

1 C. Brooks Cutter (121407)  
bcutter@cutterlaw.com  
2 Todd A. Walburg (213063)  
twalburg@cutterlaw.com  
3 Celine E. Cutter (312622)  
ccutter@cutterlaw.com  
4 CUTTER LAW, P.C.  
401 Watt Avenue  
5 Sacramento, CA 95864  
Telephone: (510) 281-5881  
6 Facsimile: (916) 588-9330

7 Attorneys for Plaintiff TREACY GANGI,  
individually and on behalf of the Estate of  
8 THOMAS GANGI, deceased

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

TREACY GANGI, individually and  
on behalf of the Estate of THOMAS  
GANGI, deceased,

Plaintiff,

v.

FLAWLESS VAPE WHOLESALE  
& DISTRIBUTION INC.;  
FLAWLESS VAPE SHOP INC;  
SHENZHEN KANGSIDE  
TECHNOLOGY CO., LTD.;  
ANKER TECHNOLOGY  
CORPORATION; ANKER  
TECHNOLOGY CO., LIMITED;  
SMOKTEK LLC; LONG ISLAND  
VAPORIUM; OAK DALE SMOKE  
SHOP; FLUID INDUSTRIES LLC;  
and DOES 1 through 10, inclusive,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES**

(Product Liability/Wrongful Death:  
Exploding E-Cigarette Products)

1. Strict Product Liability: Design Defect;
2. Strict Product Liability: Failure to Warn;
3. Negligence;
4. Breach of Implied Warranty of Merchantability;
5. Wrongful Death and Survival

**DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff TREACY GANGI, individually and on behalf of the  
Estate of THOMAS GANGI, deceased (“Plaintiff”), by and through her counsel, and  
alleges as follows:

///

**INTRODUCTION**

1  
2 1. THOMAS GANGI purchased an electronic cigarette and related parts.  
3 The Defendants are the manufacturers, wholesalers, distributors, and retailers of the  
4 electronic cigarette and related parts. On November 19, 2015, THOMAS GANGI  
5 was at home when suddenly his e-cigarette and related parts exploded, launching a  
6 projectile into his skull and brain, and catching the dwelling on fire. THOMAS  
7 GANGI died in the fire at age 30.

8 2. Electronic cigarettes, or e-cigarettes as they are more commonly known,  
9 claim to provide a tobacco-free alternative to the traditional cigarette. E-cigarettes  
10 offer doses of nicotine with a vaporized solution, providing a physical sensation like  
11 tobacco smoke, supposedly without the harmful effects of actual tobacco or smoke.  
12 E-cigarettes also offer non-nicotine flavors, coming in enticing varieties such as  
13 gummy bear, vanilla, and blueberry pancake. Using e-cigarettes is known as  
14 “vaping”, and users are known as “vapers.” In addition to the e-cigarette used by  
15 THOMAS GANGI, Defendants manufacture, design, and sell a variety of other e-  
16 cigarette products.

17 3. All e-cigarettes operate basically the same way. They consist of three  
18 parts: a tank or cartridge, a battery, which works to heat the liquid nicotine or other  
19 chemicals (often called “juices” or “e-liquids”) contained in the tank or cartridge, and  
20 an atomizer, which converts the contents of the liquid-filled cartridge into vapor that  
21 the user then inhales. Some batteries are rechargeable, and some are disposable. The  
22 batteries are cylinder lithium-ion batteries. Some e-cigarettes are closed systems, in  
23 which pre-filled cartridges are used. There are also open systems, where a user can  
24 manually refill a cartridge. E-cigarettes come in pen form (modeled after a traditional  
25 cigarette) and mods—devices, either mechanical or electrical, that are heavier and  
26 carry a much higher capacity for juice and vapor. There are many different types of  
27 mods, some of which require the use of coils that require installation before or after  
28 purchase.

