

<p>DISTRICT COURT, COUNTY OF DENVER STATE OF COLORADO</p> <p>Court Address: 1437 Bannock Street Denver, Colorado 80202</p> <p>Telephone: 720-865-8301</p>	<p>DATE FILED: April 13, 2016 7:18 PM FILING ID: C412DD7A1A436 CASE NUMBER: 2016CV31310</p>
<p>Plaintiff: ANDREW KIRK, CHRISOPHER AIDEN KIRK AND ETHAN KIRK, by and through their Co-Guardians, WAYNE KOHNKE, MARTI KOHNKE AND TAMARA HEMAN</p> <p>v.</p> <p>Defendants: RICHARD KIRK, an Individual; NUTRITIONAL ELEMENTS, INC., a Colorado Corporation; and GAIA'S GARDEN, a Colorado Corporation</p>	<p>Case No.:</p> <p>Division:</p>
<p align="center">COMPLAINT FOR DAMAGES AND JURY DEMAND</p>	

Plaintiffs, Andrew Kirk, Christopher Aiden Kirk and Ethan Kirk, by and through their Guardians, Wayne Kohnke, Marti Kohnke and Tamara Heman, by and through their counsel of record, The Gold Law Firm, L.L.C. and Silverman & Olivas, P.C. hereby submit the following Complaint for Damages. Plaintiff's state and allege as follows:

GENERAL ALLEGATIONS

1. On April 14, 2014, Plaintiff Andrew Kirk was the natural born son of Richard Kirk and Kristine Kirk, deceased, and was a resident of the City and County of Denver, State of Colorado. Plaintiff Andrew Kirk is now a resident of the City of Centennial, County of Arapahoe, State of Colorado.

2. On April 14, 2014, Plaintiff Christopher Aiden Kirk was the natural born son of Richard Kirk and Kristine Kirk, deceased, and was a resident of the City and County of Denver, State of Colorado. Plaintiff Christopher Aiden Kirk is now a resident of the City of Centennial, County of Arapahoe, State of Colorado.

3. On April 14, 2014, Plaintiff Ethan Kirk, was the natural born son of Richard Kirk and Kristine Kirk, deceased, and was a resident of the City and County of Denver, State of Colorado. Plaintiff Ethan Kirk is now a resident of the City of Centennial, County of Arapahoe, State of Colorado.

4. At all times relevant, Defendant Richard Kirk, was the natural father of Plaintiffs Andrew Kirk, Christopher Aiden Kirk and Ethan Kirk and was a resident of the City and County of Denver, State of Colorado.

5. Upon information and belief, Defendant Richard Kirk is currently incarcerated at the Colorado State Hospital, Pueblo, State of Colorado.

6. Upon information and belief, Defendant Nutritional Elements, Inc. is a Colorado corporation, doing business in the State of Colorado with its principal place of business located at 2777 S. Colorado Boulevard, Denver, Colorado 80222.

7. Upon information and belief, Defendant Gaia's Garden is a Colorado corporation, doing business in the State of Colorado with its principal place of business located 4785 N. Elati Street, #11, Denver, Colorado 80216.

8. Jurisdiction and venue are appropriate in this Court.

FACTUAL ALLEGATIONS

9. Plaintiff incorporates by reference the General Allegations in paragraphs 1-8 above, as though fully set forth herein.

10. Upon information and belief, on or about April 14, 2014, Defendant Richard Kirk purchased a marijuana infused edible candy, "Karma Kandy Orange Ginger", from Defendant Nutritional Elements, Inc.

11. Upon information and belief, the marijuana infused edible candy purchased by Richard Kirk was packaged, sold and distributed by Defendant Gai's Garden.

12. On April 14, 2014, after consuming some or all of the marijuana infused edible candy, Defendant Richard Kirk shot and killed Kristine Kirk, the natural mother of their minor children Andrew Kirk, Christopher Aiden Kirk and Ethan Kirk at the family home located on South St. Paul Street in the City and County of Denver, State of Colorado.

13. Upon information and belief, the label for the “Karma Kandy Orange Ginger” purchased and consumed stated that the candy contained “101 mg THC.”

14. Upon information and belief, Defendant Richard Kirk experienced strong drug effects, including possible psychotic behavior, following ingestion of the marijuana infused edible candy, which caused him to shoot and kill his wife.

15. Upon information and belief, Defendants Nutritional Elements, Inc. and Gaii’s Garden were engaged in the business of manufacturing, labeling, packaging, selling and distributing marijuana infused edibles and did in fact label, package, sell, and distribute the marijuana infused edible purchased and consumed by Defendant Richard Kirk.

