

CAUSE NO. 348-315599-20

LYDIA ZACARIAS and STEVEN § IN THE DISTRICT COURT OF  
THOMAS BROWN, Individually as Heirs §  
at Law, and as Representatives of the §  
Estate of WILLIAM ERIC BROWN, §  
Deceased, §  
*Plaintiffs,* § TARRANT COUNTY, TEXAS  
§  
vs. §  
§  
SMOKE AND VAPE DZ, LLC; §  
*Defendant.* § \_\_\_\_\_ JUDICIAL DISTRICT COURT

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**PLAINTIFFS' ORIGINAL PETITION**

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TO THE HONORABLE JUDGE OF SAID COURT:

LYDIA ZACARIAS and STEVEN THOMAS BROWN, Individually as Heirs at Law, and as Representatives of the Estate of WILLIAM ERIC BROWN, Deceased, Plaintiffs, file this Original Petition, complaining of SMOKE AND VAPE DZ, LLC, Defendant, and for cause of action would show the Court as follows:

**RELIEF SOUGHT AND LEVEL OF DISCOVERY CONTROL PLAN**

1. Plaintiffs seek monetary relief over \$1,000,000.00 and a demand for judgment for all the other relief to which Plaintiffs may show themselves entitled.
2. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiffs will proceed with discovery under a Level 3 Discovery Control Plan.

**PARTIES**

3. Plaintiff Lydia Zacarias is an individual and resident of Tarrant County, Texas.
4. Plaintiff Steven Thomas Brown is an individual and resident of Tarrant County, Texas.
5. Defendant Smoke and Vape DZ, LLC ("Smoke and Vape) is a limited liability corporation doing business in the state of Texas and can be served with process by serving its

registered agent, Ledgers, Inc., 221 Bedford Road, Suite 313, Bedford, Texas 76022.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction because Plaintiffs' damages are in excess of this Court's jurisdictional minimum.

7. Pursuant to TEX. CIV PRAC. & REM. CODE § 15.002(a)(2), venue is proper in Tarrant County, Texas, because all or a substantial part of the events or omissions giving rise to the claim occurred in Tarrant County, Texas.

8. Plaintiffs would show that William Eric Brown died without a will. The Estate of William Eric Brown, Deceased (the "Estate"), is represented in this civil action by Lydia Zacarias and Steven Thomas Brown pursuant to a family agreement of all heirs. No estate administration is pending and none is necessary as the estate has no debts, and the distribution of the estate's assets has been resolved. Pursuant to TEX. CIV PRAC. & REM. CODE § 71.021 et seq., Lydia Zacarias and Steven Thomas Brown, as Representatives of the Estate of William Eric Brown, Deceased, are prosecuting the personal injury claims of William Eric Brown, Deceased, who was a natural person and resident of Tarrant County, Texas, at the time the causes of action asserted herein accrued, and also at the time of his death.

**NATURE OF THE CASE**

9. This is a negligence and products liability case.

10. This case involves a defective LG 18650 battery lithium-ion battery.

11. Defendant Smoke and Vape DZ, LLC ("Smoke and Vape") sold the LG 18650 battery to William Eric Brown, Deceased ("Decedent").

12. On or about January 27, 2019, Decedent purchased the LG 18650 battery from Defendant Smoke and Vape at their Keller location located at 4528 Golden Triangle Boulevard, Fort Worth, Texas 76244. Defendant Smoke and Vape installed the LG 18650 battery into

Decedent's e-cigarette device, often referred to as a "Mod," and instructed Decedent and demonstrated for him how to do so. As Decedent sat in his car in the parking lot of Smoke and Vape, Decedent fired the "Mod" as intended and the LG 18650 battery exploded, causing fragments to travel through his teeth, which had been broken in the explosion, and into his neck, which lacerated a major artery. After two days of suffering, William Eric Brown died as a result of the catastrophic injuries inflicted by the Defendant Smoke and Vape's product.

13. The LG 18650 battery that killed Decedent was designed, manufactured, assembled, marketed and sold by LG Chem, Ltd. and LG Chem America, Inc.

