

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b>	<b>DEFENDANTS</b>	
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.)		<b>ATTORNEYS</b> (If Known)
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)		
<b>NATURE OF SUIT</b>		
(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<input type="checkbox"/> <b>FRBP 7001(1) – Recovery of Money/Property</b> 11 - Recovery of money/property - § 542 turnover of property <input type="checkbox"/> 12 - Recovery of money/property - § 547 preference <input type="checkbox"/> 13 - Recovery of money/property - § 548 fraudulent transfer <input type="checkbox"/> 14 - Recovery of money/property - other  <input type="checkbox"/> <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> 21 - Validity, priority or extent of lien or other interest in property  <input type="checkbox"/> <b>FRBP 7001(3) – Approval of Sale of Property</b> 31 - Approval of sale of property of estate and of co-owner - § 363(h)  <input type="checkbox"/> <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> 41 - Objection / revocation of discharge - § 727(c),(d),(e)  <input type="checkbox"/> <b>FRBP 7001(5) – Revocation of Confirmation</b> 51 - Revocation of confirmation  <input type="checkbox"/> <b>FRBP 7001(6) – Dischargeability</b> 66 - Dischargeability - § 523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny  (continued next column)	<input type="checkbox"/> <b>FRBP 7001(6) – Dischargeability (continued)</b> 61 - Dischargeability - § 523(a)(5), domestic support <input type="checkbox"/> 68 - Dischargeability - § 523(a)(6), willful and malicious injury <input type="checkbox"/> 63 - Dischargeability - § 523(a)(8), student loan <input type="checkbox"/> 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65 - Dischargeability - other  <input type="checkbox"/> <b>FRBP 7001(7) – Injunctive Relief</b> 71 - Injunctive relief - reinstatement of stay <input type="checkbox"/> 72 - Injunctive relief - other  <input type="checkbox"/> <b>FRBP 7001(8) Subordination of Claim or Interest</b> 81 - Subordination of claim or interest  <input type="checkbox"/> <b>FRBP 7001(9) Declaratory Judgment</b> 91 - Declaratory judgment  <input type="checkbox"/> <b>FRBP 7001(10) Determination of Removed Action</b> 01 - Determination of removed claim or cause  <input type="checkbox"/> <b>Other</b> SS-SIPA Case – 15 U.S.C. §§ 78aaa <i>et seq.</i> <input type="checkbox"/> 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR		BANKRUPTCY CASE NO.
DISTRICT IN WHICH CASE IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

## INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

1 **David S. Lee, Esq. – State Bar No. 246876**  
2 **John P. Kennedy, Esq. – State Bar No. 299603**  
3 **LEE SHOME & KENNEDY, LLP**  
4 7979 Ivanhoe Avenue, Suite 400  
5 La Jolla, CA 92037  
6 Telephone: (855) 254-1228  
7 Facsimile: (858) 459-0690

8 Attorney for Creditors Pacific CNC Machine Co., Inc., John McClain, and Jesse McClain

9 **UNITED STATES BANKRUPTCY COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 In re: ) Case No.: 15-05905-LT7  
12 )  
13 ERIC HUTCHINSON, ) Chapter 7  
14 )  
15 Debtor. ) Adv. No:

16 ) **COMPLAINT FOR:**

17 )  
18 ) PACIFIC CNC MACHINE CO., INC., a ) (1) DETERMINATION OF  
19 ) California corporation, JOHN MCCLAIN, an ) DISCHARGEABILITY AND IN  
20 ) individual; and JESSE MCCLAIN, an individual ) OBJECTION TO DISCHARGE PURSUANT  
21 ) TO 11 U.S.C. § 727(a)(2)(A);  
22 ) Plaintiff, ) (2) DETERMINATION OF  
23 ) ) DISCHARGEABILITY AND IN  
24 ) Vs. ) OBJECTION TO DISCHARGE PURSUANT  
25 ) TO 11 U.S.C. § 727(a)(4)(A);  
26 ) (3) DETERMINATION OF  
27 ) DISCHARGEABILITY AND IN  
28 ) OBJECTION TO DISCHARGE PURSUANT  
29 ) TO 11 U.S.C. § 523(a)(2)(A);  
30 ) (4) DETERMINATION OF  
31 ) DISCHARGEABILITY AND IN  
32 ) OBJECTION TO DISCHARGE PURSUANT  
33 ) TO 11 U.S.C. § 523(a)(4); and  
34 ) (5) DETERMINATION OF  
35 ) DISCHARGEABILITY AND IN  
36 ) OBJECTION TO DISCHARGE PURSUANT  
37 ) TO 11 U.S.C. § 523(a)(6);