**PARTIES**

1  
2 4. Plaintiff TREACY GANGI, individually and on behalf of the Estate of  
3 THOMAS GANGI, deceased, is the natural mother of THOMAS GANGI. She is  
4 the executor of the estate of THOMAS GANGI. TREACY GANGI is an adult  
5 individual citizen of the State of New York, residing therein at 85 Bourne Boulevard,  
6 Bohemia, New York.

7 5. Defendant FLAWLESS VAPE WHOLESALE & DISTRIBUTION  
8 INC. was at all relevant times a California corporation with its principal place of  
9 business and headquarters at 1021 E. Orangethorpe Avenue, Anaheim, CA 92801, in  
10 Orange County, within the Central District of California.

11 6. Defendant FLAWLESS VAPE SHOP INC was at all relevant times a  
12 California corporation with its principal place of business and headquarters at 1021  
13 E. Orangethorpe Avenue, Anaheim, CA 92801, in Orange County, within the Central  
14 District of California.

15 7. Defendant SHENZHEN KANGSIDE TECHNOLOGY CO., LTD. was  
16 at all relevant times a foreign entity of unknown form located in Shenzhen, China,  
17 which does business in the State of California.

18 8. Defendant ANKER TECHNOLOGY CORPORATION was at all  
19 relevant times a Delaware corporation with its principal place of business and  
20 headquarters in Santa Clara, in Santa Clara County, California.

21 9. Defendant ANKER TECHNOLOGY CO., LIMITED was at all relevant  
22 times a foreign entity of unknown form located in Kowloon, Hong Kong, which does  
23 business in the State of California.

24 10. Defendant SMOKTEK LLC was at all relevant times a Florida limited  
25 liability company with its headquarters in Pinellas Park, Florida, which does business  
26 in the State of California.

27 11. Defendants FLAWLESS VAPE WHOLESALE & DISTRIBUTION  
28 INC., FLAWLESS VAPE SHOP INC, SHENZHEN KANGSIDE TECHNOLOGY

1 CO., LTD., ANKER TECHNOLOGY CORPORATION, ANKER TECHNOLOGY  
2 CO., LIMITED, SMOKTEK LLC, and DOES 1 through 6, designed, manufactured,  
3 marketed, distributed, and sold the subject e-cigarette and components (including  
4 mod, battery, and charger).

5 12. Defendant LONG ISLAND VAPORIUM is a storefront retail seller of  
6 e-cigarettes and components (including mod, battery, and charger) located at 401  
7 Hawkins Avenue, Suite 4, Ronkonkoma, New York, which does business in the State  
8 of California.

9 13. Defendant OAK DALE SMOKE SHOP is a storefront retail seller of e-  
10 cigarettes and components (including mod, battery, and charger) located at 1316  
11 Montauk Highway, Oakdale, New York, which does business in the State of  
12 California.

13 14. Defendant FLUID INDUSTRIES LLC is a storefront retail seller of e-  
14 cigarettes and components (including mod, battery, and charger) located at 5055  
15 Johnson Avenue, Bohemia, New York, which does business in the State of  
16 California.

17 15. Defendants LONG ISLAND VAPORIUM, OAK DALE SMOKE  
18 SHOP, FLUID INDUSTRIES LLC, and DOES 7 through 10, were the storefront  
19 retail sellers of the subject e-cigarette and components (including mod, battery, and  
20 charger).

21 16. Plaintiff sues fictitious Defendants DOES 1 through 10 because their  
22 names and/or capacities and/or facts showing them to be liable to Plaintiff are not  
23 presently known. Plaintiff will seek leave to amend this Complaint if necessary to  
24 reflect the true names and capacities of such fictitious Defendants when ascertained.  
25 Plaintiff is informed and believes and thereon alleges that each of the fictitiously  
26 named Defendants are negligent or responsible in some manner for the events herein  
27 alleged.

28 17. Plaintiff is informed and believes and on that basis alleges that at all

1 times mentioned herein the Defendants, and each of them, were the agents, servants,  
2 employees, and joint venturers of each other, and were as such acting within the  
3 course, scope and authority of said agency and employment and or joint venture, and  
4 that each and every Defendant, when acting as a principal, was negligent and reckless  
5 in the selection, hiring, entrustment and supervision of each and every other  
6 Defendant as an agent, servant, employee, or joint venturer.

