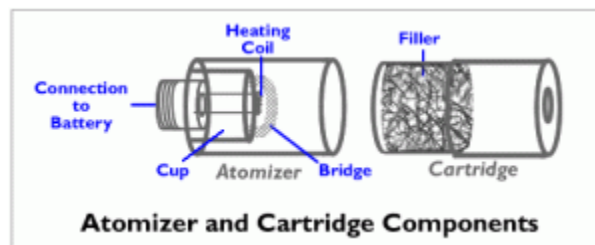
¹ See <https://www.lgchem.com/product/PD00000150> (last accessed April 9, 2020).

availed themselves of the markets within Louisiana through the promotion, sale, marketing and distribution of its products.

FACTUAL BACKGROUND

9. 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.

10. 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”)² 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 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 December 6,

2019)

² 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.

11. Heating coils feature a specific resistance,³ which is measured in ohms.⁴ 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”⁵ to occur, whereby the internal battery temperature can cause a fire or explosion, and which is often the result of “poor design, use of low quality materials ... [and] manufacturing flaws and defects....”⁶

12. E-cigarette batteries, like the subject batteries in this case, are typically cylindrical lithium-ion batteries. Some e-cigarette batteries are rechargeable, and others are disposable. Some e-cigarettes are closed systems, in which prefilled tanks are used; others are also open systems that allow the user to manually refill the tank with e-liquid. E-cigarettes come in pen form (these are usually plastic and are modeled after a traditional cigarette) and in a form known as a ‘mod.’ Mods are metal devices that are heavier than pen e-cigarettes and carry a much higher capacity for juice and creation of vapor. There are many different types of mods, some of which require the use and replacement of atomizer coils like those described above.

³ 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.

⁴ 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.

⁵ 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.

⁶ *See* Ben DJ. Burn Care Res. 2009 Nov-Dec; 30(6): 1048.

13. E-cigarette batteries, like the subject batteries, typically consist of layers of metallic anode and cathode⁷ material separated by a porous film or “wrapping”⁸ which holds liquid electrolytes. The electrolytes used in these batteries are either flammable or combustible liquids.

14. While e-cigarettes were first patented in 2003, they first entered the market exclusively in China in 2004 and did not first appear in the United States until 2007. Since that time, U.S. sales of electronic cigarettes have risen dramatically — from approximately \$20 million in 2008 to \$2.5 billion in 2014. According to some media sources, industry experts predict the e-cigarette industry will reach \$32.11 billion by 2021.

15. Lithium ion batteries, commonly used in e-cigarettes, pose a risk of fire and explosion.⁹ A medical case report of a man in New Jersey, whose e-cigarette exploded in his pocket causing him severe burns, noted, “the potential for serious burn injuries related to device malfunction is of concern.”¹⁰

16. Some tout e-cigarettes as a safer alternative to traditional cigarettes because e-cigarettes do not contain tobacco, do not actually burn or create smoke, and do not pose the same risks of second-hand smoke inhalation. However, these supposedly ‘safer’ alternatives to traditional cigarettes are still the subject of debate, as they still often provide nicotine, which is a

⁷ The cathode of a device is the terminal where the energy current flows out, as where the anode is where the energy current flows in.

⁸ The battery “wrapping” is often made of plastic or other porous film and serves to keep the liquid electrolytes within the battery from coming into direct contact with outside sources.

⁹ 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.

¹⁰ *Spontaneous Electronic Cigarette Explosion: A Case Report, American Journal of Medical Case Reports*, 2015, Vol. 3, No. 4, 93-94, 94.

neurotoxin and extremely addictive. Further, the actual and long-term effects of the chemicals in e-liquid and vapor are unknown, as the technology is still relatively new.

17. Only a few federal regulations have been promulgated or proposed regarding e-cigarette sales and use. Many of these products are shipped from China and placed into the stream of commerce without any knowledge as to what is in them, how they were made, or whether they are safe for consumers.

18. In 2009, the United States Food and Drug Administration ("FDA") first attempted to regulate e-cigarettes under the Food, Drug, and Cosmetic Act ("FDCA"). E-cigarette manufacturers then successfully sued the FDA, claiming e-cigarettes should not be considered medical devices subject to the provisions of FDCA. Because of this ruling and lack of regulatory oversight, e-cigarette sales skyrocketed.