38 ) Date: No Hearing Set  
39 ) Time:  
40 ) Dept:  
41 ) Judge: Hon. Laura S. Taylor

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1 Pacific CNC Machine Co., Inc., a California corporation, John McClain, an individual,  
2 and Jesse McClain, an individual (collectively, “Plaintiffs”), as creditors of the debtor, Erik  
3 Hutchinson, and plaintiffs in this adversary proceeding, respectfully represent and allege:

4 **I.**

5 **SUBJECT MATTER JURISDICTION AND VENUE**

6 1. This adversary proceeding arises in, and relates to, Bankruptcy Case No. 15-  
7 05905-LT7, In Re Hutchinson, which was commenced by the filing of a voluntary chapter 7  
8 petition on September 10, 2015.

9 2. The court has jurisdiction to adjudicate the issues raised in this adversary  
10 proceeding pursuant to Title 11 of the United States Code (“U.S.C.”) §§ 727 and 523.

11 3. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(I) and (J).

12 4. Venue in this judicial district is appropriate under 28 U.S.C. §1409(a) because  
13 the debtor’s bankruptcy case is pending in the Southern District of California.

14 **II.**

15 **THE PARTIES**

16 5. Plaintiff Pacific CNC Machine Co., Inc. (“Pacific”) is, and at all times relevant  
17 herein was, a California corporation having its principal office in the County of San Diego,  
18 State of California.

19 6. Plaintiff John McClain is an individual who is, and at all times relevant herein  
20 was, a resident of the County of San Diego, State of California, and is the President and co-  
21 owner of Pacific.

22 7. Plaintiff Jesse McClain is an individual who is, and at all times relevant herein  
23 was, a resident of the County of San Diego, State of California, and is a co-owner of Pacific.

24 8. Defendant Erik Hutchinson (“Hutchinson”) is an individual who at all times  
25 relevant herein has been a resident of the County of San Diego, State of California, and is the  
26 co-founder of Avid Lyfe, Inc., Ameravape Technologies, Inc., and Ameramatic Vtech, LLC.

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III.

GENERAL ALLEGATIONS

1  
2  
3 1. In or around January of 2014, Hutchinson approached the McClains, as  
4 representatives of Pacific, with an idea for Pacific to develop and manufacture certain personal  
5 electronic cigarette vaporizing units (the “units”) on behalf of and to be distributed by  
6 Hutchinson.

7 2. Around the same time, Hutchinson decided to start a business with Jesse  
8 McClain and Kyle Kruger (“Kruger”), with the three of them to split profits equally among  
9 themselves by manufacturing and distributing electronic cigarette units.

10 3. Hutchinson, Kruger, and Jesse McClain agreed to call the company “Ameravape  
11 Technologies.”

12 4. Hutchinson’s duty was to handle outside sales, Kruge’s duty was to handle all  
13 finances and bookkeeping, and Jesse McClain’s duty was to design and machine the units.

14 5. In or about early 2014, before Ameravape Technologies, Inc. was legally formed  
15 and the required documents filed with the California Secretary of State, Plaintiffs presented to  
16 Hutchinson a prototype unit that Plaintiffs had designed, for which Hutchinson expressed great  
17 enthusiasm

18 6. Shortly thereafter, Hutchinson made a verbal offer to order at least 3,000 units  
19 per month and to pay approximately \$50.00 per unit, plus cover all costs for materials, in three  
20 payments: the first payment for costs of materials was to be paid up front, and the last two  
21 payments for the remaining balance of the units would be paid one-half (50%) on delivery and  
22 the other one-half (50%) to be paid thirty (30) days after delivery (the “Contract”).

23 7. On February 28, 2014, shortly after Hutchinson entered into the Contract with  
24 Pacific, Hutchinson filed the necessary documents and paid the fees to the California Secretary  
25 of State to duly form “Ameravape Technologies, Inc.” (“Ameravape”).

26 8. On March 11, 2014, Hutchinson submitted to Pacific an initial partial order for  
27 1,600 units and paid a down payment of \$30,212.50.

28 9. In or about early April of 2014, Pacific finished manufacturing the requested

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1 units. Shortly thereafter, Hutchinson entered Plaintiffs’ manufacturing facility and removed  
2 1,653 units and additional parts from Plaintiffs’ facility.

