

1 Goodnow | McKay
1825 E. Northern Ave., Ste. 135H
2 Phoenix, AZ 85020
Phone: 602-900-1000
3 Fax: 602-900-8000
azminutes@goodnowmckay.com
4 Justin McKay 032491
James R. Dashiell 035816
5 *Attorneys for Johnathon Cross*

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Johnathon Cross
9 Plaintiff
10 v.
11 Empressive Candles, LLC, Virginia
Candles, LLC, and Candlewic, a fictitious
12 name owned by Binder Industries, Inc.
13 Defendants

Case No. CV-20-00423-TUC-RM-MSA
Second Amended Complaint
(Assigned to Honorable Maria S Aguilera)

14
15 **Parties**

16 1. Plaintiff, Jonathon Cross (“John”), is an individual who, at all material
17 times, resided in Pima County.

18 2. Defendant, Empressive Candles, LLC (“Empressive”), is a Florida limited
19 liability company, which, at all material times, was doing business as a manufacturer and
20 retailer of customized candles at 4500 N. Oracle Rd., Tucson Mall, Tucson, AZ.

21 3. Defendant, Virginia Candle Supply, LLC (“VCS”) a Tennessee Limited
22 Liability Company, is a Tennessee limited liability company, which, at all material times,
34 was doing business as a manufacturer and wholesaler of gels, fragrances and other
24 materials used by Empressive to manufacture and sell candles.

25 4. Defendant, Candlewic, is a Pennsylvania business, which is a fictitious
26 name owned by Binder Industries, Inc., a Pennsylvania corporation (Binder). At all
27 material times, Candlewic was doing business as a seller of candle fragrances and gels and
28 held itself out to the public as an expert in making candles.

Jurisdiction and Venue

1
2 5. At all material times, Empressive was doing business in Pima County,
3 Arizona.

4 6. Plaintiff has been informed and believes that, at all material times, VCS was
5 selling materials to Empressive that were used to make the customized candle (the
6 “Candle”) that is the subject of this case.

7 7. Plaintiff has been informed and believes that, at all material times,
8 Candlewic was selling fragrance to Empressive and gel to VCS that were used to make the
9 Candle.

10 8. The sale of the Candle took place at Empressive’s place of business in Pima
11 County, Arizona.

12 9. The accident, which is the subject of this lawsuit (the “Accident”), took
13 place at Plaintiff’s residence in Pima County.

14 10. Defendant, Empressive, is a Florida LLC with its principal place of business
15 in Jacksonville, FL.

16 11. Defendant, VCS, is a Tennessee LLC with its principal place of business in
17 Tennessee.

18 12. Defendant, Candlewic, is a business located in Pennsylvania, doing business
19 as a fictitious name of Binder, which is a Pennsylvania corporation with its principal place
20 of business in Pennsylvania.

21 13. Plaintiff has suffered serious burns and disfigurement as a consequence of
22 the accident, which is the subject of this case, and, accordingly, the amount in controversy
34 exceeds \$75,000.00.

24 14. Pursuant to the foregoing, this Court has jurisdiction under 28 U.S.C.
25 §1332(a)(1) and venue is proper in this district.

The Product

26
27 15. On November 16, 2019, Plaintiff purchased the Candle for his mother, Lisa
28 Thomas (“Lisa”), at Empressive.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Accident

16. In the evening of November 28, 2019, while at the home of her son, John, located at 3108 N Terrel Pl, Tucson, AZ 85716, Lisa Thomas lit the candle and laid down on the bed to relax.

17. Shortly thereafter, Lisa noticed the smell of something burning, and saw the Candle engulfed in flames approximately two feet high.

18. Lisa was unable to put out the flames herself and called John for help.

19. John was successful in putting out the flames but, in the process, sustained serious and permanent injuries, including severe burns.

Liability – Common Allegations

20. Lisa and John used the candle in a proper and reasonably foreseeable manner.

21. Plaintiff sustained damages as described herein.

22. Plaintiff’s damages were caused by the defective design, manufacture and information provided by each of the defendants as set forth in Counts I, II and III below.

23. Plaintiff’s damages were caused by the concerted action of the defendants in knowingly and intentionally placing into the stream of commerce for economic gain to be derived ultimately from end-users, such as Plaintiff, a product and/or products, which they knew, or reasonably should have known, was unreasonably defective and unreasonably dangerous.

Count I – Defective Design, Manufacture and Information – Empressive

In Count I, Plaintiff makes the following claims against Empressive:

24. At the time Plaintiff purchased the Candle, Empressive was, or reasonably should have been, aware of design, manufacturing and information defects in the Candle related to the increased flammability of the materials used to create it and other similar candles in its store.

