

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

DENNIS STINER, Administrator of
Estate of Logan James Stiner
c/o Brian K. Balsler Co., LPA
5311 Meadow Lane Ct.
Elyria, OH 44035,

Plaintiff,

vs.

AMAZON.COM, INC.
c/o Corporation Service Company
300 Deschuters Way SW, Ste.304
Tumwater, WA 98501

-and-

TENKORIS, LLC
c/o Ken M. Olcher
7705 E. Doubletree Ranch Rd. #22
Scottsdale, AZ 85258

-and-

TENKORIS, INC.
c/o Ken M. Olcher
7705 E. Doubletree Ranch Rd. #22
Scottsdale, AZ 85258

-and-

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) JUDGE:

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) **COMPLAINT**

) (JURY DEMAND ENDORSED HEREON)

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THE BULK SOURCE)
c/o Ken M. Olcher)
7705 E. Doubletree Ranch Rd. #22)
Scottsdale, AZ 85258)
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-and-)
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GUARDIAN WHOLESale)
c/o Ken M. Olcher)
7705 E. Doubletree Ranch Rd. #22)
Scottsdale, AZ 85258)
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-and-)
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HARD RHINO)
c/o Ken M. Olcher)
7705 E. Doubletree Ranch Rd. #22)
Scottsdale, AZ 85258)
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-and-)
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GUARDIAN BIOSCIENCES, INC.)
c/o Ken M. Olcher)
7705 E. Doubletree Ranch Rd. #22)
Scottsdale, AZ 85258)
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-and-)
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KELSEY KIDD)
132 Mercury Dr.)
Elyria, OH 44035)
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-and-)
)
ABC COMPANY(S) #1-#5)
NAME UNKNOWN)
ADDRESS UNKNOWN)
)
Defendants.)
_____)

PLAINTIFF'S COMPLAINT

COMES NOW Plaintiff, Dennis Stiner, Administrator of the Estate of Logan James Stiner, deceased, by and through his undersigned attorneys, for his Complaint against Defendants Amazon.com, Inc., Tenkoris, LLC., Tenkoris, Inc., The Bulk Source, Guardian Wholesale, Hard Rhino, Guardian BioSciences Inc., Kelsey Kidd and ABC Companies #1-5 (collectively "Defendants") relative to their manufacturing, design, marketing, labeling, supplying, distribution, offering for sale, selling, providing, advertising, and/or promotion of caffeine powder, in the United States, and in the State of Ohio and County of Lorain, and in support thereof would show the following:

PARTIES

PLAINTIFF

1. Dennis Stiner is the Administrator of the Estate of Logan James Stiner, appointed by Lorain County Probate Court, which has been opened in Lorain County, Ohio and bears Case No. 2014 ES 00808.

2. Plaintiff brings this survival and wrongful death action for the personal injuries suffered as a result of the May 27, 2014 injuries and resulting death of Logan James Stiner as a result of his ingestion of the caffeine powder that Defendants manufactured, designed, marketed, supplied, labeled, distributed, sold and/or promoted.

DEFENDANTS

3. Defendant Amazon.com Inc. (“Amazon.com”) is a multi-billion dollar a year on-line retail company that is a Delaware corporation with its headquarters in the City of Seattle in the State of Washington. Defendant Amazon.com does business in the State of Ohio and County of Lorain. At all times relevant herein Defendants did business in the State of Ohio and County of Lorain.

4. Defendant Tenkoris, LLC (“Tenkoris, LLC”) is an Arizona corporation with its principal place of business in Scottsdale, Arizona, Tenkoris, LLC is also an importer of chemicals and pure powders from China and does business in the State of Ohio and County of Lorain. At all times relevant herein Defendant Tenkoris, LLC did business in the State of Ohio and County of Lorain.

5. Defendant Tenkoris, Inc. (“Tenkoris, Inc.”) is an Arizona corporation with its principal place of business in Scottsdale, Arizona, Tenkoris, Inc. is also an importer of chemicals and pure powders from China and does business in the State of Ohio and County of Lorain. At all times relevant herein Defendant Tenkoris, Inc. did business in the State of Ohio and County of Lorain.

