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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Jacob Anderson, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

Puff Corp., a Delaware Corporation,

Defendant.

Case No.

CLASS ACTION COMPLAINT

Representative Plaintiff Jacob Anderson, on behalf of himself and all others
similarly situated, alleges the following Complaint against Defendant Puff Corp.

INTRODUCTION

1. This is a class action brought by Representative Plaintiff on behalf of
himself, an Arizona class, and a national class, of all persons who purchased PUFFCO's
PEAK vaporizer distributed by PUFFCO and its retail partners since first sold on January
15, 2018. These vaporizers are defective. In some cases, the battery unit does not hold a
charge or does not charge at all. In other cases, the atomizers break with a single use, or a
few uses. Atomizers are not covered by PUFFCO's limited warranty and are \$39.99 to
replace.

COMMON FACTUAL ALLEGATIONS

2. Puff Corp. ("PUFFCO") is an American manufacturing company that
manufactures vaporizers for cannabis concentrates and other smoking material for use in

1 legal medical and adult use states.

2 3. Upon information and belief, PUFFCO is incorporated in Delaware, with its
3 principal place of business in Los Angeles, California.

4 4. PUFFCO has been distributing and selling the PUFFCO PEAK (“PEAK”)
5 since January 15, 2018, with various iterations, colors, limited editions, and attachments.
6 (See Exhibit A).

7 5. The PEAK is an electronic vaporizer used to smoke cannabis concentrates
8 or other smoking material.

9 6. The PEAK retails for \$379.99 and comes with the PEAK device with
10 atomizer, a carrying case, cleaning swabs, a loading tool, a micro USB cable and
11 “supercharger,” a carb cap, and an extra ceramic bowl. (See Exhibit B).

12 7. The PEAK requires ceramic “atomizers” to heat the smoking material.
13 Replacement atomizers retail for \$39.99 on PUFFCO’s website. (See Exhibit C).

14 8. The PEAK packaging comes with an instruction manual which contains
15 instructions, warnings, and a summary of the one-year limited warranty (See Exhibit D).

16 9. The instruction manual accompanying the PEAK, represents that the PEAK
17 comes with a one-year warranty “for only the electronic base.” PUFFCO does not
18 warrant the “glass, atomizers, normal wear and tear, or damage caused by accident or
19 abuse.” (See Exhibit D).

20 10. However, a separate warranty exists on PUFFCO’s website for all
21 “authentic Puffco-branded products,” which guarantees that for the period of one (1) year,
22 the product will be “free of defects in design, assembly, material, or workmanship.” (See
23 Exhibit E).

24 11. The marketing for the PEAK promotes its reliability, ensuring consumers
25 that the “design of the PEAK maintains a consistent experience,” and touts a “more
26 consistently flavor experience.” (See Exhibit F).

27 12. PUFFCO claims that “each component of the Peak represents an exhaustive
28 effort to find the best possible materials and designs. Each piece interlocking, without any

1 glues or shortcuts, to deliver a perfect experience every time.” (See Exhibit G).

2 13. In reality, the PEAK suffers from design and/or manufacturing defects
3 wherein 1) the battery will not remain charged, or never charges at all; and, 2) the
4 atomizers provided with the PEAK and replacement atomizers are defective in that they
5 do not heat properly or at all.

6 14. Upon discovering that the atomizers for the PEAK are defective, many class
7 members, including Plaintiff, foreseeably purchased—and indeed, were required to
8 purchase based on the limited warranty included in the instruction manual—additional
9 atomizers at \$39.99 each, as PUFFCO expected, or should have expected, if not intended.

10 15. Many class members have continued to spend money replacing atomizers,
11 until they realize that it is futile or that the PEAK they purchased was fatally flawed.

12 16. PUFFCO further discourages customer complaints and warranty claims by
13 providing only an email address for their customer service and not a phone number.
14 Further, consumers have reported that it takes several weeks to get reply from Customer
15 Service, and then another several weeks for Customer Service to respond to the
16 consumer’s communication; or are unresponsive all together. (See Exhibit H).

17 17. The defectiveness of the PEAK atomizers is so prevalent that a business has
18 sprung up that caters to PEAK consumers by selling repair kits to fix defective PEAK
19 atomizers. (See Exhibit I).

20 18. From 2018 to the filing of the Complaint, consumers from all over the
21 United States have reported and complained about the defectiveness of the PEAK, as well
22 as the atomizers sold with the PEAK and replacement atomizers. (See Exhibit J).

23 19. The numerous Complaints by consumers resolve any doubt that PUFFCO
24 was fully aware of the prevalence of these defects.