7 18. Defendants FLAWLESS VAPE WHOLESALE & DISTRIBUTION  
8 INC., FLAWLESS VAPE SHOP INC, SHENZHEN KANGSIDE TECHNOLOGY  
9 CO., LTD., ANKER TECHNOLOGY CORPORATION, ANKER TECHNOLOGY  
10 CO., LIMITED, SMOKTEK LLC, LONG ISLAND VAPORIUM, OAK DALE  
11 SMOKE SHOP, FLUID INDUSTRIES LLC, and DOES 1 through 10 shall  
12 hereinafter be referred to as “Defendants.”

13 **JURISDICTION AND VENUE**

14 19. This Court has jurisdiction over the subject matter of this action  
15 pursuant to 28 U.S.C. § 1332 because the amount in controversy is greater than  
16 \$75,000, exclusive of interest and costs, and because there is complete diversity of  
17 citizenship among the parties.

18 20. This Court has specific personal jurisdiction over the Defendants  
19 because a substantial portion of the wrongdoing alleged in this Complaint took place  
20 in California, the Defendants are authorized to do business in California, the  
21 Defendants have minimum contacts with California, and/or the Defendants otherwise  
22 intentionally availed themselves of the markets in California through the promotion,  
23 marketing, distribution, and sale of their products in California, each of which are  
24 sufficient bases to render the exercise of jurisdiction by this Court permissible under  
25 traditional notions of fair play and substantial justice.

26 21. This Court has general personal jurisdiction over Defendants  
27 FLAWLESS VAPE WHOLESALE & DISTRIBUTION INC. and FLAWLESS  
28 VAPE SHOP INC because said defendants have their headquarters, principal place

1 of business, and place of incorporation located in the State of California, within the  
2 Central District of California.

3 22. Venue is proper in the Central District of California pursuant to  
4 28 U.S.C. § 1391(a) and (b) because a substantial part of the events, acts and  
5 omissions giving rise to these claims occurred in the Central District of California,  
6 where Defendants FLAWLESS VAPE WHOLESALE & DISTRIBUTION INC. and  
7 FLAWLESS VAPE SHOP INC reside and are headquartered.

8 **FACTUAL BACKGROUND**

9 **A. Background of E-Cigarettes**

10 23. While e-cigarettes were first patented in 2003, they entered the market  
11 solely in China in 2004 and did not first appear in the United States until 2007. Since  
12 their introduction into the United States, sales have risen dramatically from  
13 approximately \$20 million in 2008 to \$2.5 billion in 2014. Some media sources  
14 report that industry experts predict that the e-cigarette industry will become an \$85  
15 billion industry within a decade and surpass the tobacco industry. (See Clarke, Toni,  
16 “Reports of e-cigarette injury jump amid rising popularity, United States data show,”  
17 *Reuters.com*, April 17, 2014.)

18 24. E-cigarettes carry mass appeal to consumers, as they are heavily  
19 advertised and offer a cheaper alternative to smoking. There are currently hundreds  
20 of brands of e-cigarettes on the market, and since e-cigarette marketing is completely  
21 unfettered and unregulated (unlike tobacco marketing), e-cigarette products reach  
22 minors and people who would never smoke a traditional cigarette, but who are  
23 nevertheless intrigued by e-cigarettes. The variety of flavors offered, including root  
24 beer float, bubble gum, and cotton candy, further target and spark the intrigue of  
25 minors. Finally, e-cigarette advertisements are unrestricted, appearing on television  
26 and radio, where tobacco advertisements have been banned for more than 40 years.  
27 E-cigarettes simply have the ability to reach a broader consumer base than traditional  
28 cigarettes.