6. Defendant Guardian Wholesale (“Guardian Wholesale”) is a company and/or subsidiary, trade name and/or agent of Defendants Tenkoris, LLC and/or Tenkoris, Inc., and is a wholesale distributor, manufacturer and importer of pure caffeine powder from China and does business in the State of Ohio and County of Lorain. At all times relevant herein Defendant Guardian Wholesale did business in the State of Ohio and County of Lorain.

7. Defendant The Bulk Source (“Bulk Source”) is a company and/or subsidiary and/or agent of Defendants Tenkoris, LLC and/or Tenkoris, Inc., and does business in the State of Ohio and County of Lorain. At all times relevant herein Defendant Bulk Source did business in the State of Ohio and County of Lorain.

8. Defendant Hard Rhino (“Hard Rhino”) is a company and/or subsidiary and/or agent of Defendants Tenkoris, LLC and/or Tenkoris, Inc., and does business in the State of Ohio and County of Lorain. At all times relevant herein Defendant Hard Rhino did business in the State of Ohio and County of Lorain.

9. Defendant Guardian BioSciences, Inc. (“Guardian BioSciences”) is a pharmaceutical and medicine manufacturing company and/or subsidiary and/or agent of Defendants Tenkoris, LLC and/or Tenkoris, Inc., and does business in the State of Ohio and County of Lorain. At all times relevant herein Defendant Guardian BioSciences did business in the State of Ohio and County of Lorain.

10. Defendants Amazon.com, Tenkoris LLC, Tenkoris Inc., Hard Rhino, Bulk Source, Guardian Wholesale, Guardian BioSciences do business with a company that manufactures and/or produces pure caffeine powder located in China, said Chinese manufacturer is not subject to jurisdiction of this Court.

11. Defendant Kelsey Kidd (“Kidd”) is a resident of the City of Elyria, County of Lorain and State of Ohio.

12. Defendants ABC Companies #1-5, names and addresses unknown, are companies and/or subsidiaries and/or agents of Defendants Amazon.com and/or Tenkoris, LLC and/or Tenkoris, Inc. and do business in the State of Ohio and County of

Lorain. At all times relevant herein Defendants ABC Companies #1-5 did business in the State of Ohio and County of Lorain.

13. Defendants engaged in the business of designing, licensing, manufacturing, testing, labeling, advertising, warranting, distributing, supplying, promoting, offering for sale, selling providing and/or introducing into the stream of commerce a certain product known as “pure caffeine powder” in bulk packaging.

14. Defendants engaged in the business of designing, licensing, manufacturing, testing, labeling, advertising, warranting, distributing, supplying, promoting, offering for sale, providing, selling and/or introducing into the stream of commerce a certain product known as “pure caffeine powder” in bulk packaging in the State of Ohio and County of Lorain.

15. Defendants, except Defendant Kidd, operate under a business agreement and/or relationship the terms of which at this time are only known to Defendants.

16. Whenever any reference in this Complaint is made to any act by Defendants or their subsidiaries, affiliates, distributors, retailers and other related entities, known or unknown, such allegation(s) shall be deemed to mean that the principals, officers, directors, employees, agents and/or representatives of Defendants committed, knew of or performed, authorized, ratified and/or directed that act or transaction on behalf of Defendants while actively engaged in the scope of their employment and/or duties.

JURISDICTION AND VENUE

17. This Court has jurisdiction over the claims in this case pursuant to Ohio R.C. §2307.382 and Civ. R. 3. Defendants have purposely availed themselves of the privilege of conducting activities within the State of Ohio and all claims set forth herein arise out of the Defendants direct activities in the State of Ohio.

18. Defendants transact business in the State of Ohio.

19. Defendants contract to supply services or goods in the State of Ohio.

20. Defendants caused tortious injury in the State of Ohio.

21. Defendants regularly do or solicit business, and engage in other persistent courses of conduct and derive substantial revenue from goods used or consumed or services rendered in the State of Ohio.

22. Upon information and belief Defendants have an interest in, use or possess real property in the State of Ohio.

23. Defendants intentionally exposed, supplied, advertised, offered for sale, sold, offered for delivery, delivered an unsafe and dangerous product -- pure caffeine powder-- into the State of Ohio and County of Lorain.

24. All of Defendants' actions set forth herein were taken to specifically interact with Ohio residents.

25. Defendants worked together under a business agreement, the terms of the agreement are only known to Defendants at this time, to solicit orders from residents of the State of Ohio.

