

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

EDWARD RUGGIERI and TAMARA RUGGIERI, his wife, individually; EDWARD RUGGIERI and TAMARA RUGGIERI, as Legal Guardians of their granddaughter, A. S., a minor; ETHAN RUGGIERI; and TAMARA RUGGIERI, as the Administratrix of the Estate of HARRIET STACEY,

Plaintiffs,

vs.

COWBOY WHOLESALE CORP. and
TMD HOLDINGS, LLC,

Defendants.

JURY TRIAL DEMANDED

CIVIL DIVISION

No. G.D. 19-013012

COMPLAINT IN CIVIL ACTION

Filed on behalf of:

Plaintiffs, EDWARD RUGGIERI and TAMARA RUGGIERI, his wife, individually; EDWARD RUGGIERI and TAMARA RUGGIERI, as Legal Guardians of their granddaughter, A. S., a minor; ETHAN RUGGIERI; and TAMARA RUGGIERI, as the Administratrix of the Estate of HARRIET STACEY,

Counsel of Record for this party:

RYAN A. ZELI, ESQUIRE

Pa. I.D. #203054

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Pittsburgh, PA 15219

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

EDWARD RUGGIERI and TAMARA
RUGGIERI, his wife, individually, and as
Natural Guardians of A. S., a minor, ETHAN
RUGGIERI; and TAMARA RUGGIERI, as
the Administratrix of the Estate HARRIET
STACEY,

CIVIL DIVISION

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COWBOY WHOLESALE CORP. and
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Defendants.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

IF YOU CANNOT AFFORD A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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PLAINTIFFS' COMPLAINT — CIVIL ACTION

AND NOW come Plaintiffs, by and through their undersigned counsel RYAN A. ZELI and the law firm of ZIMMER KUNZ, PLLC, to assert wrongful death, survival, and other actions arising from the negligence and products liability of the above-captioned Defendants, and in support thereof, Plaintiffs aver as follows:

PLAINTIFFS

1. Plaintiff Tamara Ruggieri is an adult individual who resides at 1531 Alverado Ave., Pittsburgh, PA 15216. Plaintiff Tamara Ruggieri is the wife of Plaintiff Edward Ruggieri, the Legal Guardian of Plaintiff A. S., and was duly appointed the Administratrix of the Estate of Harriet Stacey, deceased, on June 25, 2018.

2. Plaintiff Edward Ruggieri is an adult resident of the Commonwealth of Pennsylvania, who resides at 1531 Alverado Ave., Pittsburgh, PA 15216. Plaintiff Edward Ruggieri is the husband of Tamara Ruggieri, and Legal Guardian of A. S.

3. Plaintiff Ethan Ruggieri is an adult resident of the Commonwealth of Pennsylvania, who resides at 1531 Alverado Ave., Pittsburgh, PA 15216.

4. Plaintiffs Edward and Tamara Ruggieri are the grandparents and legal guardians of A. S., a minor, who resides at 1531 Alverado Ave., Pittsburgh, PA 15216.

DEFENDANTS

5. Defendant TMD Holdings, LLC is a Pennsylvania Limited Liability Company, with its principal place of business at 461 Melwood Ave., Pittsburgh, PA 15213.

6. Defendant Cowboy Wholesale Corp. is a New York Corporation with its principal place of business at 28 West 27th Street, New York, New York 10001.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 42 Pa. C.S.A. §5301 and is therefore proper in this Court.

8. Venue is proper in this county pursuant to Pa. R.C.P. 1006(a)(1), Pa. R.C.P. 2130(a), and Pa. R.C.P. 2179(a)(2) - (4), the defendants regularly conduct business in this county, and the transaction or occurrence giving rise to this cause of action occurred in this county.

FACTS

9. At all times material hereto, Defendants were engaged in the business of the sale and distribution of Hover boards, including the Hover boards at issue in this case.

10. Upon information and belief, prior to December 24, 2015 and through October 14, 2017, Defendants were importing Hover boards from an unknown manufacturer outside of the United States with the intent to sell and distribute the Hover boards to the consuming public, including the Plaintiffs.

11. Upon information and belief, prior to December 24, 2015 through October 2017, Defendants marketed, branded, sold and distributed the imported Hover boards, including the Hover boards at issue in this case.

12. Upon information and belief, prior to December 24, 2015 through October 2017, Defendants marketed, branded, sold and distributed Hover boards to various local vendors, including Ninja Electronics, located at 1763 South Braddock Ave, Pittsburgh, PA 15218.

13. Upon information and belief, on or about December 24, 2015, Plaintiffs purchased the two Hover boards from Ninja Electronics, located at 1763 South Braddock Ave., Pittsburgh, PA 15218.

14. Upon information and belief, several weeks after the Plaintiffs' initial purchase, around January 14, 2016, one of the Hover boards was returned to Ninja Electronics and replaced with a new Hover board.

15. At all times relevant hereto, and unbeknownst to Plaintiffs, the Hover boards purchased were in a defective condition, *inter alia*, in that they (a) were prone to overcharge and/or overheat and burn and ignite in flames, and (b) did not employ the proper safeguards to prevent it from overheating, burning, and/or catching fire, despite the existence of safer, economically feasible alternative designs that would prevented them from overcharging and/or overheating; and (c) they did not contain adequate warnings and/or instructions to alert a user to the Hover board's propensity to overcharge and/or overheat and bum and ignite in flames.

