

Andrew W. Shalaby sbn 206841  
7525 Leviston Ave  
El Cerrito, CA 94530  
Tel. 510-551-8500  
Fax: 510-725-4950  
email: andrew@eastbaylaw.com

Attorney for Plaintiff  
Jason Lou Peralta

**EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Jason Lou Peralta,

Plaintiff,

vs.

BernzOmatic;  
Worthington Industries, Inc.;  
Worthington Cylinder Corporation;  
Worthington Cylinder Corporation,  
LLC;  
Worthington Cylinder Wisconsin,  
LLC;

Defendants.

Case Number: 2:17-cv-03195-JJT

FIRST AMENDED COMPLAINT FOR

1. PRODUCTS LIABILITY  
(NEGLIGENCE);
2. PUNITIVE DAMAGES
3. BATTERY AND FELONIOUS  
AGGRAVATED BATTERY  
(INTENTIONAL TORT)

Demand for Jury Trial

Judge: Hon. John J. Tuchi

**I. JURISDICTION**

Plaintiff resides in Arizona, Defendant's principle place of business is in Ohio, and the amount in controversy exceeds \$75,000, therefore this Court has diversity jurisdiction pursuant to 28 U.S.C § 1332.

**II. VENUE**

The injury at issue occurred in Mesa, AZ, Maricopa County, therefore this Court is the proper venue.

## PENDING MDL DISCLOSURE

1. The United States Panel on Multidistrict Litigation has pending before it at this time a motion to coordinate several related actions, case number MDL No. 2823.

### III. PARTIES

2. Plaintiff, JASON LOU PERALTA (hereinafter “Plaintiff”), is a competent adult individual, and a resident of Maricopa County, Arizona.

#### BERNZOMATIC PURCHASE BY WORTHINGTON

3. On July 1, 2011 Worthington Industries purchased the Bernzomatic entity from Newelly Brands Company for \$51million. Thereafter, Worthington has manufactured, marketed, and sold the subject products with the trade name “BernzOmatic” printed on the labels of the products. Therefore, “Bernzomatic” is named as a division of defendant Worthington Industries, and includes any and all related entities which have a sufficient nexus and symbiotic relationship with Worthington to be deemed agents, representatives, and conglomerates of one-another.

#### WORTHINGTON ENTITIES

4. Worthington Industries, Inc. is incorporated in Ohio.

5. Worthington Cylinder Corporation is incorporated in Ohio.

6. Worthington Cylinder Corporation, LLC is located in Ohio.

7. Worthington Cylinder Wisconsin, LLC is located in Wisconsin.

Reference to Defendants: Use of the words “Defendants” and “Worthington” hereinafter shall refer to all of the above-captioned defendants. Reference to “Bernzomatic” is reference to the entity Worthington purchased on July 1, 2011.

### IV. RELATIONSHIP HISTORY OF DEFENDANTS AND AFFILIATES

On information and belief, Plaintiff alleges as follows:

10. BernzOmatic was an American manufacturing company founded by one Otto Bernz in 1876. The company manufactured handheld torches and accessories, especially gas burner torches using fuel cylinders containing butane, propane, MAPP

1 gas, and oxygen for soldering, brazing, and welding. In the 1940's Otto Bernz Co.  
2 relocated to Rochester, New York and changed its name to BernzOmatic. In 1982,  
3 BernzOmatic became a division of Newell (now Newell Brands, Inc.).

4 11. Newell Rubbermaid purchased Irwin Industrial Tool Company in the year  
5 2002.

6 12. Irwin Industrial Tool Company sold the BernzOmatic brand torches and  
7 cylinders for several years or decades, until July 1, 2011, when the parent company  
8 Newell Brands sold Bernzomatic to Worthington Industries.

9 13. Newell Rubbermaid Company, a subsidiary of Newell Brands Company,  
10 owed Irwin Industrial Tool Company during the above-stated years of production of  
11 the subject products.

12 14. Worthington Industries, Inc. Manufactured fuel the NRT cylinders from  
13 approximately September 2004 to and through the date of the filing of this pleading.