25. The design and manufacturing defects included, without limitation, the following:

- 1 a. The Candle contained too much fragrance relative to its other
- 2 ingredients;
- 3 b. The fragrance used ignited at too low a temperature;
- 4 c. The fragrance was not compatible with the gel used to manufacture the
- 5 Candle;
- 6 d. The mineral oil or other ingredients in the gel were too volatile and/or
- 7 burned at too high a temperature;
- 8 e. The liquid gel resulting from the ignition of the fragrance and/or the
- 9 mineral oil or other materials in the gel was excessively hot;
- 10 f. Any of the foregoing defects, or combination of them, could cause a
- 11 spontaneous combustion of the type that caused the Accident.

12 26. At the time Plaintiff purchased the Candle, Empressive was aware that the
13 Candle could behave in an unexpected way that could cause injury to Plaintiff.

- 14 27. The information defects included, without limitation, the following:
- 15 a. At the time Plaintiff purchased the Candle, Empressive did not warn
 - 16 Plaintiff that the Candle could behave in an unexpected way.
 - 17 b. At the time Plaintiff purchased the Candle, Empressive did not warn
 - 18 Plaintiff that the Candle could behave in an unexpected way that could
 - 19 cause injury to Plaintiff.
 - 20 c. At the time Plaintiff purchased the Candle, Empressive did not warn
 - 21 Plaintiff that it was possible the Candle was more flammable than
 - 22 expected.

34 28. Empressive is vicariously liable for the acts and omissions of its agents
24 acting within the course and scope of employment under the doctrine of Respondeat
25 Superior.

26 29. Empressive is at fault for the design, manufacture and/or sale of a defective
27 and unreasonably dangerous product.

28

1 30. Empressive manufactured and/or sold a product that was defective and
2 unreasonably dangerous at the time it left Defendant’s control, and the defect was a cause
3 of Plaintiff’s injury.

4 31. Empressive was a manufacturer of the Candle.

5 32. Empressive was a designer of the Candle.

6 33. Empressive was a seller of the Candle.

7 34. The Candle was defective and unreasonably dangerous at the time it was
8 sold to Plaintiff, including, without limitation, the following respects:

9 a. The Candle contained a manufacturing defect.

10 b. The Candle contained a design defect.

11 c. The Candle contained an information defect.

12 35. One or more of the defects were a cause of Plaintiff’s injuries.

13 **Count II – Defective Design, Manufacture and Information – VCS**

14 In Count II, Plaintiff makes the following claims in addition, and in the alternative,
15 to those asserted in Count I against VCS:

16 36. Empressive purchased materials to make the Candle from VCS (the “VCS
17 Materials”).

18 37. VCS knew, or reasonably should have known, that the VCS Materials
19 would be used by Empressive to make candles like, or similar to, the Candle.

20 38. VCS knew, or reasonably should have known, that Empressive intended to
21 sell the candles it made from the VCS Materials to the general public, including
22 consumers like John.

23 39. VCS was, or reasonably should have been, aware of design, manufacturing
24 and information defects in the VCS Materials related to their increased flammability when
25 they were sold to Empressive.

26 40. The design and manufacturing defects included, without limitation, the
27 following:

28 a. The gel contained too much fragrance relative to its other ingredients;

- 1 b. The fragrance sold ignited at too low a temperature;
- 2 c. The fragrance was not compatible with the gel sold to manufacture the
- 3 Candle and/or those similar to it;
- 4 d. The mineral oil or other ingredients in the gel were too volatile and/or
- 5 burned at too high a temperature;
- 6 e. The liquid gel resulting from the ignition of the fragrance and/or the
- 7 mineral oil or other materials in the gel was excessively hot; and
- 8 f. Any of the foregoing defects, or combination of them, could cause a
- 9 spontaneous combustion of the type that caused the Accident.

10 41. At the time Empressive purchased the VCS Materials, VCS was or should
11 have been aware that the VCS Materials could behave in an unexpected way that could
12 cause injury to consumers, such as Plaintiff.

- 13 42. The information defects included, without limitation, the following:
- 14 a. At the time Empressive purchased the VCS Materials, VCS did not
 - 15 warn Empressive that use of the VCS Materials would produce candles
 - 16 that could behave in an unexpected way.
 - 17 b. At the time Empressive purchased the VCS Materials, VCS did not
 - 18 warn Empressive that use of the VCS Materials would produce candles
 - 19 that could behave in an unexpected way that could cause injury to
 - 20 consumers such as Plaintiff.
 - 21 c. At the time Empressive purchased the VCS Materials, VCS did not
 - 22 warn Empressive that the use of the VCS Materials would produce
 - 23 candles that were more flammable than expected.