THE FIRE OF OCTOBER 14, 2017

16. On Saturday, October 14, 2017, at approximately 3:30 A.M., a fire broke out at 1137 Peermont Avenue (Peermont Avenue house) Pittsburgh, PA 15216.

17. On said date, the Peermont Avenue house was owned by Denise and Michael Pirollo.

18. On said time and date, the house was occupied by Edward Ruggieri, Ethan Ruggieri, A. S., and Harriet Stacey.

19. Upon information and belief, on October 14, 2017, one of the Hover boards purchased at Ninja Electronics, and supplied by the Defendants, and was plugged in and charging in living room of the Peermont Avenue house.

20. Upon information and belief, on October 14, 2017, at approximately 3:30 A.M., the charging Hover board burst into flames, starting a fire on the ground floor living room of the Peermont Avenue house.

21. Upon information and belief, at the time the fire erupted, Edward Ruggieri was in a bedroom on the second floor with his two dogs.

22. Shortly after the Hover board ignited and caught fire, Edward Ruggieri was awakened by Harriet Stacey screaming from her converted ground floor bedroom.

23. As Edward Ruggieri ran down the stairs to go to check on Ms. Stacey, he noticed there was smoke billowing up the steps.

24. Upon arrival of Ms. Stacey's room, Edward Ruggieri encountered hot, black smoke.

25. Unfortunately, due to the heat and volume of smoke, Edward Ruggieri could not save Ms. Stacey.

26. After running out of Ms. Stacey's room, Edward Ruggieri ran up the stairs to the third floor to alert his granddaughter, A. S., and his son, Ethan Ruggieri to exit the premises.

27. A. S. was able to run down the stairs and out the front door.

28. Ethan Ruggieri was unable to get to the door, and therefore, was forced to exit out his bedroom window onto the front porch roof.

29. Edward Ruggieri proceeded down the stairs and out the structure through the front door.

30. After exiting into the front yard, in order to save his life, Edward Ruggieri coaxed his son, Ethan Ruggieri, to jump from the front porch roof to the ground.

31. Although Edward Ruggieri attempted to catch his son, he was unsuccessful.

32. Upon EMS's arrival, both Ethan and Edward Ruggieri were taken via ambulance to Mercy Hospital to be treated for serious injuries.

33. Unfortunately, Harriet Stacey could not escape and did not survive the fire.

CAUSE OF INJURIES

34. At all times relevant hereto, the Hover board which ignited was in a dangerous and defective condition, *inter cilia*, in that it was prone overcharge and/or overheat and burn and/or ignite and catch fire, and in turn, cause the house fire that fatally burned Harriet Stacey, as well as injured the other Plaintiffs as described herein.

35. Had the Defendants employed the proper safeguards and warnings in the sale and distribution of the Hover board which ignited, including, *inter alia*, safer, economically feasible alternative designs that would prevent the battery from overcharging and/or overheating, the fire of October 14, 2017, would have been prevented.

36. As the direct and proximate result of the Defendants' negligence and strict liability, Plaintiffs suffered the injuries and damages as described herein, including death, physical and psychological / emotional injuries, and economic damages including, but not limited to, as follows:

- a. Plaintiffs have suffered thermal inhalation injuries;
- b. Plaintiffs have suffered multiple leg fractures (Ethan Ruggieri);
- c. Plaintiffs have suffered injuries to the muscles, tissues;

- ligaments, blood vessels, arteries and bones;
- f. Plaintiffs have suffered bruises and contusions;
 - g. Plaintiffs have suffered severe and serious internal injuries;
 - h. Plaintiffs have suffered shock and injuries their nerves and nervous system;
 - i. Plaintiffs have suffered burns and scarring on their bodies;
 - j. Plaintiffs have suffered emotional distress;
 - k. Plaintiffs have suffered other severe and serious injuries;
 - l. Plaintiffs have suffered loss of life (Harriet Stacey);
 - m. Plaintiffs have suffered and will continue to suffer severe physical pain, anxiety, depression, embarrassment, humiliation, emotional distress, mental anguish, inconvenience and a loss of life's pleasures;
 - n. Plaintiffs have been and will continue to be obliged to receive and undergo medical attention and care and has spent and will continue to spend significant sums of money in an effort to restore their health;
 - o. Plaintiffs have been and will continue to be obliged to undergo surgical procedures in the future;
 - p. Plaintiffs have been and will continue to be required to undergo a continuous regiment of physical therapy;
 - q. Plaintiffs suffer from pain which affects their ability to engage in normal daily activities and otherwise enjoy life;
 - r. Plaintiffs have suffered and in the future will continue to suffer a loss of income and impairment of earning capacity and power;
 - s. Plaintiffs have incurred excessive out of pocket expenses related to the complete loss of all their personal items;
 - t. Plaintiffs have been permanently disfigured and physically impaired;
 - u. Plaintiffs general health, strength and vitality have been greatly impaired, thereby depriving him of the normal joys of life; and
 - v. Plaintiffs have suffered other severe and significant damages.

37. The damages and injuries described herein were in no way caused or contributed to by any of the Plaintiffs in this case, and was were caused by the Defendants in the manners as set forth below.

COUNT I
NEGLIGENCE
ALL PLAINTIFFS v. COWBOY WHOLESALE CORP.

38. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

39. The losses, injuries and damages sustained by the Plaintiffs, as set forth herein, resulted directly and proximately from the negligent and careless conduct of Defendant, Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, who were negligent, in the following manner:

- a. Designing, selling, and supplying a product that was in a defective and/or dangerous condition due to its propensity to overcharge, overheat, burn and/or ignite and/or combust into flames;
- b. Defective design and/or absence of adequate instructions and/or warnings; and placing this device into the stream of commerce in a defective and unreasonably dangerous condition for consumers;
- c. Failing to determine if and/or insure that the Hover board possessed appropriate and necessary safety components for its intended use;
- d. Failing to determine if and/or insure that the Hover board possessed appropriate and necessary safety components to prevent the Hover board from overcharging, overheating, burning and/or combusting into flames;
- e. Failing to properly inspect, test, design, market, distribute, supply, and sell the Hover board, despite Defendant's actual and/or constructive knowledge that the aforementioned fire and injuries could and/or would occur;
- f. Failing to properly warn and place adequate warnings and instructions on the Hover board, despite Defendant's actual and/or

constructive knowledge that the aforementioned fire and injuries could and/or would occur;

- g. Failing to market and distribute an economically feasible alternative design, despite the existence of economical, safer alternatives, that could have prevented the Plaintiffs' injuries and damages, and the death of Harriet Stacey.

40. Cowboy Wholesale Corp. knew or should have known of the defective conditions of the Hover board, including, *inter alia*, the dangerous propensities associated with it overcharging and/or overheating and/or burning and/or igniting, and the lack of adequate warnings and/or instructions, and Cowboy Wholesale Corp. should have foreseen the harms ultimately suffered.

41. As a direct and proximate result of the negligence and carelessness of Cowboy Wholesale Corp, and their agents, servants, workmen and/or employees, Plaintiffs suffered the catastrophic injuries, both physical and economic, as described herein and incorporated by reference.

WHEREFORE, Plaintiffs claim of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT II
STRICT LIABILITY
ALL PLAINTIFFS v. COWBOY WHOLESALE CORP.

42. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

43. At the time of the Plaintiffs' respective injuries, the Hover board which ignited was defective and unreasonably dangerous for use by foreseeable consumers, including Plaintiffs.

44. The Hover board that ignited was distributed by Cowboy Wholesale Corp. and subsequently received in the same condition as when it left the possession of Cowboy Wholesale Corp.

45. Plaintiffs did not misuse or alter the Hover board.

46. The Hover board was defective and dangerous for the following particulars:

- a. The Hover board and its components, as designed, were prone to overcharging, overheating, burning and/or combusting into flames;
- b. During routine charging, the Hover board could and did here combust into flames;
- c. The Hover board lacked appropriate and necessary safety components to prevent the Hover board from overcharging, overheating, burning and/or combusting into flames;
- d. The Hover board as designed, manufactured and distributed, lacked appropriate and necessary safety instructions and warnings to alert the consumer/user of the possibility that the Hover board could overcharge, overheat, burn and/or combust into flames;

47. A reasonable person would conclude that the possibility and seriousness of the foreseeable harm outweigh the burden and/or cost of implementing a technologically and economically feasible safer design.

48. As a direct and proximate result of the defects in the design, manufacture, distribution and lack of warnings and instructions, the Hover board which ignited did not perform safely as an ordinary consumer would have expected it to perform when used in a reasonably foreseeable way.

49. Because the design, manufacture, production and marketing of the Hover board caused it to be unreasonably dangerous, Cowboy Wholesale Corp. should not have marketed and distributed this product without offering the safety components and warnings needed to prevent users from incurring foreseeable harm.

50. The severe injuries, damages and other losses suffered by Plaintiffs were caused by the design, manufacture, sale, and supply of the Hover board and its components in a defective condition, for which Cowboy Wholesale Corp. is strictly liable to Plaintiffs.

WHEREFORE, Plaintiffs claim of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT III
BREACH OF IMPLIED WARRANTY OF FITNESS
FOR A PARTICULAR PURPOSE
ALL PLAINTIFFS v. COWBOY WHOLESALE CORP.

51. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

52. Cowboy Wholesale Corp., supplied, distributed and sold Hover boards with an implied warranty that they were fit for the particular purpose of being a product that consumer is able to ride, charge, and otherwise use safely.

53. Members of the consuming public, including consumers such as the Plaintiffs, were intended third-party beneficiaries of the warranty.

54. The Hover board that ignited was not fit for the particular purpose, due to the unreasonable risks of bodily injury and death associated with its use, as described herein in this Complaint.

55. The Plaintiffs in this case and their families reasonably relied on Cowboy Wholesale Corp.'s representations that the Hover board was safe to ride, charge, and otherwise use safely.

56. Cowboy Wholesale Corp., breach of the implied warranty of fitness for a particular purpose was the direct and proximate cause of the Plaintiffs' injuries, damages, and the death of Harriet Stacey.

WHEREFORE, Plaintiffs claim of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT IV
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
ALL PLAINTIFFS v. COWBOY WHOLESALE CORP.

57. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

58. At the time Cowboy Wholesale Corp., distributed and sold the Hover boards for use by Plaintiffs in this case, Cowboy Wholesale Corp., warranted that the Hover boards were merchantable and fit for the ordinary purposes for which it was intended.