19. On April 25, 2014, the FDA released a proposed regulation that would extend the statutory definition of "tobacco product" to include e-cigarettes. While the FDA regulates traditional cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco under its tobacco control authority, e-cigarettes are not yet defined as a tobacco product.

20. An October 2014 report notes the proposed FDA regulations do not include any consideration of the battery or electronic components of the devices, as the FDA is only addressing the health effects of vapor inhalation.¹¹ Further, the U.S. Fire Administration noted the World Health Organization recently proposed member states adopt stringent controls on e-cigarettes, but did not include any language addressing the electronics themselves. The U.S. Consumer Product Safety Commission has advised e-cigarettes do not fall under its jurisdiction. As noted in October 2014, and as was the case when Plaintiff purchased his e-cigarette and its batteries, "no regulation, code or law applies to the safety of the electronics or batteries in e-

¹¹ See United States Fire Administration, *Electronic Cigarette Fires and Explosions*, October 2014, at 2.

cigarettes. While many consumer products are required to be tested by a nationally recognized test laboratory . . . there are no requirements that e-cigarettes be subjected to the product safety testing.”¹²

21. On August 8, 2016, a new FDA rule took effect expanding regulation to e-cigarettes. According to the FDA [t]his final rule has two purposes: (1) To deem all products that meet the definition of “tobacco product” under the law, except accessories of a newly deemed tobacco product, and subject them to the tobacco control authorities in chapter IX of the FD&C Act and FDA's implementing regulations; and (2) to establish specific restrictions that are appropriate for the protection of the public health for the newly deemed tobacco products.

22. E-cigarettes and e-cigarette batteries have caused numerous fires and explosions injuring consumers. Federal, state, and local efforts have recently been aimed at protecting public health via regulations on sale and use of e-cigarettes, but not on the safety hazards posed by the products themselves.

23. There is mounting evidence the explosions and fires caused by e-cigarettes and lithium ion batteries are increasing in occurrence. The U.S. Department of Transportation ("DOT") issued a rule banning e-cigarettes from checked bags on airplanes because they have been known to catch fire. The DOT has also determined e-cigarettes may not be used during flight. The explosion of e-cigarettes and lithium ion batteries are not novel occurrences; a California man recently lost his eye as a result of an e-cigarette exploding near him. A southern California woman was set on fire after an e-cigarette exploded while she was a passenger in a car. An Atlanta woman's couch and rug caught on fire after an e-cigarette exploded, almost burning her house down. Complaints of injury caused by e-cigarettes continue to rise as the devices' popularity increases.

¹² *Id.*

24. These products continue to be placed into the stream of commerce in an untested and unsafe condition and will continue to cause injuries unless and until those responsible are held accountable.

25. Defendant LGCL has admitted that “In 1999, LG Chem succeeded in developing a lithium-ion battery for the first time in Korea. Since then, [LGCL] has continued to increase its sales volume in the battery market based on its competitive technologies and innovative product development.”¹³

26. The Subject LG battery is one such lithium ion battery.

27. Upon information and belief, Defendant LGCA and Defendant LGCL sell and distribute LG 18650 batteries such as the Subject LG battery worldwide, including in Louisiana.

28. It has been common practice for users and consumers to utilize lithium ion batteries to power their e-cigarette devices since the inception of e-cigarettes in 2003.

29. Upon information and belief, Defendant LGCA and Defendant LGCL have been aware their lithium ion batteries, including but not limited to LG 18650 batteries such as the Subject LG battery, have been used in e-cigarette devices for more than a decade.

30. Defendant LGCL, its agents, servants and employees, participated in the design, formulation, production, manufacture, construction, assembly, marketing, distribution, delivery, and sale of the LG 18650 batteries, including the Subject LG battery.

31. Upon information and belief, Defendant LGCA, its agents, servants and employees, participated in the distribution, delivery, and sale of the LG 18650 batteries, including the Subject LG battery.

¹³See <https://www.lgchem.com/global/small-battery/it-device-battery/product-detail-PDEA0001> (last accessed April 17, 2019).