1           25. E-cigarettes differ from traditional cigarettes in a critical way: the e-  
2 cigarette is battery-operated and uses a heating element to produce vapor, and the  
3 traditional cigarette has no electronic components. While both products may produce  
4 a similar physical sensation, e-cigarettes pose an additional danger—the battery-  
5 powered heating element can cause, and has caused, explosions, fires, and serious  
6 injuries.

7           26. Lithium-ion batteries, commonly used in all types of e-cigarettes, have  
8 an inherent risk of fire and explosion. Combining lithium-ion batteries with a heating  
9 element poses serious dangers and risks. According to a medical case report, a man  
10 in New Jersey had an e-cigarette explode in his pocket, ignite his pants on fire, and  
11 cause him severe burns. The case report further highlighted the inherent danger of  
12 lithium-ion batteries and pointed to research that recognized that the “poor design,  
13 use of low-quality materials, manufacturing flaws and defects, and improper use and  
14 handling can all contribute to a condition known as ‘thermal runaway’, whereby the  
15 internal battery temperature can increase to the point of causing a battery fire or  
16 explosion.” (Id. citing Brown CM, Cheng JM. “Electronic Cigarettes: Product  
17 Characterization and Design Considerations,” *Tobacco Control*, 2014.) The medical  
18 case report noted that as the industry grows, “the potential for serious burn injuries  
19 related to device malfunction is of concern.” (“Spontaneous Electronic Cigarette  
20 Explosion: A Case Report,” *American Journal of Medical Case Reports*, 2015, Vol.  
21 3, No. 4, 93-94, 94.)

22           27. There has been much debate over the supposed “safety” of e-cigarettes.  
23 Many tout e-cigarettes as the safer alternative to traditional cigarettes because e-  
24 cigarettes (1) do not contain tobacco; (2) do not create smoke for a person to inhale;  
25 and (3) do not pose as high of a risk for second-hand smoke inhalation. This  
26 supposed “safer” alternative to traditional cigarettes is still under debate because e-  
27 juice contains nicotine—a neurotoxin which is extremely addictive—and other  
28 chemicals which are likely to have long-term health effects that are still unknown,

1 since e-cigarette technology is relatively new.

2 28. The e-cigarette industry carries mass appeal to manufacturers,  
3 distributors, and sellers because the cost of production is low and the return on profits  
4 is high. Manufacturers, distributors, and sellers also profit from these products  
5 because of the lack of regulatory oversight at the federal, state, and local level. (See  
6 *Tobacco Control Legal Consortium*, “Regulating Electronic Cigarettes and Similar  
7 Devices,” Updated August 2015). Currently, manufacturers, distributors, and sellers  
8 are not required to spend any money on testing or to otherwise ensure the safety of  
9 the products. This unregulated environment creates an industry that is full of  
10 lucrative business opportunities. And injured consumers.

11 29. China continues to be a major producer of e-cigarettes. It was estimated  
12 that more than 300 million e-cigarettes would be shipped from China to the United  
13 States and Europe in 2015. (Barboza, David, “China’s E-Cigarette Boom Lacks  
14 Oversight for Safety,” *New York Times*, Dec. 13, 2014). Many of these products are  
15 shipped from China and placed directly into the stream of commerce in the United  
16 States without any knowledge as to the composition, design, or safety of the products.  
17 Most United States’ distributors choose to import e-cigarettes from China because of  
18 the low cost and non-existent quality control.

19 30. Only a few federal regulations have been proposed or promulgated  
20 regarding e-cigarettes. While the United States Department of Transportation and  
21 the Food and Drug Administration have taken important first steps, none of these  
22 regulations deal with the safety of the actual device itself. Currently, e-cigarettes are  
23 not subject to any manufacturing or quality control standards at the federal, state, or  
24 local level.

25 31. E-cigarettes are more dangerous than other products that contain lithium  
26 batteries because the e-cigarette is most often designed as a cylindrical device. Thus,  
27 when the device malfunctions or fails, the battery can be shot out like a bullet or  
28 rocket. (*United States Fire Administration*, “Electronic Cigarette Fires and



1 Explosions,” October 2014, at 5). There are different methods to protect against these  
2 batteries, but because of a lack of regulation, the protections are left up to the e-  
3 cigarette manufacturers. (*Id.* at 6.)