59. Members of the consuming public, including Plaintiffs, were intended third-party beneficiaries of the warranty.

60. The Hover board that ignited was not merchantable and fit for its ordinary purpose, because the Hover board had the propensity to overheat, combust, cause fire and to lead to the serious personal injuries and death, as described herein in this Complaint.

61. Plaintiffs purchased the Hover board with the reasonable expectation that it was properly designed and manufactured, free from defects of any kind, and that it was safe for its intended, foreseeable use as a toy.

62. Cowboy Wholesale Corp.'s breach of the implied warranty of merchantability was the direct and proximate cause of the Plaintiffs' injuries, damages, and the death of Harriet Stacey

WHEREFORE, Plaintiffs claim of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT V
NEGLIGENCE / NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
EDWARD RUGGIERI V. COWBOY WHOLESALE CORP

63. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

64. At all times relevant hereto, Cowboy Wholesale Corp., owed a duty to refrain from engaging in the careless and negligent conduct as previously described that would cause the Plaintiffs' personal injuries and emotional distress.

65. At all times relevant hereto, Edward Ruggieri occupied the Premises, and was in close proximity and witness to the horrific injuries caused by Cowboy Wholesale Corp.'s negligence and which lead to the injuries sustained by his close relatives, including his son, Ethan.

66. As a result of the careless and negligent conduct of Cowboy Wholesale Corp., Plaintiff Edward Ruggieri has suffered serious injuries, including, *inter alia*: emotional distress; mental anxiety, anguish and stress; embarrassment; humiliation; discomfort; and other injuries as may be diagnosed by his health care providers. Each of the aforementioned injuries has in the past and will continue in the future to cause Plaintiff Edward Ruggieri profound pain and suffering.

67. As a result of the careless and negligent conduct of Cowboy Wholesale Corp., Plaintiff Edward Ruggieri may in the future be obliged to receive medical attention, care and

counseling, and consequently Plaintiff Edward Ruggieri may be subject to medical expenses, bills, liens, and other expenses related to the fire which are recoverable as damages.

68. As a result of the careless and negligent conduct of Cowboy Wholesale Corp., Plaintiff Edward Ruggieri has suffered emotional, mental and/or physical impairment which prevents and/or diminishes his ability to enjoy life's pleasures and to perform material acts and duties that constituted his usual and customary activities prior to the fatal fire.

69. As a result of Cowboy Wholesale Corp.'s negligence, Plaintiff Edward Ruggieri has in the past and/or may hereafter incur other financial expenses and economic losses which are recoverable as damages.

WHEREFORE, Plaintiff Edward Ruggieri, Individually, claims of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT VI
NEGLIGENCE / NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
ETHAN RUGGIERI V. COWBOY WHOLESALE CORP.

70. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

71. At all times relevant hereto, Cowboy Wholesale Corp. owed a duty to refrain from engaging in the careless and negligent conduct as previously described that would cause the Plaintiffs' personal injuries and emotional distress.

72. At all times relevant hereto, Ethan Ruggieri occupied the Premises, and was in close proximity and witness to the horrific injuries caused by Cowboy Wholesale Corp.'s negligence and which lead to the injuries sustained by his close relatives, including his father, Edward.

73. As a result of the careless and negligent conduct of Cowboy Wholesale Corp., Plaintiff Ethan Ruggieri has suffered serious injuries, including, *inter alia*: emotional distress; mental anxiety, anguish and stress; embarrassment; humiliation; discomfort; and other injuries as may be diagnosed by his health care providers. Each of the aforementioned injuries has in the past and will continue in the future to cause Plaintiff Ethan Ruggieri profound pain and suffering.

74. As a result of the careless and negligent conduct of Cowboy Wholesale Corp., Plaintiff Ethan Ruggieri may in the future be obliged to receive medical attention, care and counseling, and consequently Plaintiff Ethan Ruggieri may be subject to medical expenses, bills, liens, and other expenses related to the fire which are recoverable as damages.

75. As a result of the careless and negligent conduct of Cowboy Wholesale Corp., Plaintiff Ethan Ruggieri has suffered emotional, mental and/or physical impairment which prevents and/or diminishes his ability to enjoy life's pleasures and to perform material acts and duties that constituted his usual and customary activities prior to the fatal fire.

76. As a result of Cowboy Wholesale Corp.'s negligence, Plaintiff Ethan Ruggieri has in the past and/or may hereafter incur other financial expenses and economic losses which are recoverable as damages.

WHEREFORE, Plaintiff Ethan Ruggieri, Individually, claims of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT VII
NEGLIGENCE / NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
EDWARD AND TAMRA RUGGIERI AS LEGAL GAURDIANS OF A. S. V. COWBOY
WHOLESALE CORP.

77. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

78. At all times relevant hereto, Cowboy Wholesale Corp., owed a duty to refrain from engaging in the careless and negligent conduct as previously described that would cause the Plaintiffs personal injuries and emotional distress.

79. At all times relevant hereto, A. S. occupied the Premises, and was in close proximity and witness to the horrific injuries caused by Cowboy Wholesale Corp.'s negligence and which lead to the injuries sustained by her close relatives.