25 20. In fact, in an interview with David Downs of Leafly, Roger Volodarsky, the
26 Chief Executive Officer of PUFFCO, admitted issues with the PEAK and compared his
27 consumers (and PEAK purchasers) to beta software testers. (See Exhibit J).

28 21. Mr. Volodarsky admitted that PUFFCO was aware of the defect issues and

1 stated the following: “If you’re one of the first to buy it, you’re going to be one of the first
2 to experience issues.” (See Exhibit J). Despite this knowledge of the pervasive defects, no
3 national recall action has even been undertaken by PUFFCO to warn consumers, remove
4 the defective product from circulation, or replace the defective atomizers or batteries.

5 22. Instead, PUFFCO has chosen to maximize its profits and avoid the costs of
6 fixing the defective PEAKs at the expense of its consumers, who are induced into
7 spending money replacing atomizers at \$39.99 apiece.

8 23. PUFFCO continues to sell defective PEAK vaporizers.

9 24. By this scheme, PUFFCO has unfairly reaped profits by fraudulently
10 increasing demand for replacement atomizers. PUFFCO continues to market the PEAK
11 and its various models and attachments, notwithstanding the maelstrom of complaints
12 from their customers.

13 25. Plaintiff, on behalf of himself and all members of each of the respective
14 classes, seek damages, interest thereon, restitution, injunctive and other equitable relief,
15 reasonable attorneys’ fees, and costs as a remedy for PUFFCO’s numerous unlawful
16 and/or deceptive business practices, as detailed herein.

17 **VENUE AND JURISDICTION**

18 26. The Court has jurisdiction over the subject matter presented by this
19 Complaint because it is a class action arising under the Class Action Fairness Act of 2005
20 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the
21 original jurisdiction of the Federal Courts of any class action in which any member of the
22 plaintiff class is a citizen of a state different from any defendant, and in which the matter
23 in controversy exceeds the aggregate sum of \$5,000,000.00, exclusive of interest and
24 costs.

25 27. Plaintiff alleges that the total claims of the individual members of the
26 Plaintiff class in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of
27 interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). As set forth below, Plaintiff
28 is a citizen of Arizona and PUFFCO is a citizen of Delaware. Therefore, diversity of

1 citizenship exists under CAFA and diversity jurisdiction, as required by 28 U.S.C. §§
2 1332(a)(1), (d)(2)(A). Furthermore, Plaintiff alleges on information and belief that more
3 than two-third of all of the members of the proposed Plaintiff class in the aggregate are
4 citizens of a state other than Arizona, where this action is originally being filed, and that
5 the total number of members of the proposed Plaintiff class is greater than 100, pursuant
6 to 28 U.S.C. § 1332(d)(5)(B).

7 28. Venue in this jurisdiction is proper pursuant to 28 U.S.C. § 1391(a) because
8 as set forth below, PUFFCO conducts business, and may be found, in this district and
9 Plaintiff purchased the subject product of this action in this judicial district.

10 **PLAINTIFF**

11 29. Plaintiff is an individual more than 18 years old, and is a citizen of Arizona,
12 resident of Maricopa County. Plaintiff respectfully requests a jury trial on all damage
13 claims.

14 30. Plaintiff is an Arizona medical marijuana patient and authorized to consume
15 cannabis under Arizona's medical marijuana law.

16 31. Prior to discovering the product defects summarized above, Plaintiff
17 purchased the PEAK. These purchases were made within this judicial district, and as the
18 purchaser and owner of the PEAK, Plaintiff was damaged by PUFFCO's conduct, as set
19 forth herein.

20 32. Plaintiff is, at was at all times relevant herein, a member of the class.

21 33. Plaintiff brings this action on behalf of himself, and as a class action,
22 pursuant to Federal Civil Procedure Rule 23, on behalf of all persons similarly situated
23 and proximately damaged by the unlawful conduct described herein.

24 34. Within the relevant claim period, Plaintiff purchased the PEAK.

25 35. Plaintiff followed the instructions provided with the PEAK, allowing the
26 unit to charge fully before use.

27 36. To Plaintiff's surprise and dismay, within less than one week the atomizer
28 provided with the PEAK stopped heating properly. It would not heat the smoking

1 material properly and could not create smoke.

2 37. As the atomizer is not covered under PUFFCO's limited warranty, Plaintiff
3 was required to purchase another atomizer at full retail price of \$40.00 to enable the
4 PEAK to work again.

5 **DEFENDANT**

6 38. Defendant PUFF CORP. is an American vaporizer manufacturing company,
7 with principal offices in Los Angeles, California that produces vaporizers for the legal
8 cannabis industry since 2015.