4 32. The explosion of THOMAS GANGI's e-cigarette product is not a novel  
5 occurrence; e-cigarettes have caused fires and explosions which have injured many  
6 consumers.

7 33. Complaints of injury caused by e-cigarettes continue to rise as the  
8 devices become more popular. These products continue to be placed into the stream  
9 of commerce despite being untested and unsafe. E-cigarettes will continue to cause  
10 these types of injuries unless and until those placing them in the stream of commerce  
11 are held accountable. Even industry proponents, such as the Electronic Cigarette  
12 Industry Group, acknowledge that no universal method of testing e-cigarettes has  
13 been adopted. The case of THOMAS GANGI illustrates why this should change.

14 **B. The Explosion that Ended Thomas Gangi's Life**

15 34. In 2015, THOMAS GANGI purchased the e-cigarette and components  
16 consisting of a lithium ion battery, a lithium-ion battery charger, and a mod and  
17 accessories from the Defendants. These products will be collectively referred to  
18 herein as the “E-Cig Products.”

19 35. The E-Cig Products were manufactured, wholesaled, distributed, and  
20 retailed by Defendants.

21 36. On November 19, 2015, THOMAS GANGI was at home in Bohemia,  
22 New York, when suddenly his e-cigarette exploded, launching a projective into his  
23 skull and brain, and catching the dwelling on fire. THOMAS GANGI died in the fire  
24 at age 30.

25 37. The explosion and THOMAS GANGI's resulting injuries and death  
26 were caused by the defective E-Cig Products, as well as the Defendants' negligence.

27 ///

28 ///

**FIRST CLAIM FOR RELIEF**

**Strict Product Liability: Design Defect**

1  
2  
3 38. Plaintiff refers to each and every preceding paragraph and incorporates  
4 those paragraphs as though set forth in full in this claim for relief.

5 39. At all times mentioned herein, Defendants were engaged in the business  
6 of manufacturing, fabricating, designing, assembling, distributing, selling,  
7 inspecting, warranting, leasing, renting, retailing, wholesaling, and advertising the E-  
8 Cig Products THOMAS GANGI purchased and used.

9 40. On November 19, 2015, as THOMAS GANGI was using the E-Cig  
10 Products in a reasonably foreseeable and intended manner, the E-Cig Products  
11 suddenly exploded, causing his death.

12 41. Defendants knew that consumers would use the E-Cig Products as  
13 THOMAS GANGI did on November 19, 2015.

14 42. Defendants manufactured, designed, assembled, packaged, tested,  
15 fabricated, inspected, marketed, distributed, and sold the E-Cig Products and each of  
16 their component parts with defects in design which made them dangerous, hazardous,  
17 and unsafe for their intended and reasonably foreseeable use.

18 43. The design defects in the E-Cig Products included defective and unsafe  
19 characteristics, which resulted in excessive overheating of the E-Cig Products,  
20 causing them to catch fire during intended use and in the course of non-use.

21 44. The E-Cig Products contained design defects when the E-Cig Products  
22 were introduced into the stream of commerce by Defendants.

23 45. The E-Cig Products were defective and unsafe for their intended use.  
24 Due to the design defects, the E-Cig Products failed to perform as safely as an  
25 ordinary consumer would expect when used in an intended or reasonably foreseeable  
26 manner.

27 46. Furthermore, the risk of danger in the design of the E-Cig Products  
28 outweighed any benefits of the design, and safer alternative designs were available

1 at the time of manufacture. Therefore, the E-Cig Products presented a substantial  
2 and unreasonable risk of serious injuries to users of said E-Cig Products or those in  
3 the vicinity of use.

4 47. The defects in the design of the E-Cig Products and its component parts  
5 were a substantial factor in causing THOMAS GANGI's severe injuries and death,  
6 and Plaintiff's damages as herein alleged.