80. As a result of the careless and negligent conduct of Cowboy Wholesale Corp., Plaintiff A. S. has suffered serious injuries, including, *inter alia*: emotional distress; mental anxiety, anguish and stress; embarrassment; humiliation; discomfort; and other injuries as may be diagnosed by his health care providers. Each of the aforementioned injuries has in the past and will continue in the future to cause Plaintiff A. S. profound pain and suffering.

81. As a result of the careless and negligent conduct of Cowboy Wholesale Corp., Plaintiff Angel Shelton may in the future be obliged to receive medical attention, care and counseling, and consequently Plaintiff A. S. may be subject to medical expenses, bills, liens, and other expenses related to the fire which are recoverable as damages.

82. As a result of the careless and negligent conduct of Cowboy Wholesale Corp., Plaintiff A. S. has suffered emotional, mental and/or physical impairment which prevents and/or diminishes his ability to enjoy life's pleasures and to perform material acts and duties that constituted his usual and customary activities prior to the fatal fire.

83. As a result of Cowboy Wholesale Corp.'s negligence, Plaintiff A. S. has in the past and/or may hereafter incur other financial expenses and economic losses which are recoverable as damages.

WHEREFORE, Plaintiffs, Edward and Tamara Ruggieri, as Legal Guardians of A. S., claims of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT VIII
LOSS OF CONSORTIUM
TAMARA RUGGIERI v. COWBOY WHOLESALE CORP.

84. The foregoing and subsequent paragraphs are incorporated herein by reference as though fully set forth herein at length.

85. At all times pertinent hereto, Plaintiffs Edward and Tamara Ruggieri were and still are married and cohabitating as husband and wife.

86. As a direct, proximate and legal result of Cowboy Wholesale Corp.'s conduct described above, Mrs. Ruggieri has suffered a loss of Mr. Ruggieri's love, affection, support, companionship, assistance, society, consortium and services which she previously enjoyed.

WHEREFORE, Plaintiff, Tamara Ruggieri, claims of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT IX
SURVIVAL ACTION
TAMARA RUGGIERI AS ADMINISTRATRIX OF THE ESTATE
OF HARRIET STACEY V. COWBOY WHOLESALE CORP.

87. The foregoing and subsequent paragraphs are incorporated herein by reference as though fully set forth herein at length.

88. Plaintiff, Tamara Ruggieri, as Administratrix of the Estate of Harriet Stacey, brings this action on behalf of the Estate under and by virtue of the Pennsylvania Survival Act, 42 Pa.C.S. §8302, et seq. and claims on behalf of the Estate all damages recoverable by law to which these estate are now entitled, including: mental and physical pain, and suffering which decedent Harriet Stacey endured prior to her demise, the economic value of decedent attending to her usual duties and occupation during the period of their life expectancy; the loss of earning capacity suffered by the decedent; and the absolute and total limitation and deprivation of the decedent's normal activities, pursuits, pleasures and full enjoyment of life.

89. As a result of the death of Harriet Stacey, the Estate has been deprived of the economic value of Decedent's life during the period of life expectancy, the Estate has suffered a loss of Decedent's earning capacity and the Plaintiff as Administratrix to the Estate claim damages for the pecuniary loss sustained by the Estate as well as the pain and suffering undergone by the Plaintiff Decedent.

WHEREFORE, Plaintiff, Tamara Ruggieri, as Administratrix of the Estate of Harriet Stacey, claims of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT X
WRONGFUL DEATH ACTION
TAMARA RUGGIERI, AS ADMINISTRATRIX OF THE
ESTATES OF HARRIET STACEY V. COWBOY WHOLESALE CORP.

90. The foregoing and preceding paragraphs are incorporated herein by reference as though fully set forth herein at length.

91. As a direct and proximate result of Cowboy Wholesale Corp's aforesaid negligence and strict liability as herein alleged, Plaintiff Decedent, Harriet Stacey, suffered severe and excruciating aches, pains, mental anxiety, anguish and shock to her entire nervous system causing Decedent's untimely demise.

92. The Plaintiff, Tamara Ruggieri, as Administratrix of the Estate of Harriet Stacey, deceased, is authorized to and bring this action on behalf of the survivors of the Decedent under and by virtue of the Pennsylvania Wrongful Death Act, 42 Pa.C.S. §8301, et seq.

93. By reason of the death of Harriet Stacey, a pecuniary loss has been incurred by the Estate, for medical bills, hospital bills, funeral, burial, estate administration expenses and other expenses, all of which relate to the loss hereinafter suffered, and the Estate and beneficiaries thereof are further entitled to recover damages in this action pursuant to the Pennsylvania Wrongful Death Act, 42 Pa.C.S. §8301, et seq.

94. As a direct and proximate result of the death of Decedent Harriet Stacey, her survivors have been deprived of the earnings, services, maintenance, guidance, tutelage, advice, counsel, support, comfort, assistance and society that they would have received from Harriet Stacey for the remainder of her natural life had her life not been tragically and prematurely lost.