14. Upon information and belief, the LG 18650 battery was then purchased by Defendant Smoke and Vape, which it sold to Decedent.

15. Defendant was negligent, and Defendant's negligent conduct was attributable to their employee(s) and agent(s) who, at all times relevant hereto, were acting within the course, purpose, and scope of their employment or agency, and with the authority, consent, approval and ratification of Defendant.

**STRICT LIABILITY: DEFENDANT SMOKE AND VAPE DZ, LLC**

16. All preceding paragraphs are incorporated by reference as if stated fully herein.

17. Defendant Smoke and Vape is engaged in the business of selling and distributing e-cigarette products to the public, including selling batteries for same, such as the LG 18650 battery it sold to Decedent.

18. Defendant Smoke and Vape placed the LG 18650 battery for sale in its store with knowledge that it would be used without inspecting for dangers or defects. Defendant Smoke and Vape knew or should have known that the ultimate users, operators or consumers would not or could not properly inspect these products for dangerous conditions and that the detection of such defects and dangers would be beyond the capabilities of such persons.

19. Defects in the LG 18650 battery included, but were not limited to, the following:
- (a) The LG 18650 battery failed to operate as an ordinary consumer would expect;
  - (b) The LG 18650 battery was designed, manufactured, sold or supplied in an unsafe, unreasonably dangerous, and defective condition which created an unreasonable propensity for it to heat and catch fire during normal and foreseeable conditions;
  - (c) The LG 18650 battery was designed, manufactured, sold, or supplied in an unsafe, unreasonably dangerous and defective condition which created an unreasonable propensity for it to explode during normal and foreseeable conditions;
  - (d) The LG 18650 battery was defective in its design, manufacture, and warnings, in that it failed to operate as marketed and advertised, and failed to alert users to the hazardous conditions described herein;
  - (e) The LG 18650 battery was defective due to inadequate, or the absence of, warnings or instructions, including warning stickers, placards, or proper documentation to alert users regarding the hazardous conditions described herein; and
  - (f) The instructions and warnings provided by Defendant Smoke & Vape to Decedent about the LG 18650 battery, over which Defendant Smoke & Vape exercised substantial control in that they were the only instructions and warnings provided to Decedent, were inadequate in one or more of the following particulars:
    - (i) failing to convey that the LG 18650 battery had an unreasonable propensity to catch fire and explode under normal use and foreseeable conditions; or
    - (ii) failing to convey that the LG 18650 battery may have been modified or repackaged, or otherwise may not meet specifications of the LG 18650 battery as originally designed and manufactured.

20. Each of the foregoing, either singularly or in combination, rendered the LG 18650 battery unreasonably and dangerously defective, or was a producing cause of Decedent's injuries and death, and of Plaintiffs' damages.

**NEGLIGENCE: DEFENDANT SMOKE AND VAPE DZ, LLC**

21. All preceding paragraphs are incorporated by reference as if stated fully herein.

22. Defendant Smoke and Vape committed acts or omissions that constituted negligence, as that term is defined by law, including but not limited to the following:

- (a) Installing the LG 18650 battery into Decedent's Mod; and
- (b) The instructions and warnings provided by Defendant Smoke & Vape to Decedent about the LG 18650 battery, over which Defendant Smoke & Vape exercised substantial control in that they were the only instructions and warnings provided to Decedent, were inadequate in one or more of the following particulars:
  - (i) failing to convey that the LG 18650 battery had an unreasonable propensity to catch fire and explode under normal use and foreseeable conditions; or
  - (ii) failing to convey that the LG 18650 battery may have been modified or repackaged, or otherwise may not meet specifications of the LG 18650 battery as originally designed and manufactured.

23. The foregoing acts or omissions, either singularly or in combination, were a direct, proximate, and producing cause of Decedent's injuries and death, and of Plaintiffs' damages.

24. At all times material hereto the individuals who committed the foregoing acts or omissions were acting in the course and scope of their employment with Defendant Smoke and Vape. Defendant Smoke and Vape is therefore vicariously liable for those acts or omissions.