3 10. On April 8, 2014, Pacific sent Hutchinson invoice #P3769 showing a subtotal of  
4 \$86,925.67, including material costs, leaving the remaining balance owed by Hutchinson at  
5 \$56,713.17, which Hutchinson did not pay and is still due and owing from Hutchinson to  
6 Pacific on this date. A true and correct copy of Invoice #P3769 is attached hereto as Exhibit  
7 “1”.

8 11. On April 9, 2014, Ameravape applied for a trademark, when the application was  
9 suspended, Hutchinson dissolved Ameravape, and misrepresented to Pacific and Jesse McClain  
10 that it was because it had to be dissolved under California law because it was not properly  
11 insured.

12 12. On April 18, 2014, Hutchinson informed Jesse McClain that: (1) Hutchinson had  
13 lost the units; (2) he did not know where they were; and that (3) Pacific was never going to see  
14 them again.

15 13. On April 21, 2014, John McClain demanded Hutchinson return the units, but  
16 Hutchinson refused to comply.

17 14. On April 24, 2014, and after dissolving Ameravape, Hutchinson formed  
18 Ameramatic Vtech, LLC (“AVT”), dba Ameravape Technologies, and continued to use the  
19 trade name Ameravape Technologies while selling the units manufactured by Plaintiffs, but  
20 never paid for by Hutchinson.

21 15. Hutchinson did not inform Plaintiffs that a new company had been formed and  
22 that Hutchinson was in possession of and selling the units belonging to Ameravape.

23 16. Hutchinson, through his contacts as the outside sales representative, continued  
24 selling the unpaid for units at such prices as \$279.99 per unit, under the trade name Ameravape  
25 Technologies, despite the fact that Ameravape had been dissolved.

26 17. Hutchinson continued to sell the units after dissolving Ameravape and has reaped  
27 a substantial profit at the expense of Jesse McClain, to whom Hutchinson never paid his rightful  
28 1/3<sup>rd</sup> share of the profits as agreed upon at the formation of Ameravape, nor repaid the

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1 outstanding balance of Invoice #P3769 owed to Pacific.

2 18. Pacific is informed and believes, and thereon alleges, that Hutchinson used the  
3 proceeds from the sale of those stolen and unpaid for units to purchase manufacturing  
4 machinery, and proceeded to manufacture and distribute, and still is currently manufacturing  
5 and distributing through his new company Avid Lyfe, Inc., a large number of units based on  
6 Pacific's design, at great profit to Hutchinson and his sister and co-founder of Avid Lyfe, Inc.,  
7 Lindsey Hunziker.

8 19. On July 16, 2014, Plaintiffs filed a complaint against Hutchinson and Kyle  
9 Kruger in the San Diego County Superior Court, Case No. 37-2014-00023575-CU-CO-NC for  
10 the following causes of action: breach of contract, bad faith, intentional interference with  
11 contractual relationship, fraud, breach of fiduciary duty, conversion, and judicial declaration  
12 regarding funds in controversy for amounts exceeding Five Hundred Thousand Dollars and No  
13 Cents (\$500,000.00), including disgorgement of all gains, profits, and advantages derived by  
14 Hutchinson and Kyle Kruger from their actions. A true and correct copy of the germane sections  
15 of the Plaintiffs' complaint, entitled McClain vs. Hutchinson, Case No. 37-2014-00023575-CU-  
16 CO-NC, are attached hereto as Exhibit "2".

17 20. On November 21, 2014, Hutchinson and his sister Lindsey Hunziker formed  
18 Avid Lyfe, and Plaintiffs are informed and believe, and thereon allege, that Hutchinson has been  
19 diverting business and profits away from AVT to Avid Lyfe in order to purposefully cut Kruger  
20 out of Kruger's share of the profits raised by AVT. Income from AVT was not declared in  
21 Hutchinson's bankruptcy petition.

22 21. On December 12, 2014, Kruger filed a complaint against Hutchinson and  
23 Hunziker in San Diego County Superior Court, Case No. 37-2014-00042037-CU-BT-NC, for  
24 breach of fiduciary duty, breach of covenant of good faith and fair dealing, conversion, unfair  
25 competition, and for the involuntary dissolution of AVT. A true and correct copy of the  
26 relevant parts of the complaint filed on December 12, 2014, in the San Diego County Superior  
27 Court Case No. 37-2014-00042037-CU-BT-NC, titled Kyle Kruger v. Ameramatic Vtech LLC,  
28 *et al.* are attached hereto as Exhibit "3".

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1           22.     Kruger alleged in his complaint that, among other actions, Hutchinson used  
2 threats of violence to exclude Kruger from both the management and operation of AVT;  
3 willfully misappropriating and converting funds, assets, and inventory to personal uses;  
4 misappropriating AVT’s confidential and trade secret designs in order to form and operate a  
5 competing business marketing and selling the same products as AVT with AVT’s logo; and  
6 Hutchinson had taken control of all of AVT’s assets for his personal use in a competing  
7 business.