WHEREFORE, Plaintiff, Tamara Ruggieri, as Administratrix of the Estate of Harriet Stacey, claims of Cowboy Wholesale Corp., and/or Cowboy Wholesale Corp.'s agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XI
NEGLIGENCE
ALL PLAINTIFFS v. TMD HOLDINGS, LLC

95. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

96. The losses, injuries and damages sustained by the Plaintiffs, as set forth herein, resulted directly and proximately from the negligent and careless conduct of Defendant, TMD Holdings, LLC (TMD) and/or TMD's agents, servants, workmen and/or employees, who were negligent, in the following manner:

- a. Designing, selling, and supplying a product that was in a defective and/or dangerous condition due to its propensity to overcharge, overheat, burn and/or ignite and/or combust into flames;
- b. Defective design and/or absence of adequate instructions and/or warnings; and placing this device into the stream of commerce in a defective and unreasonably dangerous condition for consumers;
- c. Failing to determine if and/or insure that the Hover board possessed appropriate and necessary safety components for its intended use;
- d. Failing to determine if and/or insure that the Hover board possessed appropriate and necessary safety components to prevent the Hover board from overcharging, overheating, burning and/or combusting into flames;
- e. Failing to properly inspect, test, design, market, distribute, supply, and sell the Hover board, despite Defendant's actual and/or constructive knowledge that the aforementioned fire and injuries could and/or would occur;
- f. Failing to properly warn and place adequate warnings and instructions on the Hover board, despite Defendant's actual and/or constructive knowledge that the aforementioned fire and injuries could and/or would occur;
- g. Failing to market and distribute an economically feasible alternative design, despite the existence of economical, safer

alternatives, that could have prevented the Plaintiffs' injuries, damages, and the death of Harriet Stacey.

97. TMD knew or should have known of the defective conditions of the Hover board, including, *inter alia*, the dangerous propensities associated with it overcharging and/or overheating and/or burning and/or igniting, and the lack of adequate warnings and/or instructions, and TMD should have foreseen the harms ultimately suffered.

98. As a direct and proximate result of the negligence and carelessness of TMD and/or TMD's agents, servants, workmen and/or employees, Plaintiffs suffered the catastrophic injuries, both physical and economic, as described herein and incorporated by reference.

WHEREFORE, Plaintiffs claim of TMD, and/or TMD's agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XII
STRICT LIABILITY
ALL PLAINTIFFS v. TMD HOLDINGS, LLC

99. The foregoing and preceding paragraphs are incorporated herein by reference as though fully set forth herein at length.

100. At the time of the Plaintiffs respective injuries, the Hover board which ignited was defective and unreasonably dangerous for use by foreseeable consumers, including Plaintiffs.

101. The Hover board that ignited was distributed by TMD and subsequently received in the same condition as when it left the possession of each of TMD.

102. Plaintiffs did not misuse or alter the Hover board.

103. The Hover board was defective and dangerous for the following particulars:

- a. The Hover board and its components, as designed, were prone to overcharging, overheating, burning and/or combusting into flames;

- b. During routine charging, the Hover board could and did here combust into flames;
- c. The Hover board lacked appropriate and necessary safety components to prevent the Hover board from overcharging, overheating, burning and/or combusting into flames;
- d. The Hover board as designed, manufactured and distributed, lacked appropriate and necessary safety instructions and warnings to alert the consumer/user of the possibility that the Hover board could overcharge, overheat, burn and/or combust into flames;

104. A reasonable person would conclude that the possibility and seriousness of the foreseeable harm outweigh the burden and/or cost of implementing a technologically and economically feasible safer design.

105. As a direct and proximate result of the defects in the design, manufacture, distribution and lack of warnings and instructions, the Hover board which ignited did not perform safely as an ordinary consumer would have expected it to perform when used in a reasonably foreseeable way.

106. Because the design, manufacture, production and marketing of the Hover board caused it to be unreasonably dangerous, TMD should not have marketed and distributed this product without offering the safety components and warnings needed to prevent users from incurring foreseeable harm.

107. The severe injuries, damages and other losses suffered by Plaintiffs were caused by the design, manufacture, sale, and supply of the Hover board and its components in a defective condition, for which TMD is strictly liable to Plaintiffs.

WHEREFORE, Plaintiffs claim of TMD, and/or TMD's agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XIII
BREACH OF IMPLIED WARRANTY OF FITNESS
FOR A PARTICULAR PURPOSE
ALL PLAINTIFFS v. TMD HOLDINGS, LLC

108. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

109. TMD supplied, distributed and sold Hover boards with an implied warranty that they were fit for the particular purpose of being a product that consumer is able to ride, charge, and otherwise use safely.

110. Members of the consuming public, including consumers such as the Plaintiffs, were intended third-party beneficiaries of the warranty.

111. The Hover board that ignited was not fit for the particular purpose, due to the unreasonable risks of bodily injury and death associated with its use, as described herein in this Complaint.

112. The Plaintiffs in this case and their families reasonably relied on TMD's representations that the Hover board was safe to ride, charge, and otherwise use safely.

113. TMD's breach of the implied warranty of fitness for a particular purpose was the direct and proximate cause of the Plaintiffs' injuries, damages, and the death of Harriet Stacey.

WHEREFORE, Plaintiffs claim of TMD, and/or TMD's agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XIV
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
ALL PLAINTIFFS v. TMD HOLDINGS, LLC

114. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

115. At the time TMD distributed and sold the Hover board that ignited for use by Plaintiffs in this case, TMD warranted that the Hover board was merchantable and fit for the ordinary purposes for which it was intended.

116. Members of the consuming public, including Plaintiffs, were intended third-party beneficiaries of the warranty.

117. The Hover board was not merchantable and fit for its ordinary purpose, because the Hover board had the propensity to overheat, combust, cause fire and to lead to the serious personal injuries and death, as described herein in this Complaint.