#### **WRONGFUL DEATH AND SURVIVAL STATUTE DAMAGES**

25. Pursuant to TEX. CIV. PRAC. & REM. CODE § 71.001 et seq., Plaintiffs, as wrongful death beneficiaries and as heirs of William Eric Brown, Deceased, bring this action to recover just compensation for the damages that they have suffered as a result of the death of their son.

26. As a result of the above acts or omissions described herein, Plaintiffs have suffered pecuniary damages due to the death of William Eric Brown, including loss of care, maintenance, support, services, advice, counsel and contributions of a pecuniary value that they would in reasonable probability have received from William Eric Brown during his lifetime, had he lived.

27. Plaintiffs have suffered additional losses by virtue of the destruction of the parent/child relationship, including the right to love, affection, solace, comfort, companionship, society, emotional support, and happiness.

28. Plaintiffs have suffered severe mental depression and anguish, grief and sorrow, as a result of the death of William Eric Brown and are likely to continue to suffer for a long time into the future.

29. For these losses, Plaintiffs, as wrongful death beneficiaries, and heirs of William Eric Brown, seek damages in excess of minimal jurisdictional limits of the Court.

30. Further, Plaintiffs, as wrongful death beneficiaries and heirs of William Eric Brown, seek both pre-judgment and post-judgment interest as allowed by law, for all costs of Court, and all other relief both in law and equity, to which they may be entitled.

31. Pursuant to TEX. CIV. PRAC. & REM. CODE § 71.021, Plaintiffs, as Representatives of the Estate, seek recovery from Defendant for the mental anguish suffered by William Eric Brown from the moment he became aware of the incident in question until the time of his death.

32. Plaintiffs respectfully request the Court and jury to determine the amount of loss incurred, not only from a financial standpoint, but also in terms of mental anguish and freedom from grief and worry. From the date of the incident in question to the time of trial of this case, the elements of damages to be considered separately and individually for the purpose of determining the sum of money that will be fair and reasonably compensate Plaintiffs as follows:

- (a) Plaintiffs' mental pain and anguish, meaning the emotional pain, torment and suffering they have experienced because of the untimely and sudden death of their son, William Eric Brown;
- (b) Plaintiffs' loss of companionship and society from the date of the incident to the time of trial, including but not limited to, the loss of the positive benefits flowing from the love, comfort, companionship, and society that Plaintiffs, in reasonable probability, would have received from William Eric Brown, had he lived;

- (c) Plaintiffs' pecuniary losses, including, but not limited to, the loss of William Eric Brown's advice, counsel, services, care, maintenance, and support that the deceased's parents, in reasonable probability, would have received from the deceased had he lived;
- (d) All elements of damages under the survival statute;
- (e) All elements of damages available under the wrongful death statute; and
- (f) Reasonable costs and expenses.

### **RESERVATION OF RIGHTS**

33. These allegations herein are made acknowledging that this lawsuit is still in its early stages, and investigation, although undertaken, is continuing.

34. As further investigation is conducted, additional facts will surely be uncovered that may and probably will necessitate further, additional, or different allegations, including the potential of adding additional parties or dismissing parties from the case. The right to do so, under Texas law, is expressly reserved.

### **JURY DEMAND**

35. Pursuant to TEX. R. CIV. P. 216, Plaintiffs respectfully request and demand a trial by jury, and have tendered the requisite fee.

### **REQUESTS FOR DISCLOSURE**

36. Pursuant to TEX. R. CIV. P. 194, Plaintiffs request that Defendant completely disclose, within fifty days of service of this request, the information and matters described in TEX. R. CIV. P. 194.2.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendant Smoke & Vape be cited to appear herein, and that upon final trial hereof Plaintiffs receive a judgment against Defendant Smoke & Vape, awarding Plaintiffs actual damages as alleged herein,

costs of court, attorney's fees and expenses, prejudgment interest at the highest rate allowed by law from the earliest time allowed by law, exemplary damages as alleged herein, interest on the judgment at the highest rate allowed by law from the date of the judgment until said judgment is fully collected by Plaintiffs, and for such other and further relief, both general and special, at law and in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

**THE AMMONS LAW FIRM, LLP**

/s/ Patrick A. Luff

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