8           23.     Kruger included in his complaint an invoice dated November 17, 2014,  
9 documenting that Hutchinson and Hunziker were the parties receiving payments, to the  
10 exclusion of Kruger, and that payment was taken by Hutchinson and Hunziker without  
11 delivering the products that were paid for, keeping the payment for themselves.

12           24.     Plaintiffs thereon allege that Hutchinson was personally in receipt of the funds  
13 from AVT, which as set forth in the preceding paragraphs, was not disclosed in Hutchinson’s  
14 bankruptcy petition.

15           25.     On January 22, 2015, Avid Lyfe registered and received a trademark for their  
16 logo, assigned No. 86510867, for which the Avid Lyfe trademark is nearly identical to the  
17 Ameravape and AVT logos. A true and correct copy of the documents retrieved on October 23,  
18 2015 from the Trademark Electronic Search System from the United States Patent and  
19 Trademark Office, showing the application date, as well as true and correct copies from  
20 vendor’s websites of both Ameravape’s and AVT’s products with similar, if not identical logos,  
21 are attached hereto as Exhibit “4”.

22           26.     Furthermore, Hutchinson’s name appears multiple times on the Avid Lyfe  
23 website, including a page that Hutchinson is the founder of Avid Lyfe, and Hutchinson has or  
24 had videos posted on the website www.YouTube.com advertising the “Avid Lyfe Manhattan  
25 Mod.” True and correct copies of the Avid Lyfe website listing the Debtor as the founder of  
26 Avid Lyfe, the Debtor’s Facebook page stating he is a representative for Avid Lyfe, and a  
27 screen shot of the Debtor marketing for Avid Lyfe on YouTube, as of October 23, 2015, are  
28 attached hereto as Exhibit “5”.

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1           27.    On November 12, 2015, Andrew Birnbaum, an individual, and Smartcloud  
2 Technologies, Inc., a California corporation, filed a complaint in the San Diego County Superior  
3 Court, Case No. 37-2015-00038497-CU-BC-NC, against Avid Lyfe, Hunziker, and Hutchinson  
4 for breach of contract, breach of fiduciary duty, and failure to pay wages, commissions and  
5 benefits when due. A true and correct copy of the relevant part of the complaint filed in the San  
6 Diego County Superior Court Case No. 37-2015-00038497-CU-BC-NC, titled Andrew  
7 Birnbaum, *et al.* v. Avid Lyfe, Inc., *et al.* is attached hereto as Exhibit “6”.

8           28.    The complaint states that Avid Lyfe had, among numerous other benefits, agreed  
9 to pay Andrew Birnbaum and SmartCloud Technologies, Inc., compensation in the amount of  
10 \$10,000.00 *per month*, for his services as Chief Executive Officer of Avid Lyfe. The complaint  
11 further alleges Hutchinson and Hunziker as the co-founders of Avid Lyfe.

12           29.    Hutchinson has an extensive record of acts of fraud, dishonesty, and moral  
13 turpitude documented in court records and other official documents, including:

- 14           02/06/97 – Felony reduced larceny;
- 15           10/13/10 – Stealing money from Mr. Zachary Gibson;
- 16           05/09/12 – Frivolous filing of a TRO on Mr. Ryan Press;
- 17           05/30/12 – Lying repeatedly to San Diego County Sheriffs and Sup. Crt. Judge;
- 18           11/12/13 – Disobeying court order, secreting minor child and refusal to return child; and
- 19           01/14/14 – Contempt of court proceeding initiated for refusal to pay child support.

20           A true and correct copy of the relevant court records and official documents relating to  
21 Hutchinson’s felony reduced larceny, Hutchinson stealing money from Mr. Zachary Gibson,  
22 Hutchinson’s frivolous filing of a TRO on Mr. Ryan Press, Hutchinson lying repeatedly to San  
23 Diego County Sheriffs and Superior Court Judge, and Hutchinson’s disobedience of a court  
24 order, secreting minor child and refusal to return child are attached hereto as Exhibit “7”

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**IV.**

**FIRST CLAIM FOR RELIEF**

**(For a Determination That Hutchinson’s Debts are Not Dischargeable Pursuant to 11 U.S.C. §727(a)(2)(a) against Erik Hutchinson)**

30. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though fully set forth herein.