9 39. In 2015, its first year of business, PUFFCO made \$5 million in sales.
10 PUFFCO's business relies, at least in part, the sale of replacement parts to existing
11 customers. (See Exhibit L).

12 **CLASS ACTION ALLEGATIONS**

13 40. Plaintiff brings this class action on behalf of himself and all others similarly
14 situated, for all claims alleged herein, pursuant to Federal Civil Procedure Rule 23. The
15 proposed class is defined as: All persons and entities that resided in the United States
16 (including its Territories and the District of Columbia) and purchased PUFFCO PEAK
17 Vaporizers from January 15, 2018 to the present.

18 41. PUFFCO, its officers, directors, employees, as well as the Judge(s) assigned
19 to this matter, the jury in this case, and the members of their immediate families and
20 Plaintiff's counsel's law firm(s) are excluded from the Plaintiff classes.

21 42. This action has been brought and may properly be maintained as a class
22 action under Federal Civil Procedure Rule 23 because there is a well-defined community
23 of interest in the litigation, and membership in the proposed class is easily ascertainable.

24 a. Numerosity. A class action is the only available method for the fair and
25 efficient adjudication of this controversy. The members of the Plaintiff
26 classes are so numerous that joinder of all members is impractical, if not
27 impossible. Plaintiff is informed and believe and, on that basis, allege
28 that total number of class members is in the thousands of individuals.

1 Membership in the classes will be determined by analysis of Defendants'
2 records.

3 b. Commonality. Plaintiff and the class members share a community of
4 interests in that there are numerous common questions and issues of fact
5 and law which predominate over questions and issues solely affecting
6 individual members, including but not necessarily limited to:

- 7 i. Whether Defendant had a duty to disclose to consumers the defect
8 issues with the PEAK;
- 9 ii. Whether Defendant failed to disclose or concealed material
10 information regarding the defects with PEAK;
- 11 iii. Whether Defendant breached any express or implied warranties;
- 12 iv. Whether Defendant engaged in fraud;
- 13 v. Whether Defendant's conduct and business practices violated
14 Arizona's Consumer Fraud Act, A.R.S. § 44-1522, *et seq.*;
- 15 vi. Whether Defendant's conduct and business practices constituted
16 deceptive trade practices;
- 17 vii. The total number of defective PEAK products purchased by
18 consumers during the relevant claim period through PUFFCO
19 directly and from each of PUFFCO's retail partners;
- 20 viii. The total number of replacement atomizers purchased by
21 consumers during the relevant claim period through PUFFCO
22 directly and from each of PUFFCO's retail partners;
- 23 ix. The profits realized from consumers' purchasers of the defective
24 PEAK products and replacement atomizers;
- 25 x. Whether Plaintiff and class members are entitled to relief, the
26 amount of relief and nature of such relief, including injunctive
27 relief and/or restitution.

28 c. Typicality. Plaintiff's claims are typical of the claims of the Plaintiff

1 classes. Plaintiff and all members of the Plaintiff class sustained
2 economic damages arising out of and caused by PUFFCO's common
3 course of conduct in violation of law, as alleged herein.

4 d. Adequacy of Representation. Plaintiff in this class action are adequate
5 representatives of each of Plaintiff class in that Plaintiff has the same
6 interest in the litigation of this case as class members, are committed to
7 vigorous prosecution of this case and have retained competent counsel
8 who are experienced in conducting class action litigation of this nature.
9 Plaintiff is not subject to any individual defenses unique from those
10 conceivable applicable to other class members or the class in its entirety.
11 Plaintiff anticipates no management difficulties in this litigation.

12 e. Superiority of the Class Action Procedure. Since the damages suffered
13 by the individual class members, while not inconsequential, may be
14 relatively small, the expense and burden of individual litigation by each
15 member makes or may make it impractical for members of the Plaintiff
16 classes to seek redress individually for the wrongful conduct alleged
17 herein. Should separate actions be brought or be required to be brought,
18 by each individual member of Plaintiff class, the resulting multiplicity of
19 lawsuits would cause undue hardship and expense for the Court, and the
20 litigants. The prosecution of separate actions would also create a risk of
21 inconsistent rulings which might be dispositive of the interests of other
22 class members who are not parties to the adjudication and/or may
23 substantially impede their ability to adequately protect their interests.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF ARIZONA'S CONSUMER FRAUD ACT**

26 ARIZ. REV. STAT. § 44-1522, *ET SEQ.*

27 43. Plaintiff re-alleges and incorporates by reference the allegations set forth in
28 each of the preceding paragraphs of this Complaint.