26. Defendants operate interactive websites, and have substantial contacts with Ohio residents and customers through their websites. Defendants advertise for Ohio customers and conduct transactions with Ohio residents through the internet.

27. Defendants and/or their subsidiary(s) and/or agents have personal contact with each and every Ohio resident that visits their website(s).

28. Defendants Amazon.com and/or its subsidiary(s) and/or agents, employ “Customer Tracking” where they place “cookies” on Ohio residents’ hard drives and Defendants know each and every visitor and/or customer that access Defendants website(s) and then use its embedded marketing techniques to further target and conduct business with Ohio residents.

29. Defendants’ interactions and transactions with Ohio residents are 24-hours a day, 7-days a week, 52 weeks of the year, and include marketing, advertising, promoting, and selling products, including making personal purchase recommendations, accepting orders, receiving payments and making deliveries to Ohio residents.

30. Defendants also provide service links for Ohio residents whereby Ohio residents can e-mail questions or call Defendants.

31. Defendants’ websites are interactive to such a degree that it reveals their specific intent to target Ohio residents and to transact business or otherwise interact specifically with Ohio residents.

32. Defendants derive substantial revenue from goods used or consumed in the State of Ohio; some estimates place 2013 revenue from transactions within the State of Ohio at over \$400 million dollars.¹

33. Defendant Amazon.com does such a substantial amount of business in the State of Ohio that it is investing over \$1.1 billion in the State of Ohio for a data center.

34. Defendant Amazon.com and/or its agents or subsidiaries have policies in place regarding dietary supplement sales on its websites.

35. Defendant Amazon.com and/or its agents and/or subsidiaries have policies in place regarding compliance with State and Federal laws and regulations regarding “dietary supplements” that they advertise, promote, offer for sale, sell, supply and/or deliver.

36. Defendant Amazon.com and/or its agents and/or subsidiaries, employee “Compliance Specialists” who research, analyze and synthesize federal and state regulations regarding restricted and regulated products, said products include dietary supplements and pure caffeine powder.

37. Defendant Amazon.com and/or its agents and/or subsidiaries, have employee (s) who research and analyze Ohio laws and regulations including but not limited to Ohio Food and Drug Safety laws.

38. Defendant Amazon.com and/or its agents and/or subsidiaries employ a “Regulatory Team” that maintains compliance files and reports regarding restricted and regulated products including dietary supplements and pure caffeine powder.

¹ Schiller, Zach, “Why isn’t Amazon collecting sales tax in Ohio?,” Policy Matters Ohio, Sept. 2014.

39. For the safety of the public and consumers, including those in the State of Ohio, Defendant Amazon.com, its agents and/or subsidiaries have policies in effect to prevent unsafe and illegal products from reaching the marketplace, including Lorain County, Ohio.

40. Defendant Amazon.com, its agents and/or subsidiaries and Defendants Tenkoris LLC, Tenkoris Inc., Hard Rhino, Bulk Source, Guardian Wholesale, Guardian BioSciences, entered into a business partnership and/or relationship, the terms of which at this time are only known by Defendants, for promoting, advertising, offering for sale, selling, offering delivery, delivering and/or supplying caffeine powder as a “dietary supplement”.

41. Defendant Amazon.com has policies in place for the safety of the public, and consumers, including those in the State of Ohio.

42. Defendant Amazon.com, its agents and/or subsidiaries and Defendants, Tenkoris, LLC, Tenkoris Inc., Hard Rhino, Bulk Source, Guardian Wholesale and Guardian BioSciences were aware of these safety policies prior to the promoting, advertising, offering for sale, selling, offering delivery, delivering and/or supplying caffeine powder to residents of the State of Ohio on Amazon.com.

43. Defendant Amazon.com’s safety policies, include pre-approval for selling caffeine powder as a dietary supplement under the Health and Personal Care section of Amazon.com website because this safety policy reflects “customer concerns about product quality, product branding and consumer safety”.

44. Defendant Amazon.com, its agents and/or subsidiaries control the image, listing and branding of pure caffeine powder on the Amazon.com website.