31. Pursuant to 11 U.S.C. § 727(a)(2)(A), “The court shall grant the debtor a discharge, unless – the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate...has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated or concealed – property of the debtor, within one year before the date of the filing of this petition.”

32. Avid was formed on November 21, 2014, which is within one year from the date Hutchinson filed the Petition.

33. On Avid Lyfe’s website, Hutchinson is listed as the founder and owner.

34. Plaintiff is informed and believes, and thereon alleges, that Hutchinson has continually transferred, concealed, and kept his assets, income, and businesses, all of which are Hutchinson’s property, in Hunziker’s name and through Avid Lyfe, with the intent to hinder, delay, and defraud his creditors, all within one year before the date of the filing of the Petition.

35. Plaintiff allege that Hutchinson is trying to hide his business and his business income from Plaintiff by putting Hunziker’s name on the Avid Lyfe corporation, and it is done with an intent to defraud. Hutchinson is trying to hide behind the claim that Avid Lyfe is Hunziker’s company, and that is to hinder the ability of his creditors to find his income for the amounts he owes to such creditors, including Plaintiff.

**V.**

**SECOND CLAIM FOR RELIEF**

**(Determination of Dischargeability and In Objection To Discharge Pursuant To 11 U.S.C. §727(A)(4)(A) against Erik Hutchinson)**

36. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though

1 fully set forth herein.

2 37. Pursuant to 11 U.S.C. § 727(a)(4)(A), “the court shall grant the debtor a  
3 discharge unless – the debtor knowingly and fraudulently, in or in connection with the case –  
4 made a false oath or account.”

5 38. On September 10, 2015, Hutchinson filed a voluntary petition for bankruptcy  
6 with this Court. He swore under penalty of perjury that the information, which he provided in  
7 the petition, was true and correct. A true and correct copy of the relevant parts of the Debtor’s  
8 bankruptcy petition are attached hereto as Exhibit “8”.

9 39. On Hutchinson’s bankruptcy petition (the “Petition”), on Schedule B – Personal  
10 Property, under Item 13 “Stock and interests in incorporated and unincorporated businesses,”  
11 Hutchinson only listed AVT, yet on Avid Lyfe’s website it lists Erik Hutchinson as the founder  
12 of Avid Lyfe.

13 40. On the Petition on Schedule I, entitled “Your Income,” Hutchinson stated he is  
14 not employed and has no income, yet there are many posts and/or videos online about him  
15 marketing and working for Avid Lyfe currently, as well as being posted all over as the founder  
16 and engineer behind Avid Lyfe’s products.

17 41. On the Petition under the “Statement of Financial Affairs” Item #1, “Income  
18 from employment or operation of business,” Hutchinson neither (1) listed Avid Lyfe as a source  
19 of income, nor (2) listed any income from AVT (besides a loss), which Plaintiffs believe to be  
20 false as Hutchinson sold the stolen and unpaid for merchandise to purchase his own  
21 manufacturing equipment which Avid now uses. Furthermore, just one of AVT’s bank  
22 statements show substantial deposit amounts since AVT’s inception:

23 (a) In May of 2014, one month after AVT’s formation, AVT received  
24 Deposits and Other Credits totaling \$48,461.12;

25 (b) In June of 2014, AVT received \$128,315.10 in deposits and credits;

26 (c) In July of 2014, AVT received \$187,801.67 in deposits and credits;

27 (d) In August of 2014, AVT received \$201,278.40 in deposits and credits;

28 (e) In September of 2014, AVT received \$210,412.33 in deposits and credits;

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1 (f) In October of 2014, AVT received \$268,479.41 in deposits and credits;

2 (g) However, in November of 2014, the same month Avid Lyfe was formed,  
3 total deposits and credits drop to \$81,621.20, followed by another drop in December of 2014, to  
4 a total of \$9,680.86 in deposits and credits. A true and correct copy of AVT’s redacted bank  
5 statements are attached hereto as Exhibit “9”.

6 42. Despite these large deposits and credits, Hutchinson still claimed on his petition  
7 that his income in 2014 for AVT was a loss of \$20,268.00.

8 43. Hutchinson also failed to list Avid Lyfe or Ameravape under Item 18 in the  
9 Statement of Financial Affairs, “Nature, location and name of business,” in which Hutchinson  
10 only listed AVT and Green Life Recovery as holding a position as officer, director, partner,  
11 ownership interest in, or in which the debtor owned 5% or more of the voting or equity  
12 securities within six years immediately preceding this case, yet Hutchinson was a 1/3<sup>rd</sup>  
13 shareholder in Ameravape, and is the founder of Avid Lyfe, as it states on Avid Lyfe’s website.