7 48. As a result of the defective E-Cig Products, THOMAS GANGI  
8 sustained severe personal injuries and died, and Plaintiff suffered damages, as alleged  
9 herein:

- 10 a) THOMAS GANGI, before he died, suffered great mental, physical, and  
11 emotional pain, in sums according to proof at the time of trial;
- 12 b) Plaintiff incurred medical, funeral, burial, property damage, and other  
13 damages, in sums according to proof at the time of trial;
- 14 c) Plaintiff suffered the loss of her son and resulting non-economic  
15 damages;
- 16 d) Plaintiff incurred economic losses including past and future loss of  
17 earnings and diminished earning capacity, in an amount according to  
18 proof at the time of trial.

19 49. Defendants are strictly liable to Plaintiff for the injuries complained of  
20 herein by reason of having sold and placed into the stream of commerce defective E-  
21 Cig Products, including but not limited to mods, batteries, and chargers, which were  
22 unreasonably dangerous to users.

23 50. WHEREFORE, Plaintiff demands judgment for damages generally  
24 against the Defendants, individually, jointly, severally, or in the alternative, in excess  
25 of the jurisdictional limitations of this Court, together with interest and costs of suit.

26 **SECOND CLAIM FOR RELIEF**

27 **Strict Product Liability: Failure to Warn**

28 51. Plaintiff refers to each and every preceding paragraph and incorporates

1 those paragraphs as though set forth in full in this claim for relief.

2 52. At all times mentioned herein, Defendants were engaged in the business  
3 of manufacturing, fabricating, designing, assembling, distributing, selling,  
4 inspecting, warranting, leasing, renting, retailing, wholesaling, and advertising the E-  
5 Cig Products THOMAS GANGI purchased and used.

6 53. On November 19, 2015, as THOMAS GANGI was using the E-Cig  
7 Products in a reasonably foreseeable and intended manner, the E-Cig Products  
8 suddenly exploded, causing his death.

9 54. Defendants knew that consumers would use the E-Cig Products as  
10 THOMAS GANGI did on November 19, 2015.

11 55. An ordinary consumer, such as THOMAS GANGI, would not have  
12 recognized the potential risks and dangers inherent in the E-Cig Products.

13 56. Defendants failed to warn of the dangers in the reasonably foreseeable  
14 use of the E-Cig Products. Nowhere does the product or packaging warn of the risk  
15 of explosion. There were simply no warnings about the hazards inherent in the E-  
16 Cig Products.

17 57. Defendants' failure to warn of the risks, and lack of instructions on safe  
18 use, were a substantial factor in causing THOMAS GANGI'S severe injuries and  
19 damages as herein alleged.

20 58. As a result of Defendants' failure to warn, THOMAS GANGI sustained  
21 severe personal injuries and died, and Plaintiff suffered damages, as alleged herein:

- 22 a) THOMAS GANGI, before he died, suffered great mental, physical, and  
23 emotional pain, in sums according to proof at the time of trial;
- 24 b) Plaintiff incurred medical, funeral, burial, property damage, and other  
25 damages, in sums according to proof at the time of trial;
- 26 c) Plaintiff suffered the loss of her son and resulting non-economic  
27 damages;
- 28 d) Plaintiff incurred economic losses including past and future loss of

1 earnings and diminished earning capacity, in an amount according to  
2 proof at the time of trial.

3 59. WHEREFORE, Plaintiff demands judgment for damages generally  
4 against the Defendants, individually, jointly, severally, or in the alternative, in excess  
5 of the jurisdictional limitations of this Court, together with interest and costs of suit.

6 **THIRD CLAIM FOR RELIEF**

7 **Negligence**

8 60. Plaintiff refers to each and every preceding paragraph and incorporates  
9 those paragraphs as though set forth in full in this cause of action.

10 61. Defendants negligently, recklessly, and carelessly manufactured,  
11 fabricated, designed, assembled, distributed, sold, inspected, warranted, and  
12 advertised the E-Cig Products such that they were dangerous and unsafe for their  
13 intended and/or reasonably foreseeable use.