14 15. Worthington Cylinder Corporation is an indirect subsidiary of Worthington  
15 Industries, Inc. It had acquired certain assets from Western Industries in September  
16 2004. Western Industries had manufactured the BernzOmatic brand fuel cylinders for  
17 a period of years up to September 2004, and then Worthington Cylinder Corporation  
18 began manufacturing these products from September 2004 onward, first for Newell  
19 (Bernzomatic), then after the July 1, 2011 acquisition, on its own behalf.

20 16. Worthington Cylinder Corporation, LLC is another indirect subsidiary of  
21 Worthington Industries. Based on information and belief, Plaintiff alleges that it was  
22 engaged in the manufacture, marketing, sales and distribution of the subject products  
23 at all times relevant herein.

24 17. Worthington Cylinder Wisconsin, LLC is owned by Worthington Cylinder  
25 Corporation, which is owned by Worthington Industries.

26 18. On page 3 of Worthington Industries' Annual Report 2012, Worthington  
27 disclosed its purchase of BernzOmatic assets as follows:  
28

1 On July 1, 2011, we purchased substantially all of the net assets  
2 (excluding accounts receivable) of the BernzOmatic business (“Bernz”)  
3 of Irwin Industrial Tool Company, a subsidiary of Newell Rubbermaid,  
4 Inc. Bernz is a leading manufacturer of handheld torches and accessories.  
The acquired net assets became part of our Pressure Cylinders operating  
segment upon closing of the transaction.

5 19. From July 1, 2011 onward Worthington cylinder Wisconsin began  
6 manufacturing, marketing, selling and distributing the BernzOmatic-brand subject  
7 torch attachments described below.

#### 8 IV. SUBJECT PRODUCTS

9 20. DEFENDANTS were the manufacturer and marketer of a handheld torch,  
10 consisting of two components: (1) a brass torch attachment, and (2) a steel fuel  
11 cylinder product, which Defendants call an “NRT” cylinder, where NRT stands for  
12 “non-refillable tall.”

13 21. The NRT cylinders were filled with various ultrahazardous fuels used for  
14 heating and welding purposes.

15 22. The NRT cylinders are identical in construction, in all relevant respects,  
16 regardless of the type of fuel content.

17 23. Plaintiff owns NRT cylinders which contain propane fuel, including one  
18 that failed and caused him severe burn injuries, as described below.

19 24. The cylinder that caused Plaintiff’s injuries had a manufacturer code:

20 W5P3W

21 25. Defendants have disclosed to Plaintiff that the manufacturer code,  
22 “W5P3W” references a date of manufacture of May 2014. Defendants’ answer should  
23 please confirm this.

24 26. Plaintiff owns one or more NRT cylinders which contain MAPP fuel,  
25 which are defective at their “center bushings.” The “center bushing” is detailed  
26 below.

27 27. Plaintiff paid valuable consideration for his propane and MAPP cylinders.  
28

28. Plaintiff owns a torch apparatus manufactured by the plaintiffs, which is a model TS4000. The unit is defective as described below.

29. Plaintiff owns a torch apparatus manufactured by the plaintiffs, which contains a model UL2317. The unit is defective as described below.

### DETAILS OF THE PRODUCT DEFECTS

30. The NRT cylinders are defective at the location of failure shown in the photos below:

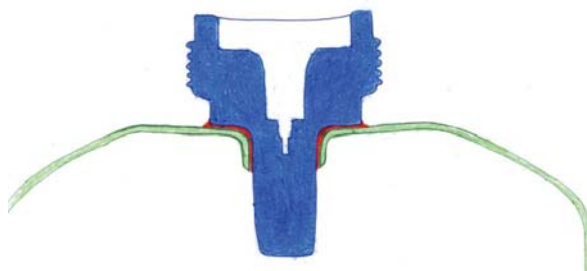


Jason Peralta's failed cylinder  
(this case)



Kurtis Bailey's failed cylinder  
(Bailey v. Bernzomatic,  
16-cv-7548 (IL)).

Defendants call this area of failure the "CENTER BUSHING." The center bushing detail is shown on the image below:



(Source: Steven Gentry, former  
Regulatory Affairs Manager -  
Worthington)

31. Defendants learned that the center bushings were defective and failing, causing injury and property damage, in the 1980's, if not earlier.