24 43. VCS is vicariously liable for the acts and omissions of its agents acting
25 within the course and scope of employment under the doctrine of Respondeat Superior.

26 44. VCS is at fault for the design, manufacture and/or sale of defective and
27 unreasonably dangerous products.

28

1 45. VCS manufactured and/or sold a product or products that were defective
2 and unreasonably dangerous at the time they left the control of VCS, and the defect(s)
3 were a cause of Plaintiff's injury.

4 46. VCS was a manufacturer of the VCS Materials.

5 47. VCS was a designer of the VCS Materials.

6 48. VCS was a seller of the VCS Materials.

7 49. The VCS Materials were defective and unreasonably dangerous at the time
8 they were sold to Empressive, including, without limitation, the following respects:

9 a. They contained a manufacturing defect.

10 b. They contained a design defect.

11 c. They contained an information defect.

12 50. One or more of such defects were a cause of Plaintiff's injuries.

13 **Count III – Defective Design, Manufacture and Information – Candlewic**

14 In Count III, Plaintiff makes the following claims in addition, and in the
15 alternative, to those asserted in Counts I and II against Candlewic:

16 51. Empressive purchased the fragrance to make the Candle from Candlewic.

17 52. VCS purchased the gel it sold to Empressive to make the Candle from
18 Cadlewic (the Candlewic gel).

19 53. Candlewic knew, or reasonably should have known, that the fragrance it
20 sold to Empressive and the Candlewic gel would be used to make candles like, or similar
21 to, the Candle.

22 54. Candlewic knew, or reasonably should have known, that Empressive
34 intended to sell the candles it made using the fragrance to the general public, including
24 consumers like John.

25 55. Candlewic knew or reasonably should have known that the Candlewic gel
26 would be used to make candles for public use.

27 56. Candlewic was, or reasonably should have been, aware of design,
28 manufacturing and information defects in the fragrance and the Candlewic gel related to

1 their increased risk of flammability at the time the fragrance and gel were sold to
2 Empressive and VCS respectively.

3 57. The design and manufacturing defects included, without limitation, the fol-
4 lowing:

- 5 a. The gel contained too much fragrance relative to its other ingredients;
- 6 b. The fragrance sold ignited at too low a temperature;
- 7 c. The fragrance was not compatible with the gel sold to manufacture the
8 Candle and/or those similar to it;
- 9 d. The mineral oil or other ingredients in the gel were too volatile and/or
10 burned at too high a temperature;
- 11 e. The liquid gel resulting from the ignition of the fragrance and/or the
12 mineral oil or other materials in the gel was excessively hot; and
- 13 f. Any of the foregoing defects, or combination of them, could cause a
14 spontaneous combustion of the type that caused the Accident.

15 58. At the times Empressive purchased the fragrance from Candlewic and VCS
16 purchased the Candlewic gel, Candlewic was, or reasonably should have been, aware that
17 the fragrance and the Candlewic gel could behave in an unexpected way that could cause
18 injury to consumers, such as Plaintiff.

19 59. The information defects included, without limitation, the following:

- 20 a. At the time Empressive purchased the fragrance, Candlewic did not
21 warn Empressive that use of the fragrance would produce candles that
22 could behave in an unexpected way.
- 23 b. At the time Empressive purchased the fragrance, Candlewic did not
24 warn Empressive that use of the fragrance would produce candles that
25 could behave in an unexpected way that could cause injury to
26 consumers such as Plaintiff.

- 1 c. At the time Empressive purchased the fragrance, Candlewic did not
- 2 warn Empressive that the use of the fragrance would produce candles
- 3 that were more flammable than expected.
- 4 d. At the time VCS purchased the Candlewic gel, Candlewic did not warn
- 5 VCS that use of the Candlewic gel would produce candles that could
- 6 behave in an unexpected way.
- 7 e. At the time VCS purchased the Candlewic gel, Candlewic did not warn
- 8 VCS that use of the Candlewic gel would produce candles that could
- 9 behave in an unexpected way that could cause injury to consumers such
- 10 as Plaintiff.
- 11 f. At the time VCS purchased the Candlewic gel, Candlewic did not warn
- 12 VCS that the use of the fragrance would produce candles that were
- 13 more flammable than expected.