118. Plaintiffs purchased the Hover board with the reasonable expectation that it was properly designed and manufactured, free from defects of any kind, and that it was safe for its intended, foreseeable use as a toy.

119. TMD's breach of the implied warranty of merchantability was the direct and proximate cause of the Plaintiffs' injuries, damages, and the death of Harriet Stacey.

WHEREFORE, Plaintiffs claim of TMD, and/or TMD's agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XV
NEGLIGENCE / NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
EDWARD RUGGIERI V. TMD HOLDINGS, LLC

120. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

121. At all times relevant hereto, TMD owed a duty to refrain from engaging in the careless and negligent conduct as previously described that would cause the Plaintiffs' personal injuries and emotional distress.

122. At all times relevant hereto, Edward Ruggieri occupied the Premises, and was in close proximity and witness to the horrific injuries caused by TMD's negligence and which lead to the injuries sustained by his close relatives, including his son, Ethan.

123. As a result of the careless and negligent conduct of TMD, Plaintiff Edward Ruggieri has suffered serious injuries, including, *inter alia*: emotional distress; mental anxiety, anguish and stress; embarrassment; humiliation; discomfort; and other injuries as may be diagnosed by his health care providers. Each of the aforementioned injuries has in the past and will continue in the future to cause Plaintiff Edward Ruggieri profound pain and suffering.

124. As a result of the careless and negligent conduct TMD, Plaintiff Edward Ruggieri may in the future be obliged to receive medical attention, care and counseling, and consequently Plaintiff Edward Ruggieri may be subject to medical expenses, bills, liens, and other expenses related to the fire which are recoverable as damages.

125. As a result of the careless and negligent conduct of TMD, Plaintiff Edward Ruggieri has suffered emotional, mental and/or physical impairment which prevents and/or diminishes his ability to enjoy life's pleasures and to perform material acts and duties that constituted his usual and customary activities prior to the fatal fire.

126. As a result of TMD's negligence, Plaintiff Edward Ruggieri has in the past and/or may hereafter incur other financial expenses and economic losses which are recoverable as damages.

WHEREFORE, Plaintiff Edward Ruggieri, Individually, TMD, and/or TMD's agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XVI
NEGLIGENCE / NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
ETHAN RUGGIERI V. TMD HOLDINGS, LLC

127. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

128. At all times relevant hereto, the TMD owed a duty to refrain from engaging in the careless and negligent conduct as previously described that would cause the Plaintiffs' personal injuries and emotional distress.

129. At all times relevant hereto, Ethan Ruggieri occupied the Premises, and was in close proximity and witness to the horrific injuries caused by TMD's negligence and which lead to the injuries sustained by his close relatives, including his father, Edward.

130. As a result of the careless and negligent conduct of TMD, Plaintiff Ethan Ruggieri has suffered serious injuries, including, *inter alia*: emotional distress; mental anxiety, anguish and stress; embarrassment; humiliation; discomfort; and other injuries as may be diagnosed by his health care providers. Each of the aforementioned injuries has in the past and will continue in the future to cause Plaintiff Ethan Ruggieri profound pain and suffering.

131. As a result of the careless and negligent conduct of TMD, Plaintiff Ethan Ruggieri may in the future be obliged to receive medical attention, care and counseling, and consequently Plaintiff Ethan Ruggieri may be subject to medical expenses, bills, liens, and other expenses related to the fire which are recoverable as damages.

132. As a result of the careless and negligent conduct of TMD, Plaintiff Ethan Ruggieri has suffered emotional, mental and/or physical impairment which prevents and/or diminishes his ability to enjoy life's pleasures and to perform material acts and duties that constituted his usual and customary activities prior to the fatal fire.

133. As a result of TMD's negligence, Plaintiff Ethan Ruggieri has in the past and/or may hereafter incur other financial expenses and economic losses which are recoverable as damages.

WHEREFORE, Plaintiff Ethan Ruggieri, Individually, TMD, and/or TMD's agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XVII
NEGLIGENCE / NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
EDWARD AND TAMARA RUGGIERI, AS LEGAL GAURDIANS OF A. S. V. TMD
HOLDINGS, LLC

134. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

135. At all times relevant hereto, TMD owed a duty to refrain from engaging in the careless and negligent conduct as previously described that would cause the Plaintiffs' personal injuries and emotional distress.

136. At all times relevant hereto, A.S. occupied the Premises, and was in close proximity and witness to the horrific injuries caused by TMD's negligence and which lead to the injuries sustained by her close relatives.

137. As a result of the careless and negligent conduct of TMD, Plaintiff A.S. has suffered serious injuries, including, *inter alia*: emotional distress; mental anxiety, anguish and stress; embarrassment; humiliation; discomfort; and other injuries as may be diagnosed by her health care providers. Each of the aforementioned injuries has in the past and will continue in the future to cause Plaintiff A. S. profound pain and suffering.

138. As a result of the careless and negligent conduct of TMD, Plaintiff A. S. may in the future be obliged to receive medical attention, care and counseling, and consequently Plaintiff A. S. may be subject to medical expenses, bills, liens, and other expenses related to the fire which are recoverable as damages.

139. As a result of the careless and negligent conduct of TMD, Plaintiff A. S. has suffered emotional, mental and/or physical impairment which prevents and/or diminishes her ability to enjoy life's pleasures and to perform material acts and duties that constituted his usual and customary activities prior to the fatal fire.