32. Defendants' (Bernzomatic's) former employee named John Nelson worked with Bernzomatic's employee named Michael Ridley approximately in the year 1989 on design of a safety feature, called a "fracture groove." Bernzomatic disclosed this safety feature on its website as follows:

<http://www.bernzomatic.com/bernzomatic/consumer/jhtml/glossary.jhtml> (1/12/10)

Fracture Groove: A designed in failure point in the torch, so that when the torch & cylinder are dropped, the fracture groove will fail prior to the cylinder center bushing failing. If the center bushing fails, then an **extremely large** 8 to 10 foot flame will erupt from the cylinder. Examples of torches with a fracture groove are: UL2317, JT680, JT681, JT539, TS4000, TS7000. [Emphasis added.]

33. After Worthington purchased Bernzomatic on July 1, 2011, Worthington removed the words "extremely large" from the above posting, and it's new present-day disclosure of the fracture groove feature is as follows:

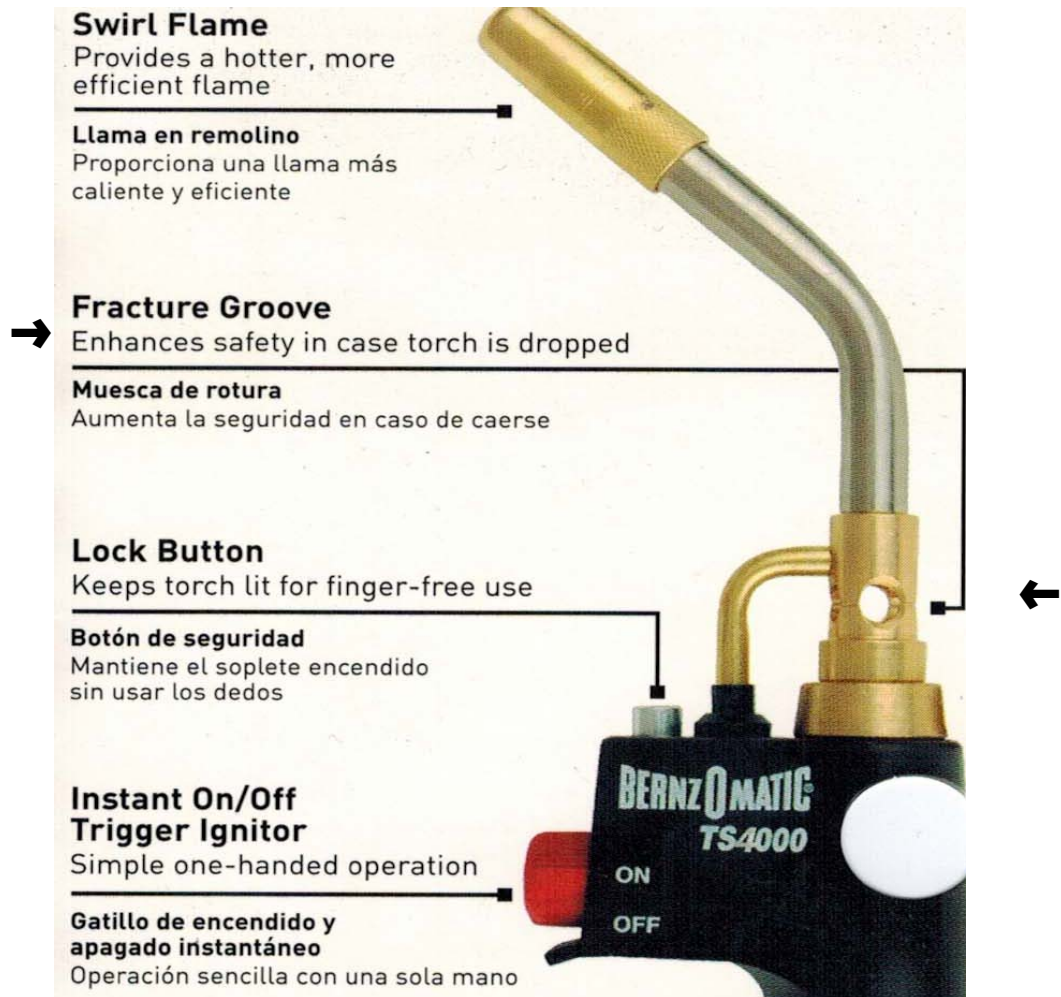
<https://www.bernzomatic.com/Using-a-Torch/Glossary> (10/29/17) - Fracture Groove - A designed-in failure point in the torch, so that when the torch and cylinder are dropped, the fracture groove will fail prior to the cylinder center bushing failing. If the center bushing fails, then an 8 to 10-foot flame will erupt from the cylinder. Example: UL2317 Manual Torch, TS4000 High Heat Torch.