14 44. Hutchinson’s failure to include his ownership interests, partners, income, and  
15 assets in the Petition is a deliberate omission of a material matter constituting a false oath or  
16 account in connection with the case.

17 45. Hutchinson failed to disclose his ownership in Avid Lyfe and Ameravape, his  
18 partners, his income from all of his previous businesses, and his assets with the intent to mislead  
19 creditors and the trustee as to Hutchinson’s true financial condition, or with reckless disregard  
20 for the truth with regard to a matter material to the case.

21 **VI.**

22 **THIRD CLAIM FOR RELIEF**

23 **(Determination of Dischargeability and In Objection To Discharge Pursuant To 11 U.S.C.**

24 **§523(a)(2)(A) against Erik Hutchinson)**

25 46. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though  
26 fully set forth herein.

27 47. Pursuant to 11 U.S.C. § 523(a)(2)(A), A discharge of a debtor does not discharge  
28 such debtor from any debt for “money, property, services...to the extent obtained by – false

1 pretenses, a false representation, or actual fraud”

2 48. Hutchinson incurred a debt to Plaintiffs, in which Hutchinson obtained the  
3 property and services from Plaintiffs by false representations and actual fraudulent conduct.

4 49. In or about January of 2014, at Plaintiff’s place of business, Hutchinson orally  
5 and by his conduct tendered a promise to Plaintiffs that Hutchinson would pay Plaintiffs  
6 approximately \$50.00 per unit, plus costs, per each unit that Plaintiffs manufactured for  
7 Hutchinson, and that Hutchinson would pay these amounts in the manner agreed upon, and that  
8 Hutchinson would order a minimum of three thousand (3,000) units per month from Plaintiffs.  
9 These promises were each as to material matters.

10 50. In or about January of 2014, Hutchinson further agreed to form Ameravape with  
11 Jesse McClain and to split the profits from selling the units to vendors evenly between Jesse  
12 McClain, Hutchinson, and Kruger.

13 51. At the time Hutchinson made these promises, he did not intend to perform them,  
14 which intention may be referred from the fact that in or about early April of 2014, Hutchinson  
15 knowingly entered upon and removed unit parts from Plaintiffs’ place of business and refused  
16 and failed to pay for the units, and further failed to split the profits from any sales of the units  
17 with Jesse McClain, despite their agreement.

18 52. Plaintiffs are informed and believe, and thereon allege, that Hutchinson induced  
19 Plaintiffs to design and manufacture the units, removed the units from Plaintiffs’ place of  
20 business, never intended to pay the amounts due and owing to Plaintiffs, never intended to  
21 fulfill the minimum order requirements, and never splitting the proceeds from any sales to  
22 vendors for the specific purpose of depriving Plaintiffs of their funds and property for  
23 Hutchinson’s own benefit by defrauding Plaintiffs and harassing Plaintiffs’ as a business, all  
24 with malice toward Plaintiffs.

25 53. Hutchinson made these promises for the purpose of inducing Plaintiffs to rely  
26 upon them and to act or refrain from acting in reliance upon them, and in or about January 2014,  
27 and during the term of Plaintiffs’ performance of the contract, Plaintiffs became justified in  
28 relying on Hutchinson’s promises through Hutchinson’s oral and written misrepresentations, in

1 the circumstances set forth herein, and Plaintiff would not have designed and manufactured the  
2 units otherwise, nor agreed to form Ameravape with Hutchinson.

3 54. Plaintiffs were unaware of Hutchinson’s intention not to perform his promises.  
4 Plaintiffs acted in justifiable reliance on Hutchinson’s promises by, among other things,  
5 manufacturing the units that Hutchinson ordered from Plaintiffs, and by forbearing the pursuit  
6 of other economic benefit and income from other business opportunities.

7 55. Plaintiffs did not discover the intentional misrepresentation practiced upon them  
8 by Hutchinson until after April 8, 2014, when Hutchinson removed the units and parts and later  
9 announced his intention to refuse to pay the full amount he owed to Plaintiff under the contract.

10 56. As a direct and proximate result of the foregoing, Plaintiffs have suffered  
11 damages in an amount not presently ascertained but believed to be in excess of \$250,000.00,  
12 which should be exempted from discharge in debtor Erik Hutchinson’s bankruptcy. Based on  
13 the fraud and defalcation, Plaintiffs, and each of them, requests that the debt owed to Plaintiffs  
14 by the debtor, Erik Hutchinson, be deemed not dischargeable in this bankruptcy.