140. As a result of TMD's negligence, Plaintiff A. S. has in the past and/or may hereafter incur other financial expenses and economic losses which are recoverable as damages.

WHEREFORE, Edward and Tamara Ruggieri, as Legal Guardians of A. S., claims of TMD, and/or TMD's agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XVIII
LOSS OF CONSORTIUM
TAMARA RUGGIERI v. TMD HOLDINGS, LLC

141. The foregoing and subsequent paragraphs are incorporated herein by reference as though fully set forth herein at length.

142. At all times pertinent hereto, Plaintiffs Edward and Tamara Ruggieri were and still are married and cohabitating as husband and wife.

143. As a direct, proximate and legal result of Defendant TMD's conduct described above, Mrs. Ruggieri has suffered a loss of Mr. Ruggieri's love, affection, support, companionship, assistance, society, consortium and services which she previously enjoyed.

WHEREFORE, Plaintiff, Tamara Ruggieri, claims of TMD, and/or TMD's agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XX
SURVIVAL ACTION
TAMARA RUGGIERI AS ADMINISTRATRIX OF THE ESTATE
OF HARRIET STACEY V. TMD HOLDINGS, LLC

144. The foregoing and subsequent paragraphs are incorporated herein by reference as though fully set forth herein at length.

145. Plaintiff, Tamara Ruggieri, as Administratrix of the Estate of Harriet Stacey, brings this action on behalf of the Estate under and by virtue of the Pennsylvania Survival Act, 42 Pa.C.S. §8302, et seq. and claims on behalf of the Estate all damages recoverable by law to which these estate are now entitled, including: mental and physical pain, and suffering which decedent Harriet Stacey endured prior to her demise, the economic value of decedent attending to her usual duties and occupation during the period of their life expectancy; the loss of earning capacity suffered by the decedent; and the absolute and total limitation and deprivation of the decedent's normal activities, pursuits, pleasures and full enjoyment of life.

146. As a result of the death of Harriet Stacey, the Estate has been deprived of the economic value of Decedent's life during the period of life expectancy, the Estate has suffered a loss of Decedent's earning capacity and the Plaintiff as Administratrix s to the Estate claim damages for the pecuniary loss sustained by the Estate as well as the pain and suffering undergone by the Plaintiff Decedent.

WHEREFORE, Plaintiff, Tamara Ruggieri, as Administratrix of the Estate of Harriet Stacey, claims of TMD and/or TMD's agents, servants, workmen and/or employees, a sum in

excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

COUNT XXI
WRONGFUL DEATH ACTION
TAMARA RUGGIERI, AS ADMINISTRATRIX OF THE
ESTATES OF HARRIET STACEY V. TMD HOLDINGS, LLC

147. The foregoing and proceeding paragraphs are incorporated herein by reference as though fully set forth herein at length.

148. As a direct and proximate result of TMD's aforesaid negligence and strict liability as herein alleged, Plaintiff Decedent, Harriet Stacey, suffered severe and excruciating aches, pains, mental anxiety, anguish and shock to her entire nervous system causing Decedent's untimely demise.

149. The Plaintiff, Tamara Ruggieri, as Administratrix of the Estate of Harriet Stacey, deceased, is authorized to and bring this action on behalf of the survivors of the Decedent under and by virtue of the Pennsylvania Wrongful Death Act, 42 Pa.C.S. §8301, et seq.

150. By reason of the death of Harriet Stacey, a pecuniary loss has been incurred by the Estate, for medical bills, hospital bills, funeral, burial, estate administration expenses and other expenses, all of which relate to the loss hereinafter suffered, and the Estate and beneficiaries thereof are further entitled to recover damages in this action pursuant to the Pennsylvania Wrongful Death Act, 42 Pa.C.S. §8301, et seq.

151. As a direct and proximate result of the death of Decedent Harriet Stacey, her survivors have been deprived of the earnings, services, maintenance, guidance, tutelage, advice, counsel, support, comfort, assistance and society that they would have received from Harriet Stacey for the remainder of her natural life had her life not been tragically and prematurely lost.

WHEREFORE, Plaintiff, Tamara Ruggieri, as Administratrix of the Estate of Harriet Stacey, claims of TMD and/or TMD's agents, servants, workmen and/or employees, a sum in excess of jurisdictional arbitration limits, plus interest, costs, and any other relief this Honorable Court deems appropriate.

Respectfully submitted,
Zimmer Kunz, PLLC

By: *s/ Ryan A. Zeli*
Ryan A. Zeli, Esquire
Attorney for Plaintiffs

VERIFICATION

I, **EDWARD RUGGIERI**, have read the foregoing **Complaint in Civil Action**.
The statements therein are correct to the best of my personal knowledge, information and
belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §
4904 relating to unsworn fabrication to authorities, which provides that if I make
knowingly false averments, I may be subject to criminal penalties.

Date:

9/5/19

Edward Ruggieri

VERIFICATION

I, **TAMARA RUGGIERI**, have read the foregoing **Complaint in Civil Action**. The statements therein are correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date:

9-5-19

Tamara Ruggieri

VERIFICATION

I, **ETHAN RUGGIERI** , have read the foregoing **Complaint in Civil Action**. The statements therein are correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date: 9-5-19