The fracture groove feature is shown on the photos below:



(fracture groove location)





34. After Worthington purchased Bernzomatic, Worthington removed the description of the fracture groove feature from its packaging.

35. Based on information and belief, Plaintiff alleges that Worthington removed the fracture groove feature description from the packaging so that product users injured by these products would not be able to determine that the products failed due to product defect, since a user aware of the fracture groove feature would be able to readily determine that failure of an NRT cylinder upon impact of the tip of the torch evidenced a defect of the product or of the torch attachment.

36. The specific defect with the NRT cylinders is a design defect: the center bushing (meaning the overall area of failure at the horizontal dome-thread assembly union) is unreasonably weak and incapable of withstanding reasonably foreseeable

1 forces that the average product user is expected to encounter. The center bushings  
2 have repeatedly failed under measures of force which were far below the amount of  
3 force the fracture groove features were designed to fracture at.

4 37. The torch fracture groove features are designed to fracture at  
5 approximately 26 foot-pounds of force applied to the tip of the torch units, as tested  
6 on the TS4000 model.

7 38. The NRT cylinders were designed to withstand in excess of 35 foot-pounds  
8 of force when applied to the tip of the TS4000 torches, but many do not.

9 39. The NRT cylinders, when not defective, will begin to deform and bend  
10 once the measure of force, as applied to the tip of the TS4000 torch units, reaches  
11 approximately 15 foot-pounds, as shown in the photo below:



20 (Source: Expert Robert Anderson Lab Tests, 2008)

21 40. The NRT cylinders that have failed over the years have all failed without  
22 bending or deformity as shown in the above photograph, hence have failed at a  
23 measure of force which was less than 15 foot-pounds as applied to the tip of the  
24 TS4000 torch units (in terms of defining the measurement and procedure).

25 41. The NRT cylinders also suffer from manufacturing defects. Several of the  
26 units are improperly assembled, with insufficient weld compound, as shown in this  
27 photo below:  
28





(Source: cylinder in Plaintiff's counsel's possession, purchased new)

42. On January 24, 2018 and January 26, 2018 respectively, Defense expert deponents Mr. Gentry and Mr. Ridley each independently testified that the cylinder shown in the above photo exhibited a manufacturing defect.

43. Plaintiff's cylinder did not evidence deformity, meaning it failed at less than 15 foot-pounds of force, as its secondary failure, and noting that it's primary failure was a pressurized leak without application of any force at all. This evidences both a manufacturing and a design defect.

44. The first defect with the torch units that contain the fracture groove features is that they fracture at too high an amount of force to protect the NRT cylinders.

45. The second defect with the torch units is that they all have trigger-lock features. This is a defect because the only way the cylinders can fail is if the cylinder and torch assemblies are held by the cylinder itself, instead of by the torch handle. The reason for this is that the differential forces required to fracture the cylinders only exist when the source of stresses is applied to the tip of the torch and the lower portion of the cylinder, creating a leverage force at the vulnerable center bushing, as shown in the photo below:



(to fracture cylinder, assembly  
must be held by the cylinder itself)

46. When the unit is held by the torch handle, the stress points are the tip of the torch and the lower portion of the torch apparatus, therefore the stress point is above the vulnerable center bushing and incapable of causing failure of the bushing. However, if held by the cylinder, force can breach the center bushing.