45. Under the terms of agreement between Co-Defendants, the exact terms of which at this time are only known to Defendants, Defendant Amazon.com, its agents and/or subsidiaries controlled the image for the listing of caffeine powder, which included images of the label of Hard Rhino Pharma Grade Pure Caffeine Powder.

46. Defendants, except Defendant Kidd, promoting, advertising, offering for sale and selling of Hard Rhino pure caffeine powder on Amazon.com included a true and accurate image of the product.

47. Defendants, except Defendant Kidd, promoting, advertising, offering for sale and selling of Hard Rhino pure caffeine powder on Amazon.com included a true and accurate image of the label of Hard Rhino pure caffeine powder.

48. Defendants, except Defendant Kidd, promoting, advertising, offering for sale and selling of Hard Rhino pure caffeine powder on Amazon.com included the ability for the entire image and the label of the product to be enlarged to enable the public and potential customers and users to read the entire label.

49. Under a contract, the exact terms of which at this time are only known to Defendants, Amazon.com, its agents and/or subsidiaries and Defendants Tenkoris LLC, Tenkoris Inc., Hard Rhino, Bulk Source, Guardian Wholesale and Guardian BioSciences promoted, advertised, offered for sale, sold, supplied, manufactured, and/or placed into the stream of commerce Hard Rhino pure caffeine powder.

50. Under a contract(s), the exact terms of which at this time are only known to Defendants, Defendant Amazon.com controls all aspects of products listed on Amazon.com website and controls all aspects of content on its website to ensure “Amazon branding”.

51. Defendant Amazon.com's policies, including pre-approval of pure caffeine powder, are in place for the safety of consumers.

52. Acting together Defendants Amazon.com, Tenkoris LLC, Tenkoris Inc., Hard Rhino, Bulk Source, Guardian Wholesale, Guardian BioSciences, under a contract(s) the terms of which are only known to Defendants at this time, promoted, advertised, sold, supplied, manufactured, and/or placed into the stream of commerce, including the State of Ohio, Hard Rhino pure caffeine powder.

53. Defendants promoted, advertised, offered for sale, sold, offered delivery, delivered and/or supplied "bulk packaging" of pure caffeine powder.

54. For the safety of the consumer, Defendant Amazon.com's policies required pre-approval of the "dietary supplement," caffeine powder.

55. To prevent unsafe products from reaching its marketplace Defendant Amazon.com requires additional information, at the present time known only to Defendants, about the "dietary supplement," caffeine powder, from Co-Defendants.

56. Defendant Amazon.com sets forth requirements for selling in Health & Personal Care Category (which includes dietary supplements), because of customers' concerns about product quality, product branding and consumer safety.

57. Defendant Amazon.com controlled and approved all information and images that appeared on its website regarding Hard Rhino pure caffeine powder.

58. Defendants, including Amazon.com, are responsible for evaluating the safety of their products, including caffeine powder prior to promoting, advertising and marketing it.

59. Defendants, including Amazon.com, are responsible for the labeling of their products, including pure caffeine powder, before marketing it.

60. A product label containing the words “can be dangerous if abused” is an inadequate warning for pure caffeine powder.

61. A product label containing the words “failure to following safety guidelines can result in serious injury and/or death” is an inadequate warning for pure caffeine powder.

62. For the safety of the public, consumers and users of caffeine powder, the product label must contain adequate instructions.

63. For the safety of the public, consumers and users of caffeine powder, the product label must contain adequate warnings.

64. Prior to and after Plaintiff’s decedent Logan Stiner’s ingestion of Hard Rhino caffeine powder, Defendants knew or should have known that Hard Rhino pure caffeine powder was dangerous, or likely to be dangerous when used in a reasonable foreseeable manner. Such dangers include but are not limited to significant increase risk of cardiac arrest, cardiac arrhythmias, strokes, blood clots, heart attacks and death.

65. Defendants knew or should have known that users of Hard Rhino pure caffeine, including Plaintiff’s decedent, Logan Stiner, would not realize the dangers presented by the product.

66. Defendants knew or should have known of the defective condition, characteristics, and risks associated with Hard Rhino pure caffeine powder.

67. The potential risks and side effects associated with Hard Rhino pure caffeine powder presented, and continue to present, a substantive danger when the caffeine

powder is used or misused in an intended or reasonably foreseeable way (i.e. ingestion orally).