32. Upon information and belief, prior to the date of the incident which forms the basis of this action, Plaintiff purchased the Subject LG battery designed, manufactured, distributed, supplied and sold by Defendants.

33. On or about May, 2019, Plaintiff was seriously injured when the Subject LG battery suddenly and unexpectedly exploded in his pants pocket.

34. As a result of the incident, Plaintiff has suffered and continues to suffer from 1st and 2nd degree burns to roughly 7% of his total body surface area.

35. At no time prior to the incident did Plaintiff have facts or information sufficient to apprise him, actually or constructively, of the dangers posed by the defective condition of the Subject LG battery.

36. At no time prior to the incident did Plaintiff, upon having facts or information which not only apprised him of the defective condition of the Subject LG battery, but also imparted knowledge and appreciation of the dangers posed thereby, then proceed to make use of the Subject LG battery in an unreasonable or unforeseeable manner.

37. Plaintiff has suffered and will continue to suffer the effects of permanent scarring due to the injuries sustained in the Incident, as well as severe physical pain and mental anguish as a result of the injuries sustained in the Incident.

38. As a result of the Incident, Plaintiff has incurred medical bills.

39. Upon information and belief, Defendant E-SMOKE, Defendant LGCA and Defendant LGCL were aware, or should have been aware, that LG 18650 batteries, including the Subject LG battery, were defective due to their manufacture, construction, design, formulation; due to their inadequate warnings or instructions; and/or due to being unit fit for either their

ordinary and foreseeable purpose, or the particular purpose for which they were purported to be sold.

CAUSES OF ACTION
PURSUANT TO THE LOUISIANA PRODUCTS LIABILITY ACT
(LSA-R.S. 9:2800.52, *ET SEQ.*)

40. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

41. At the time of Plaintiff's injuries, the Subject LG battery was defective and unreasonably dangerous for use by foreseeable consumers, including Plaintiff.

42. Defendant's actions and omissions were the direct and proximate cause of the Plaintiff's injuries and damages.

43. Defendants, under all applicable laws including, but not limited to, the Louisiana Products Liability Act, LSA-R.S. 9:2800.52 *et seq.*, is liable unto Plaintiff for his injuries and damages for designing, manufacturing, assembling, marketing, distributing, and/or selling the aforesaid pressure cooker that was unreasonably dangerous in construction or composition, in design, because inadequate warnings about the product had not been provided, and/or because the pressure cooker did not conform to the implied and express warranties of the manufacturer about this product.

WHEREFORE, Plaintiff demands judgment against Defendants for damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

INJURIES & DAMAGES

44. As a direct and proximate result of Defendant's negligence and wrongful misconduct as described herein, Plaintiff has suffered and will continue to suffer physical and emotional injuries and damages, including past, present, and future physical and emotional pain

and suffering, as a result of the burn injuries he suffered from the incident on or about May 4, 2019.

45. As a direct and proximate result of Defendant's negligence and wrongful misconduct, Plaintiff has incurred and will continue to incur the loss of full enjoyment of life and physical disfigurement as a result of the burn injuries he suffered from the incident on or about May 4, 2019

46. As a direct and proximate cause of Defendant's negligence and wrongful misconduct, Plaintiff has and will continue to incur expenses for medical care and treatment, as well as other expenses, as a result of the burn injuries he suffered from the incident on or about May 4, 2019.

JURY TRIAL DEMANDED

Plaintiff is entitled to and demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the Defendant for damages, including exemplary damages, if applicable, to which they entitled by law, as well as all costs of this action, interest and attorneys' fees, to the full extent of the law, whether arising under the common law and/or statutory law, including:

- a. judgment for Plaintiff and against Defendants;
- b. damages to compensate Plaintiff for his injuries, economic losses and pain and suffering sustained as a result of Defendants' defective battery;
- c. pre and post judgment interest at the lawful rate;
- d. a trial by jury on all issues of the case; and
- e. for any other relief as this Court may deem equitable and just, or that may be available under the law of another forum to the extent the law of another forum is applied, including but not limited to all reliefs prayed for in this Complaint and in the foregoing Prayer for Relief.

Respectfully submitted,

GERTLER LAW FIRM, LLP

/s/ Louis L. Gertler, Esq.

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