### **FIRST CAUSE OF ACTION FOR NEGLIGENCE (PRODUCTS LIABILITY)**

Plaintiff incorporates by reference all of the general allegations and factual recitals contained above, and pleads as and for a FIRST cause of action as follows:

47. Plaintiff had purchased the subject torch and cylinder assembly as a unit from Lowes Home Improvement in Mesa, Arizona a few months before the accident which is the subject of this action.

48. From the date of purchase, to the date of failure, the subject torch and cylinder were never subjected to any misuse, abuse, alteration, or modification. They were in the same condition at the time of injury as they were at the time of purchase.

49. On February 5, 2016 Plaintiff was using the subject torch and cylinder assembly to light a fireplace at his home.

50. The use of the torch and cylinder to light a fireplace is a proper and foreseeable use of the subject products.

1           51. Plaintiff successfully ignited the torch assembly and lit his fireplace. After  
2 he lit the fireplace, he released the trigger lock. After he released the trigger lock, the  
3 center bushing suddenly separated (perhaps from the sudden surge of internal pressure  
4 upon the shutting of the valve), emitted fuel under pressure, and the fuel ignited  
5 directly beneath his hand, burning his hand and causing him to drop the cylinder.

6           52. The torch and cylinder assembly fell to the ground in an inverted position,  
7 with the torch tip pointing downward.

8           53. The torch and cylinder assembly fell to the ground from a distance of  
9 approximately three (3) feet, with the tip of the torch hitting the ground.

10           54. As soon as the torch and cylinder assembly hit the ground, the cylinder  
11 ripped open at the center bushing, causing the fuel content to “explode” by immediate  
12 and highly pressurized discharge, engulfing Plaintiff in a huge ball of fire.

13           55. Plaintiff was severely burned and injured over a very large portion of his  
14 body from the flames.

15           56. The explosive pressure of the fuel cylinder caused a window to blow out  
16 entirely, caused a sliding glass door to bend and bow outward, caused sheet rock to  
17 crack throughout the house, burned portions of the house, and caused other damage  
18 to the property.

19           57. The explosive pressure was so strong that it caused a window in an  
20 adjacent room to blow with such force that glass lodged into the wall of a garage  
21 located a few feet away from the window.

22           58. The failure of Plaintiff’s cylinder was due to the above-described product  
23 defects. Defendants were negligent in the design and manufacture of the subject torch  
24 and cylinder.

25           59. Defendants negligently failed to disclose the above-specified defects and  
26 dangers to Plaintiff and all users of these subject products.  
27  
28

1           60. As of the date of filing of this pleading, Defendants have still failed to  
2 disclose the above-specified defects to users of the subject NRT cylinders and torches.

3           WHEREFORE, Plaintiff prays for all actual, general, and special damages  
4 according to proof at trial, for punitive as further set forth below, and for such other  
5 and further relief as the Court deems proper, including injunctive relief and other  
6 relief as may be appropriate.

7  
8                           **SECOND CAUSE OF ACTION FOR  
IMPOSITION OF PUNITIVE DAMAGES**

9           Plaintiff incorporates by reference all of the general allegations and factual  
10 recitals contained above, and pleads as and for a SECOND cause of action, based on  
11 information and belief, as follows:

12           61. In the State of Arizona, punitive damages are available upon a showing of  
13 an “evil mind.”

14           62. Punitive damages are particularly warranted in this action because  
15 Defendants knew of the defects and resulting severe injuries for many years before  
16 Plaintiff was injured, and yet intentionally refused to recall or warn Plaintiff and other  
17 users, evidencing an “evil mind.”

18           63. Depositions of Defendants’ long-time employees Mr. Steve Gentry and  
19 Mr. Michael Ridley, both senior employees at Worthington and Bernzomatic  
20 respectively, and both having worked for the company well before the fracture groove  
21 features were designed in the year 1989, were taken in January 2018. The deposition  
22 of one of the designers of the fracture groove feature, Michael Ridley, was noticed and  
23 taken by Defendants themselves on January 26, 2018. Both deponents testified that  
24 they knew of the weak and vulnerable brazed joints of the NRT cylinders prior to the  
25 year 1989, and in fact designed the fracture groove features due to this awareness.