14 60. Candlewic is vicariously liable for the acts and omissions of its agents
15 acting within the course and scope of employment under the doctrine of Respondeat
16 Superior.

17 61. Candlewic is at fault for the design, manufacture and/or sale of defective
18 and unreasonably dangerous products.

19 62. Candlewic manufactured, sold or designed a product or products that were
20 defective and unreasonably dangerous at the time the product(s) left the control of
21 Candlewic, and the defect(s) were a cause of Plaintiff's injury.

22 63. The fragrance and the Candlewic gel were defective and unreasonably
23 dangerous at the time they were sold to Empressive and VCS respectively, including,
24 without limitation, the following respects:

- 25 a. They contained a manufacturing defect.
- 26 b. They contained a design defect.
- 27 c. They contained an information defect.

28 64. One or more of the defects were a cause of Plaintiff's injuries.

1 **Count IV – Acting in Concert – Joint and Several Liability**

2 In Count IV, Plaintiff makes the following claims in addition, and in the alterna-
3 tive, to those asserted in Counts I and II, against Defendants, individually and collectively:

4 65. Plaintiff incorporates herein all of the allegations in Counts I, II and III.

5 66. A.R.S. Sec. 12-2506 abolished joint and several liability except in certain
6 circumstances listed in Sec. 12-2506 D. One of those circumstances is when both parties
7 “were acting in concert.” Sec. 12-2506 D.1.

8 67. A.R.S. Sec. 12-2506 F.1. provides that “‘Acting in concert’ means entering
9 into a conscious agreement to pursue a common plan or design to commit an intentional
10 tort and actively taking part in that intentional tort.”

11 68. For the reasons set forth above, Defendants acted in pursuit of a common
12 plan or design in that they intentionally placed into the same stream of commerce
13 defective products for profits that were derived from the same group of end-users,
14 including John.

15 **Damages**

16 69. Plaintiff suffered, and continues to suffer, damages caused by Defendants as
17 set forth above, including, but not limited to:

18 70. Physical and emotional injuries, some of which may be permanent;

19 71. Physical and emotional pain, discomfort, suffering, disability,
20 disfigurement, and anxiety already experienced and to be experienced in the future;

21 72. Loss of enjoyment of life and participation in life’s activities to the quality
22 and extent normally enjoyed before the accident already experienced and to be
34 experienced in the future;

24 73. Loss of earnings to date and loss of earning power or capacity in the future;
25 and

26 74. General, special, incidental, consequential, consortium, compensatory and
27 hedonic damages, the full nature and extent of which are not yet determined, including,
28 but not limited to, medical expenses both past and future.

1 75. Plaintiff is entitled to recover damages from Defendants in an amount to be
2 determined at trial which is in excess of the minimum jurisdictional limits of this Court.

3 **Wherefore**, Plaintiff, prays for judgment as follows:

4 A. Against Defendant, Empressive Candles, LLC:

- 5 1) For general, special, incidental, consequential, hedonic, and
6 compensatory damages, as alleged above, in amounts to be
7 proven at trial;
- 8 2) For costs incurred herein and accruing;
- 9 3) For interest on the foregoing sums at the statutory rate; and
- 10 4) For such other and further relief as the Court may deem just and
11 proper.

12 B. Against Virginia Candle Supply, LLC:

- 13 1) For general, special, incidental, consequential, hedonic, and
14 compensatory damages, as alleged above, in amounts to be
15 proven at trial;
- 16 2) For costs incurred herein and accruing;
- 17 3) For interest on the foregoing sums at the statutory rate; and
- 18 4) For such other and further relief as the Court may deem just and
19 proper.

20 C. Against Candlewic:

- 21 1) For general, special, incidental, consequential, hedonic, and
22 compensatory damages, as alleged above, in amounts to be
23 proven at trial;
- 24 2) For costs incurred herein and accruing;
- 25 3) For interest on the foregoing sums at the statutory rate; and
- 26 4) For such other and further relief as the Court may deem just and
27 proper.

28 D. Against Defendants, jointly and severally:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
24
25
26
27
28

- 1) For general, special, incidental, consequential, hedonic, and compensatory damages, as alleged above, in amounts to be proven at trial;
- 2) For costs incurred herein and accruing;
- 3) For interest on the foregoing sums at the statutory rate; and
- 4) For such other and further relief as the Court may deem just and proper.

Dated May 14, 2021.

Goodnow | McKay
By /s/ Justin McKay
Justin McKay, Esq.
James R. Dashiell, Esq.
1825 E. Northern Ave., Ste. 135H,
Phoenix, AZ 85020
Attorneys for Johnathon Cross