15 57. In committing the acts hereinabove described, Hutchinson acted willfully,  
16 maliciously, and with deliberate intent to deceive Plaintiffs, and because thereof, Plaintiffs are  
17 entitled to punitive and exemplary damages in an amount to be determined at trial.

18 **VII.**

19 **FOURTH CLAIM FOR RELIEF**

20 **(Determination of Dischargeability and In Objection To Discharge Pursuant To 11 U.S.C.**

21 **§523(a)(4) against Defendant Erik Hutchinson)**

22 58. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though  
23 fully set forth herein.

24 59. Pursuant to 11 U.S.C. 523(a)(4), a discharge shall not discharge the debtor from  
25 a debt for “fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.”

26 60. At all relevant times, Hutchinson operated in fiduciary capacity as an officer of  
27 Ameravape, and owed Jesse McClain, a shareholder of the corporation, a fiduciary duty to act  
28 with the utmost care, honesty, undivided loyalty, and fidelity in all of their business dealings.

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1           61. Hutchinson breached his fiduciary duty when he engaged in the following acts,  
2 among others:

3                   (a) Acts of self-dealing, designed to deprive Jesse McClain of the economic  
4 benefits from and ownership rights in Ameravape, by fraudulently misrepresenting the reason  
5 Ameravape had to be dissolved;

6                   (b) Not declaring dividends but paying still himself out of the proceeds of the  
7 sales of the unpaid for units, without disclosing to Jesse McClain he was doing so;

8                   (c) Paying himself out of the profits from sales of the units without paying  
9 Jesse McClain, and if sold for \$279.99 per unit and Hutchinson was in possession of 1,653  
10 completed units, is a gross revenue of \$462,823.47;

11                   (d) Violating the initial agreement at the onset of Ameravape to split all  
12 profits equally three ways, and failing to account for funds which he obtained from  
13 Ameravape’s treasury and/or bank accounts;

14                   (e) By willfully and maliciously forcing Jesse McClain out of his rights to  
15 the proceeds by intentionally misrepresenting to him that the Ameravape brand would no longer  
16 be selling products, all while continuing to do business under a different corporate name but  
17 with the same product logo, and wrongfully excluding Jesse McClain from his share of the  
18 profits in the business that, as referenced in the bank statements above, deposited a gross  
19 revenue of \$1,044,748.03 in just 6 months, which is the minimum as there may be other  
20 unknown accounts that had further deposits unknown to Plaintiffs at this time;

21                   (f) Failing to follow corporate formalities, such as declaring proper  
22 dividends and keeping the required books and records;

23                   (g) Fraudulently misrepresenting to Jesse McClain that Hutchinson had lost  
24 the units and that Jesse McClain was never going to see them again.

25           62. As a direct and proximate result of the foregoing, Plaintiff Jesse McClain has  
26 suffered damages in an amount not presently ascertained but believed to be in excess of  
27 \$100,000.00, which should be exempted from discharge in the debtor, Erik Hutchinson’s  
28 bankruptcy. Based on the fraud and defalcation, Plaintiff Jesse McClain requests that the debt

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1 owed to Plaintiff Jesse McClain by the debtor, Erik Hutchinson, be deemed not dischargeable in  
2 this bankruptcy.

3 63. In committing the acts hereinabove described, Hutchinson acted willfully,  
4 maliciously, and with deliberate intent to deceive Plaintiff Jesse McClain, and because thereof,  
5 Plaintiff is entitled to punitive and exemplary damages in an amount to be determined at trial.

6 **VIII.**

7 **FIFTH CLAIM FOR RELIEF**

8 **(Determination of Dischargeability and In Objection To Discharge Pursuant To 11 U.S.C.**

9 **§523(a)(6) against Erik Hutchinson)**

10 64. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though  
11 fully set forth herein.

12 65. Pursuant to 11 U.S.C. § 523(a)(6), a discharge shall not discharge the debtor  
13 from a debt for willful and malicious injury “to another entity or to the property of another  
14 entity” shall be nondischargeable.

15 66. Plaintiffs and Hutchinson, entered into a contract in or about January 2014, and  
16 during the term of Plaintiffs’ performance and the parties’ intentional conduct that both parties  
17 knew, or had reason to know, the other would interpret the conduct as an agreement to enter into  
18 the contract. The contract was oral and implied-in-fact.

19 67. The basic terms of the contract provided that Hutchinson would order a  
20 minimum of 3,000 units per month, for an extended period of time, during which Plaintiffs  
21 would design and manufacture the units, and Hutchinson would pay Plaintiffs approximately  
22 \$50.00 per unit, and which the 1,653 units averaged to about \$52.59 per unit once completed.