14 62. Defendants owed a duty to THOMAS GANGI to exercise reasonable  
15 care in the design, manufacture, and sale of the E-Cig Products, to ensure the E-Cig  
16 Products were safe for their reasonably foreseeable use.

17 63. Defendants failed to exercise the amount of care in the design,  
18 manufacture, and sale of the E-Cig Products, that a reasonably careful manufacturer,  
19 designer, seller, wholesaler, or distributor would have used in similar circumstances  
20 to avoid exposing others to a foreseeable risk of harm.

21 64. Defendants knew or reasonably should have known that the E-Cig  
22 Products were dangerous when used or misused in a reasonably foreseeable manner.

23 65. Defendants knew or reasonably should have known that users would not  
24 realize the danger of explosion and/or fire.

25 66. Defendants failed to adequately warn of the dangers of explosion and/or  
26 fire, or instruct on the safe use of the E-Cig Products.

27 67. A reasonable manufacturer, designer, seller, wholesaler, or distributor  
28 in similar circumstances would have warned of the danger, or instructed on safe use

1 of the product.

2 68. Defendants' failure to warn or instruct was a substantial factor in  
3 causing THOMAS GANGI'S death.

4 69. As a proximate result of said negligent conduct, Plaintiff suffered  
5 injuries as previously alleged. The negligence of Defendants was a substantial factor  
6 in causing the explosion, fire, serious injuries, and death to THOMAS GANGI as  
7 previously alleged.

8 70. Plaintiff incorporates by reference the damage allegations of all  
9 paragraphs alleged against Defendants, as though fully set forth herein.

10 71. WHEREFORE, Plaintiff demands judgment for damages generally  
11 against the Defendants, individually, jointly, severally, or in the alternative, in excess  
12 of the jurisdictional limitations of this Court, together with interest and costs of suit.

13 **FOURTH CLAIM FOR RELIEF**

14 **Breach of Implied Warranty of Merchantability**

15 72. Plaintiff incorporates by reference and realleges all paragraphs  
16 previously alleged herein.

17 73. Prior to the time of the subject incident, the Defendants impliedly  
18 warranted to members of the general public, including THOMAS GANGI and  
19 Plaintiff, that the E-Cig Products were of merchantable quality.

20 74. Members of the consuming public, including consumers such as  
21 THOMAS GANGI and Plaintiff, were intended third-party beneficiaries of the  
22 implied warranty of merchantability.

23 75. THOMAS GANGI and Plaintiff relied on the skill and judgment of  
24 Defendants in the purchase, selection, and use of the E-Cig Products as a safe  
25 consumer product.

26 76. The subject E-Cig Products were not of merchantable quality as  
27 warranted by Defendants, in that they were defectively designed, thereby  
28 dangerously exposing the users of said products and those around them to serious

1 injury.

2 77. After THOMAS GANGI and Plaintiff received the injuries complained  
3 of herein, notice was given by Plaintiff to Defendants, by filing this lawsuit in the  
4 time and in the manner and in the form prescribed by law, of the breach of said  
5 implied warranty.

6 78. As a legal and proximate result of the breach of said implied warranty,  
7 Plaintiff sustained the damages herein set forth.

8 79. Plaintiff is, therefore, entitled to damages in an amount to be proven at  
9 the time of trial.

10 80. WHEREFORE, Plaintiff prays judgment against Defendants, and each  
11 of them, as hereinafter set forth.

12 **FIFTH CLAIM FOR RELIEF**

13 **Wrongful Death and Survival**

14 81. Plaintiff incorporates by reference and realleges all other paragraphs of  
15 this complaint into this claim for relief.

16 82. During the subject incident, the force of the explosion of the e-cigarette  
17 propelled a metal projectile into THOMAS GANGI'S head and brain.

18 83. During the subject incident, the flames from the exploding e-cigarette  
19 caused the dwelling that THOMAS GANGI was in to catch fire.

20 84. Ultimately, after excruciating conscious pain and suffering, THOMAS  
21 GANGI died and was burned to death.