68. Ordinary consumers and users of Hard Rhino pure caffeine powder would not recognize the potential risks and side effects associated with ingesting Hard Rhino pure caffeine powder.

69. Defendants advertise that their product meets or exceeds standards set forth by the United States Pharmacopeia (“USP”) and state that USP is the official pharmacopeia of the United States.

70. Defendant Kelsey Kidd is a resident of City of Elyria, Lorain County, and State of Ohio.

71. On or about February 27, 2014, Defendant Kidd, through her Amazon.com account, responded to Co-Defendants’ offer for sale and placed an order for “bulk package” of 1.1 lbs. of Pure Caffeine Powder, 100% USP Pharma Grade Pure Powder Foil sealed from Co-Defendants through Defendant Amazon.com’s website.

72. Defendant Amazon.com charged and received payment from Defendant Kidd in the amount of \$14.99 for the 1.1 lbs. of Hard Rhino Pure Caffeine Anhydrous USP Pharma Grade Powder.

73. Defendant Amazon.com charged Defendant Kidd \$5.49 for “shipping and handling” of the pure caffeine powder to Defendant Kidd at her address in the State of Ohio, County of Lorain and City of Elyria.

74. Defendant Amazon.com accepted payment from Defendant Kidd in the form of a “Gift Card” in the amount of \$7.68 and credit card payment in the amount of \$12.80.

75. Defendant Amazon.com assigned the purchase, sale and delivery (transaction) of 1.1 lbs. of Hard Rhino Pure Caffeine Anhydrous USP Pharma Grade Powder with Defendant Kidd, Amazon.com Order Number 002-2663141-1315410 and Seller's Order Number 2023378364.

76. Defendant Amazon.com, under contract with Co-Defendants, the terms of which are only known to defendants at this time, arranged for Defendants The Bulk Source to ship the Hard Rhino Pure Caffeine Anhydrous USP Pharma Grade Powder to Defendant Kidd located in the State of Ohio, County of Lorain and City of Elyria.

77. Defendant Kidd received the Hard Rhino Pure Caffeine Anhydrous USP Pharma Grade Powder on March 4, 2014 at her address in the State of Ohio, County of Lorain and City of Elyria.

78. Defendants' Hard Rhino pure caffeine powder was marketed, advertised, offered for sale, sold and delivered to Defendant Kidd in "bulk packaging".

79. The Hard Rhino Pure Caffeine Anhydrous USP Pharma Grade Powder, manufactured, promoted, marketed, advertised, sold and delivered to Defendant Kidd contains Defendant Guardian Biosciences logo on the package.

80. Defendants actions and transactions with Co-Defendant Kidd were intentional and direct activities in the State of Ohio, County of Lorain, Defendants specifically intended to interact with Co-Defendant Kidd, a resident of the State of Ohio, which resulted in the selling, supplying, and delivering of a defective, dangerous and unsafe product into the State of Ohio.

81. Defendants' intentional and direct activities including the selling, supplying and delivering of a defective, dangerous and unsafe product into the State of Ohio caused injuries and death in the State of Ohio and County of Lorain, as set forth herein.

82. On or about May 27, 2014 Defendant Kidd provided some of the bulk Hard Rhino pure caffeine powder she purchased from Co-Defendants to Plaintiff's decedent, Logan Stiner.

83. On or about May 27, 2014 Logan Stiner ingested Hard Rhino pure caffeine powder.

84. On or about May 27, 2014 Logan Stiner's brother found him unresponsive on the floor at the Stiner home located in State of Ohio, County of Lorain and Township of LaGrange.

85. Logan Stiner was pronounced dead on May 27, 2014.

86. Lorain County Coroner, Dr. Evans, determined that the cause of Logan Stiner's death was cardiac arrhythmia and seizure due to acute caffeine toxicity due to excessive caffeine ingestion.

87. Venue is proper in Lorain County pursuant to Civ.R.3, because Plaintiff's decedent, Logan Stiner, resided in Lorain County, Ohio and his injuries and wrongful death occurred in Lorain County.

88. Defendants' actions violated Ohio safety laws enacted to protect Ohio residents, such as Logan Stiner, and caused injuries and death in Ohio.