26           64. Both deponents testified that approximately a decade ago, Bernzomatic and  
27 the Worthington entities received and read metallurgy reports disclosing the defects,  
28

1 with specificity, and with specifications supporting disclosure of the defects. The  
2 deponents testified that Defendants knew of the many cylinder fractures, knew of the  
3 many severe burn injuries that took place since the late 1980's, and knew of the  
4 horrific deaths that have resulted from failure of these cylinders.

5 65. Both deponents identified above testified that in response to the product  
6 defect disclosures by way of expert metallurgy reports and disclosures of injuries and  
7 deaths dating back over the course of many years, the Defendant manufacturers did  
8 NOTHING to remedy the defects. They did not recall the products. They did not fix  
9 the products. They did not warn the users of the defects and dangers of the products.  
10 To this day, Defendants have done nothing, even though they knew for these many  
11 years, if not decades, that users would continue to suffer severe burn injuries and  
12 horrific deaths. These facts demonstrate an “evil mind.”

13 66. Defendants did not conduct any independent testing to substantiate the  
14 findings of the several metallurgists and other experts as to the defects, and  
15 particularly with respect to specifications and disclosures given to them by a highly  
16 qualified metallurgist approximately in the year 2008. They disregarded outright the  
17 warnings and disclosures. This demonstrates an “evil mind.”

18 67. At one point, several years ago, a website was posted by an injury victim  
19 to warn the public and the users of the defects with these products. Defendants and/or  
20 their affiliates called the hosting company, misrepresented that they owned the  
21 domain, and took the website down, evidencing both knowledge as well as actual  
22 malice. One day later, the hosting company figured out the scam and put the website  
23 back up, so Defendants filed a civil action against the holder of the domain, seeking  
24 to take down the website that warned the public of the defects, again evidencing  
25 malice and scienter. They lost. The website remains up, but Defendants’ conduct  
26 evidences grounds for imposition of punitive damages, namely actual knowledge of  
27 the defects and horrific injuries resulting therefrom, failure to warn and recall, and  
28

1 specific intent to remove warnings of the defects from the internet, strongly  
2 evidencing the requisite “evil mind.”

3 68. Defendants have retained expert witnesses in the several product liability  
4 cases involving these subject products over the years, and have paid these expert  
5 witnesses to misrepresent facts and evidence to deliberately avoid acknowledgment  
6 of the above-described product defects. One of these individuals was Dr. Thomas  
7 Eagar, an MIT professor and metallurgist. Another was deponent Steven Gentry.  
8 Another was Deponent Michael Ridley. The presentation of untrue facts and product  
9 failure causation allegations, instead of recalling the products and warning the public,  
10 evidences the requisite “evil mind.”

11 69. Defendants have filed documents with the Courts, including in the related  
12 action, Bailey v. Bernzomatic, et al., 16-cv-7548, presenting false and wholly  
13 unsupported and impossible allegations of unforeseeable user misuse of the products.  
14 However, their own experts, Mr. Gentry and Mr. Ridley, rebutted those causation  
15 theories, evidencing that the defendants knew the injuries of Plaintiff Peralta and  
16 others were due to the above-described defects and their failure to recall the products  
17 and warn the users. Their false allegations of unforeseeable user misuse as filed with  
18 the Courts further evidence that they intended to cover up the defects instead of  
19 recalling the products and warning the users. Defendants’ refusal to recall the  
20 products and warn the users at this time further evidence, unequivocally, that they  
21 intend to continue covering up the defects and marketing, producing, and selling the  
22 subject products, knowing full well that others will suffer severe burn injuries and  
23 horrific deaths, perpetually, until the products are eventually recalled and fixed. Such  
24 conduct evidences the requisite “evil mind” for imposition of punitive damages.