16. At all times pertinent hereto, Defendant Richard Kirk used and consumed the marijuana infused edible in the manner intended and reasonably foreseeable to Defendants Nutritional Elements, Inc. and Gaii’s Garden.

17. On June 3, 2014, Wayne Kohnke, Marti Kohnke and Tamara Heman were appointed Co-Guardians for the minors Andrew Kirk, Christopher Aiden Kirk and Ethan Kirk by the Denver Probate Court in Case No. 14PR30614.

FIRST CLAIM FOR RELIEF
(Negligence against Defendant Richard Kirk)

18. Plaintiffs hereby incorporate Paragraphs 1-17 as if set forth fully herein.

19. On or about April 14, 2014, Defendant Richard Kirk, after consuming a marijuana infused edible candy, shot and killed Kristine Kirk the natural mother of Plaintiffs Andrew Kirk, Christopher Aiden Kirk and Ethan Kirk.

20. The Defendant owed a duty to Plaintiffs to exercise reasonable care in his actions and conduct toward their mother, Kristine Kirk.

21. The Defendant deviated from that duty in shooting Kristine Kirk while under the influence of the marijuana infused edible candy and was therefore negligent.

22. As a direct and proximate result of the negligence of Defendant Richard Kirk, Plaintiff Andrew Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

23. As a direct an proximate result of the negligence of Defendant Richard Kirk, Plaintiff Christopher Aiden Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

24. As a direct an proximate result of the negligence of Defendant Richard Kirk, Plaintiff Ethan Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

SECOND CLAIM FOR RELIEF
(Violation of the Colorado Consumer Protection Act, §§ 6-1-101 et seq. against Defendants Nutritional Elements, Inc. and Gaii's Garden)

25. Plaintiff incorporate Paragraphs 1-24 as if fully set forth herein.

26. Defendant Nutritional Elements, Inc. and Defendant Gaii's Garden engaged in a deceptive trade practice in their manufacturing, labeling, packaging, selling and distribution of the marijuana infused edible purchased and consumed by Defendant Richard Kirk.

27. The deceptive trade practice engaged in by Defendant Nutritional Elements, Inc. and Gaii's Garden significantly impacted the public as actual or potential consumers of the defendants' goods.

28. The Plaintiffs suffered injury to a legally protected interest through the loss of their mother as a result of the defendants' deceptive trade practice.

29. As a direct an proximate result of the deceptive trade practice of Defendant Nutritional Elements, Inc., Plaintiff Andrew Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

30. As a direct an proximate result of the deceptive trade practice of Defendant Gaii's Garden, Plaintiff Andrew Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

31. As a direct an proximate result of the deceptive trade practice of Defendant Nutritional Elements, Inc., Plaintiff Christopher Aiden Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

32. As a direct and proximate result of the deceptive trade practice of Defendant Gaii's Garden, Plaintiff Christopher Aiden Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

33. As a direct and proximate result of the deceptive trade practice of the Defendant Nutritional Elements, Inc. Plaintiff Ethan Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

34. As a direct and proximate result of the deceptive trade practice of the Defendant Gai's Garden, Plaintiff Ethan Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

THIRD CLAIM FOR RELIEF
(Strict Liability against Defendants Nutritional Elements, Inc. and Gai's Garden)

35. Plaintiff hereby incorporates Paragraphs 1 through 34 as though fully set forth herein.

36. The Defendants are liable as a product manufacturers, within the meaning of the Colorado Product Liability Act, § 13-21-401. The "Karma Kandy Orange Ginger", a marijuana infused edible candy, is a product within the meaning of the Act. The Defendants were each manufacturers and sellers of the product.

37. Under the Act, the Defendants owed a duty to the Plaintiffs to manufacture and sell a product that was reasonably safe in formulation, wholesome and fit for human consumption, which did not materially deviate from applicable formulation specifications, or otherwise deviate in some material way from otherwise identical units in Defendants' production line.

38. Under the Act, the Defendants owed a duty to Plaintiffs to manufacture a product that conformed to its implied warranties.

39. Upon information and belief, the "Karma Kandy Orange Ginger" purchased and consumed by Defendant Richard Kirk was not reasonably safe in formulation and did not conform to Defendants' implied warranties.

40. Because the "Karma Kandy Orange Ginger" was not reasonably safe in formulation and did not conform to the Defendants' implied warranties, the Defendants are liable to the Plaintiffs for any the economic and non-economic damages that they have suffered as the result of their mother's death.