1 U.S.C. § 2301(1).

2 52. PUFFCO's warranty is a "written warranty" within the meaning of 15
3 U.S.C. §§ 2301(6).

4 53. PUFFCO breached the warranty by, *inter alia*:

5 a. Selling PEAKs with defective designs and/or defective
6 manufacturing such that they would not hold a charge or doesn't
7 charge at all.

8 b. Selling PEAKs with defective designs and/or defective
9 manufacturing such that the atomizer would be broken upon arrival
10 to the consumer, or within a few uses of the PEAK.

11 54. PUFFCO's breach of warranty deprived Plaintiff and thousands of putative
12 class members benefits of their bargains.

13 55. The amount in controversy in this action exceeds \$50,000, exclusive of
14 interest and costs.

15 56. There are more than 100 members each of the proposed class.

16 57. PUFFCO have had a reasonable opportunity to cure their breach of written
17 warranty and failed to do so.

18 58. As a direct and proximate result of PUFFCO's breach of express warranty,
19 Plaintiff and the putative class members sustained damages and other losses in an amount
20 to be determined at trial.

21 59. Further, Plaintiff and the putative class members are entitled to, and hereby
22 seek rescission, interest, costs of suit, attorneys' fees and/or other such relief the court
23 deems appropriate.

24 **THIRD CAUSE OF ACTION**

25 **BREACH OF EXPRESS WARRANTY**

26 60. Plaintiff re-alleges and incorporates by reference the allegations set forth in
27 each of the preceding paragraphs of this Complaint.

28 61. PUFFCO warranted that each of the PEAKs was free of defects when it sold

1 these products to Plaintiff and the putative class members.

2 62. This express warranty became the basis of the bargain.

3 63. PUFFCO breach this warranty by, *inter alia*:

4 a. Selling PEAKs with defective designs and/or defective
5 manufacturing such that they would not hold a charge or doesn't
6 charge at all.

7 b. Selling PEAKs with defective designs and/or defective
8 manufacturing such that the atomizer would be broken upon arrival
9 to the consumer, or within a few uses of the PEAK.

10 64. PUFFCO was on notice of the defects *vis-à-vis* direct complaints from
11 Plaintiff, putative class members, the internet message boards, social media accounts
12 maintained by PUFFCO, and from published product reviews on countless websites.

13 65. As a direct and proximate result of PUFFCO's breach of express warranty,
14 Plaintiff and putative class members sustained damages and losses in an amount to be
15 determined at trial. Further, Plaintiff and putative class members are entitled to and
16 hereby seek rescission, interest, costs of suit, attorneys' fees and/or other such relief the
17 court deems appropriate.

18 **FOURTH CAUSE OF ACTION**

19 **BREACH OF IMPLIED WARRANTY**

20 66. Plaintiff re-alleges and incorporates by reference the allegations set forth in
21 each of the preceding paragraphs of this Complaint.

22 67. The implied warranty of merchantability required that PUFFCO's PEAK
23 vaporizer be fit for the ordinary purposes for which such goods are used.

24 68. Plaintiff and the putative class members did not use PUFFCO's PEAK
25 vaporizer for an abnormal use.

26 69. As a direct, proximate and foreseeable cause of PUFFCO's breach of
27 implied warranty, Plaintiff and the putative class members sustained damages in an
28 amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, on behalf of himself and each member of the proposed class, respectfully request that this Court enter judgment in their favor and for the following specific relief against PUFFCO as follows:

1. That the Court declare, adjudge, and decree that this action is a proper class action and certify the proposed class and any other subclasses under Fed. R. Civ. P. 23(b)(1), (b)(2), and/or (b)(3), including appointment of Plaintiff's counsel as Class Counsel;
2. For an award to Plaintiff and members of the class of compensatory and special damages in an amount to be proven at trial;
3. That PUFFCO be found to have violated Arizona's Consumer Fraud Act, A.R.S. § 44-1522;
4. That PUFFCO be found to have violated Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*;
5. That PUFFCO be found to have breached the express and implied warranties;
6. For equitable relief enjoining PUFFCO from engaging in the wrongful conduct alleged herein;
7. For interest on the amount of any and all economic losses, at the prevailing legal rate;
8. For an award of punitive and/or exemplary damages in an amount sufficient to deter such conduct in the future;
9. For an award of reasonable attorneys' fees;
10. For all other such Orders, findings, and determinations identified and sought in this Complaint.

JURY DEMAND

Plaintiff and members of the proposed classes hereby demand trial by jury on all issues triable of right by jury.

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2 Dated this 29th day of March, 2019.

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4 **BARRETT & MATURA, P.C.**

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