22 85. At all times and places mentioned herein, Defendants acted carelessly  
23 and negligently, and failed to protect THOMAS GANGI as a user of their product.

24 86. During all times relevant to the allegations in this complaint,  
25 Defendants, and each of them, their agents, employees, and representatives acted  
26 carelessly, negligently, and recklessly with respect to THOMAS GANGI and  
27 Plaintiff, causing economic loss and death.

28 87. THOMAS GANGI died as the direct and proximate result of the

1 careless, negligent, and/or reckless neglect and conduct of the Defendants, and each  
2 of them.

3 88. Accordingly, Plaintiff TREACY GANGI, individually and on behalf of  
4 the Estate of THOMAS GANGI, deceased, suffered the loss of love, comfort, care,  
5 and society of her son and their family member, THOMAS GANGI, as a result of  
6 the negligent and other bad acts of Defendants, and each of them.

7 89. As a further direct and proximate result of said negligence, acts,  
8 omissions and conduct of Defendants, and each of them, and of the resulting injuries  
9 and death, Plaintiff has lost, and will continue to lose, income and other financial  
10 advantages in an amount not yet known to Plaintiff.

11 90. As a further direct and proximate result of said negligence, acts,  
12 omissions and conduct of Defendants, and each of them, and of the resulting injuries  
13 and death, Plaintiff has incurred expenses in an amount not yet known to them.

14 91. Plaintiff prays for judgment against the Defendants, and each of them,  
15 as set forth below.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff requests of this Court the following relief:

- 18 A. For general damages, in an amount to be proven at the time of  
19 trial;
- 20 B. For wrongful death and survival damages;
- 21 C. For funeral and burial expenses;
- 22 D. For medical, incidental, hospital, psychological care, and other  
23 expenses, in an amount to be proven at the time of trial;
- 24 E. For property damage and property loss;
- 25 F. For loss of earnings and earning capacity, in an amount to be  
26 proven at the time of trial;
- 27 G. For an award of pre-judgment and post-judgment interest as  
28 provided by law;



- 1 H. For consequential damages, in an amount to be proven at the time  
2 of trial;
- 3 I. For an award providing for payment of costs of suit;
- 4 J. For such other and further relief as this Court may deem just and  
5 proper.

6 Dated: November 16, 2017 CUTTER LAW, P.C.

7  
8 By: /s/ Todd A. Walburg  
9 Todd A. Walburg

10 C. Brooks Cutter (121407)  
11 *bcutter@cutterlaw.com*  
12 Todd A. Walburg (213063)  
13 *twalburg@cutterlaw.com*  
14 Celine E. Cutter (312622)  
15 *ccutter@cutterlaw.com*  
16 CUTTER LAW, P.C.  
17 401 Watt Avenue  
18 Sacramento, CA 95864  
19 Telephone: (916) 290-9400  
20 Facsimile: (916) 588-9330

21 Attorneys for Plaintiff TREACY GANGI,  
22 individually and on behalf of the Estate of  
23 THOMAS GANGI, deceased  
24  
25  
26  
27  
28

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

**DEMAND FOR JURY TRIAL**

Plaintiff TREACY GANGI, individually and on behalf of the Estate of THOMAS GANGI, deceased, hereby demands a trial by jury on all issues that may be tried by a jury.

Dated: November 16, 2017 CUTTER LAW, P.C.

By: /s/ Todd A. Walburg  
Todd A. Walburg

C. Brooks Cutter (121407)  
*bcutter@cutterlaw.com*  
Todd A. Walburg (213063)  
*twalburg@cutterlaw.com*  
Celine E. Cutter (312622)  
*ccutter@cutterlaw.com*  
CUTTER LAW, P.C.  
401 Watt Avenue  
Sacramento, CA 95864  
Telephone: (916) 290-9400  
Facsimile: (916) 588-9330

Attorneys for Plaintiff TREACY GANGI,  
individually and on behalf of the Estate of  
THOMAS GANGI, deceased