23 68. Plaintiffs undertook and have duly performed all of the conditions, covenants  
24 and promises required by it to be performed in accordance with the terms and conditions of the  
25 contract, by manufacturing all units Hutchinson ordered from them, and being prepared and  
26 ready to manufacture the remaining units upon Hutchinson’s request.

27 69. Hutchinson breached his oral agreement with Plaintiffs by failing and refusing to  
28 perform in good faith their promise to render payment for the units he ordered from Plaintiff,

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1 and removing Plaintiffs’ property from their manufacturing facility in violation of the terms of  
2 the Contract.

3 70. Hutchinson further breached his oral agreement with Plaintiffs by failing and  
4 refusing to perform in good faith his promise to meet the minimum order amount of 3,000 units  
5 per month, as Hutchinson only ordered 1,600 units in one month, and then never ordered the  
6 remaining 1,400 units as required by the contract. Hutchinson not only failed to pay for the  
7 original order, but also failed to make any future orders.

8 71. As a result of the breach of contract by Hutchinson, the sum of \$56,713.17 is  
9 now due, owing, and unpaid for the first order of 1,653 completed units and additional parts.

10 72. As a further result of the breach of contract by Hutchinson for not ordering the  
11 remaining 1,400 units for the month as required by the terms of the contract, Plaintiffs have  
12 suffered damages in the amount of \$73,626.00.

13 73. As a result of the breach of contract by Hutchinson by failing to make the future  
14 monthly minimum orders as intended by the terms of the contract, Plaintiffs have been damaged  
15 by the loss of a monthly revenue of \$157,770.00 per month, which was expected and due under  
16 the terms of the contract.

17 74. Plaintiffs have performed all conditions, covenants, and promises that Plaintiffs  
18 were required to do in accordance with the terms and conditions of the contract, or Plaintiff was  
19 excused from having to do those things.

20 75. All the conditions, covenants, and promises required for Hutchinson under the  
21 contract have occurred, however, Hutchinson has willfully and maliciously denied Pacific its  
22 right to payment for the services provided and for the units taken from Plaintiff’s facility, and  
23 has unlawfully disposed of Plaintiffs’ property rights in the units by selling them to the  
24 distributors and shops he had met with pursuant to his position as outside salesman for  
25 Ameravape.

26 76. During this time, Hutchinson has been selling the units for up to \$279.99 per  
27 unit, while knowingly causing Plaintiffs to incur substantial economic damage in both revenue  
28 and reputation.

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1 77. Hutchinson has willfully and maliciously converted Plaintiffs’ property, as  
2 Plaintiffs have clear legal right to the units as no payment has been received from Hutchinson.

3 78. Plaintiffs are informed and believe, and thereon allege, that Hutchinson has  
4 willfully and maliciously conspired against Plaintiff to avoid repaying the amount due by setting  
5 up multiple separate legal business entities, and transferring profits from one to another, all  
6 while still selling and benefiting from the profits derived from the unpaid for units  
7 manufactured by Plaintiff.

8 79. As a direct and proximate result of the foregoing, Plaintiffs have suffered  
9 damages in an amount not presently ascertained but believed to be in excess of \$100,000.00,  
10 which should be exempted from discharge in debtor Erik Hutchinson’s bankruptcy. Based on  
11 the fraud and defalcation, Plaintiffs, and each one of them, request that the debt owed to  
12 Plaintiffs by the debtor, Erik Hutchinson, be deemed not dischargeable in this bankruptcy.

13 80. In committing the acts hereinabove described, Hutchinson acted willfully,  
14 maliciously, and with deliberate intent to deceive Plaintiffs, and because thereof, Plaintiffs are  
15 entitled to punitive and exemplary damages in an amount to be determined at trial.

16  
17 **PRAYER FOR RELIEF**

18  
19 **WHEREFORE**, Plaintiffs pray for the entry of judgment against Defendant Erik  
20 Hutchinson as follows:

21 1. That the Court determine that the debts of defendant Hutchinson be ruled  
22 nondischargeable as a result of defendant Hutchinson transferring his property within one year  
23 before the date of the filing of the petition to defendants Hunziker and Avid Lyfe by virtue of  
24 the provisions of 11 U.S.C. § 727(a)(2)(A);

25 2. That the Court determine that the debts of defendant Hutchinson be ruled  
26 nondischargeable as a result of defendant Hutchinson’s knowingly and fraudulently making a  
27 false oath in connection with a bankruptcy case by virtue of the provisions of 11 U.S.C §  
28 727(a)(4)(A);