FOURTH CLAIM FOR RELIEF
(Negligence - Failure to Warn for Causing Wrongful Death Against Defendants Nutritional Elements, Inc. and Gai's Garden)

41. Plaintiffs hereby incorporate Paragraphs 1-40 as if fully set forth herein.

42. Defendant Nutritional Elements, Inc. and Defendant Gai's Garden manufactured, distributed and sold a product, marijuana edible candy, which they knew, or in the exercise of reasonable care should have known, the use of which may be harmful or injurious to users and consumers such as Richard Kirk.

43. Defendant Nutritional Elements, Inc. and Defendant Gai's Garden knew or in the exercise of reasonable care should have known that the risk of harm or injury was not obvious to a reasonable user and consumer such as Richard Kirk.

44. Defendant Nutritional Elements, Inc. and Defendant Gai's Garden owed a duty to Plaintiffs to use reasonable care to warn users and consumers such as Richard Kirk of the risk of harm or injury including that ingestion of the marijuana edible candy, manufactured, packaged and sold as "Karma Candy Orange Ginger" may cause the user or consumer to experience strong drug effects, including possible psychotic behavior.

45. Defendant Nutritional Elements, Inc. and Defendant Gai's Garden failed to use reasonable care to warn users and consumers such as Richard Kirk of the risk of experiencing strong drug effects, including possible psychotic behavior.

46. The failure of Defendant Nutritional Elements, Inc. and Defendant Gai's Garden to use reasonable care to warn users and consumers of the risk or harm or injury was negligent.

47. As a direct an proximate result of the negligence of Defendant Nutritional Elements, Inc., Plaintiff Andrew Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

48. As a direct and proximate result of the negligence of Defendant Gai's Garden, Plaintiff Andrew Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

49. As a direct an proximate result of the negligence of Defendant Nutritional Elements, Inc., Plaintiff Christopher Aiden Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

50. As a direct an proximate result of the negligence of Defendant Gai's Garden, Plaintiff Christopher Aiden Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

51. As a direct an proximate result of the negligence of Defendant Nutritional Elements, Inc., Plaintiff Ethan Kirk, has suffered the loss and wrongful death of his

mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

52. As a direct and proximate result of the negligence of Defendant Gai's Garden, Plaintiff Ethan Kirk, has suffered the loss and wrongful death of his mother, Kristine Kirk, and has, and will continue to, suffer economic and non-economic damages.

SIXTH CLAIM FOR RELIEF
(Strict Product Liability for Misrepresentation Against Defendants
Nutritional Elements, Inc. and Gai's Garden)

53. Defendants Nutritional Elements, Inc. and Gai's Garden sold the "Karma Kandy Orange Ginger" purchased and consumed by Defendant Richard Kirk.

54. The Defendants were engaged in the business of selling marijuana infused edible products, including the "Karma Kandy Orange Ginger" purchased and consumed by Defendant Richard Kirk, for resale, use or consumption.

55. The Defendants misrepresented a fact concerning the character or quality of the marijuana infused edible product that would be material to potential purchasers or users of the product.

56. The misrepresentation was made to potential purchasers or users as members of the public at large.

57. As a purchaser of the product, Defendant Richard Kirk reasonably relied on the misrepresentation.

58. The Plaintiffs were persons who would reasonably be expected to be affected by the product.

59. As a direct and proximate result of the reasonable reliance by Richard Kirk on the misrepresentation of the Defendants, the Plaintiffs have suffered the loss and wrongful death of their mother and have, and will continue to suffer economic and non-economic damages.

PLAINTIFFS HEREBY REQUEST A JURY ON ALL ISSUES SO TRIABLE

WHEREFORE, the Plaintiffs, Andrew Kirk, Christopher Aiden Kirk and Ethan Kirk, pray for compensatory damages in favor of the Plaintiffs and against the Defendants in an amount to be determined by the trier of fact, awarding costs as are allowed by law, including expert witness fees, filing fees, prejudgment interest from the date of the their mother's death, post judgment interest and all other fees, costs and damages as allowed and permitted by law.

Respectfully submitted this 13th day of April, 2016. .

The Gold Law Firm, LLC
*A duly signed original is on file at
The Gold Law Firm, LLC*

By: Gregory A. Gold
Gregory A. Gold, #26064
Dorothy H. Dean, #13292
Attorneys for Plaintiff
The Gold Law Firm
7375 E. Orchard Road, Suite 300
Greenwood Village, CO 80111
(303)694-4653

Plaintiffs' Address:
7632 S. Cook Street
Centennial, Colorado 80122