25 70. Many years ago, Defendants were asked, by way of correspondences, to  
26 recall and fix these products, so that other severe injuries and horrific deaths do not  
27 take place, and informed that failure to recall and fix these products would result in  
28



1 further severe burn injuries and horrific deaths. Defendants intentionally ignored  
2 these written warnings, refused to recall and warn, and as a result Plaintiff Peralta has  
3 suffered his severe burn injuries, one Ms. Astrid Marmont was injured and died in  
4 front of her three children and husband, another Mr. Tam died in New York from  
5 another defective NRT cylinder, and countless other persons nationally and  
6 internationally have suffered severe burn injuries. Defendants' disregard for these  
7 written, detailed, and specific notifications and requests for recall and correction of  
8 these products evidences the requisite "evil mind" for imposition of punitive damages.

9 71. Upon receipt of notification of product defects, particularly notifications  
10 with actual product test results and specifications, most manufacturers would have  
11 immediately investigated the allegations, and if the defects were found to exist, would  
12 have immediately recalled the products and warned the public of the defects. Not  
13 these defendants. These defendants evidence an "evil mind" and complete  
14 indifference, therefore punitive damages are not only warranted, but very necessary,  
15 to lead to prevention of further injuries and horrific deaths.

16 72. Defendants have a monopoly on the subject products. They own the  
17 Coleman line of cylinders as well, and are the sole manufacturers of these products in  
18 the United States. The products are marketed under several names, but are all  
19 manufactured by these defendants. Therefore, their evil minds and failure to recall  
20 and warn are certain to result in many more injuries, indeed perpetually, until these  
21 products are recalled and the public is warned.

22 WHEREFORE, Plaintiff prays for an award of punitive damages against the  
23 defendants, and each of them, sufficient to deter their "evil minds" and cause them to  
24 act immediately, so as to persuade them to recall and fix these products. In further  
25 evidence, Plaintiff advises the Court that the evidence to be presented at trial will  
26 demonstrate Defendants' actual knowledge, even now, if for no other reason than  
27 simply by way of this complaint, and yet by the time of trial they will still have failed  
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1 to recall and warn, evidencing a most defiant “evil mind,” and warranting imposition  
2 of punitive damages..

3 **THIRD CAUSE OF ACTION FOR BATTERY**  
4 **(INTENTIONAL TORT)**

5 Plaintiff incorporates by reference all of the general allegations and factual  
6 recitals contained above, and pleads as and for a THIRD cause of as follows:

7 73. In the State of Arizona, felonious aggravated battery occurs when a person,  
8 in committing battery, intentionally or knowingly causes great bodily harm,  
9 permanent disability, or permanent disfigurement.

10 74. Defendants have committed battery against Plaintiff by intentionally  
11 producing, marketing, and selling the subject products that caused his injury with  
12 actual knowledge that the products were defective in the manner described above,  
13 actual knowledge that severe burn injuries would be occasioned by the users of these  
14 products, refusal to recall and fix these products, and refusal to warn of the above-  
15 specified dangers and defects.

16 75. Defendants’ battery was felonious because it inflicted great bodily harm,  
17 permanent disability, and permanent disfigurement to Plaintiff.

18 76. Defendants’ battery was aggravated because Defendants intentionally or  
19 knowingly caused great bodily harm, permanent disability, and permanent  
20 disfigurement to Plaintiff, by their acts as detailed above.

21 77. Defendants’ battery, as detailed above, evidences an “evil mind,” because  
22 they knew some of the users of these products would suffer severe burn injuries due  
23 to the defects of the products described above, intentionally failed to recall the  
24 products, continue to intentionally refuse to recall the products at this time, refused  
25 to warn the users of the above-detailed defects and hazards, and continue to refuse to  
26 warn the users of the above-detailed defects and hazards at this time, while aware that  
27 further severe burn injuries and inevitable horrific deaths arising from these defects  
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1 are certain to occur into the future, perpetually until these products are recalled and  
2 fixed.

3 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of  
4 them, for pain, suffering, disfigurement, actual damages, special damages, and as  
5 warranted here, imposition of punitive damages sufficient to deter their ongoing and  
6 continued infliction of battery on the users of these products.

7  
8 Plaintiff respectfully demands trial by jury.

9  
10 Dated: March 22, 2018

11 s/Andrew W. Shalaby  
12 Andrew W. Shalaby, Attorney for  
13 Plaintiff Jason Peralta  
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