89. All claims set forth herein arise out of Defendants' activities and intent to interact with Ohio residents, Defendants' introduction of a dangerous and unsafe product

into Ohio, and Defendants' violations of Ohio laws all of which resulted in injuries and death to an Ohio resident in the State of Ohio.

UNDERLYING COMMON FACTS

90. Caffeine-related toxicity, deaths and near-deaths are an undeniable fact. In Sweden, for example, four people died as a result of confirmed caffeine-related causes in one year. Yet, caffeine use continues to grow, including among young people, as it is increasingly added to a variety of drinks, foods and weight-loss and other commonly-used products.

91. The debate over calls to regulate caffeine rises to a new level of intensity with each untimely death and is captured in the provocative editorial, "Death by Caffeine: How many Caffeine-related Fatalities and Near-misses Must There Be Before We Regulate?" published in the Journal of Caffeine Research, a peer-reviewed journal from Mary Ann Liebert, Inc., Publishers.²

92. In his editorial, Jack E. James, Ph.D., Editor-in-Chief of Journal of Caffeine Research, and Professor, Reykjavik University, Iceland and National University of Ireland, Galway, explores the "lethality of caffeine" and the proliferation of "the caffeinated environment," emphasizing in particular the risk posed by caffeine being added to energy drinks, bottled water, alcoholic drinks, candy, chewing gum, and yogurt, for example, and used in pain and cold/flu medications and powder and aerosol inhalers.³

² Jack E. James. Journal of Caffeine Research. December 2012, 2(4): 149-152.
doi:10.1089/jcr.2013.1226.

³ *Id.*

93. Dr. James draws attention to the “rising tide of concern expressed in the public media and scientific literature alike regarding the potential for caffeine-related harm.” He notes that while some countries in Europe and Scandinavia have begun to take regulatory action, including sale restrictions and product labeling, the current “regulatory vacuum” in the United States “seems far from acceptable or prudent”.

94. Energy drinks are flavored beverages that contain large amounts of added caffeine that have surged in popularity in recent years. Recent reports of health complications, emergency room visits, and deaths related to energy drink consumption have caused widespread concern among physicians and scientists regarding the safety of the high caffeine levels in energy drinks.

95. The manufacturers and producers of sodas, coffee, energy drinks and food that contain caffeine add the caffeine to their products. The consumers/users do not measure or add the caffeine to these regulated products.

96. Caffeine is found in sodas, coffee, energy drinks, food and in pure powder form.

97. Powdered caffeine sold in bulk is markedly different than energy drinks, energy shots or other retail products such as pills that contain caffeine.

98. The FDA regulates all forms of caffeine except pure powder form.

99. The FDA regulates the amount of caffeine found in sodas, energy drinks and food.

100. The FDA has stated that pure caffeine is a powerful stimulant.

101. 21 CFR 340 (Code of Federal Regulations) defines caffeine as “an over-the-counter stimulant drug”.⁴

102. Defendants engaged in the business of designing, licensing, manufacturing, testing, advertising, promoting, warranting, distributing, supplying, offering for sale, selling, delivering and/or introducing into the stream of commerce a certain product known as “Pure 100% Pharma Grade Caffeine Powder,” hereinafter “caffeine powder”.

103. Defendants promote, advertise, distribute, supply, offer for sale, sell, delivery and/or introduce into the market, including the State of Ohio and County of Lorain, their product as “PURE CAFFEINE ANHYDROUS USP PHARMA GRADE CAFFEINE POWDER”.

104. The U.S. Pharmacopeial Convention (“USP”) is a scientific non-profit organization that sets standards for identity, strength, quality and purity of medicines, food ingredients, and dietary supplements manufactured, and distributed worldwide.

105. Much of USP is devoted to drug standards, which are organized as drug monographs that provide specific information on drug strength, quality, purity, packaging, storage, and other requirements. The current version of USP contains more than 4,200 monographs for drug products.

106. The State of Ohio Food & Drug Safety Act, are laws that are in place for the safety and protection of Ohio residents, including Plaintiff’s decedent Logan Stiner.

107. The State of Ohio under O.R.C. §3715.01(A)(3)(a), Ohio’s Pure Food and Drug Definitions, defines a “drug” as articles recognized in the United States Pharmacopeia (USP).

⁴ 21CFR340.50

108. Pursuant to Ohio Law, as defined in Ohio’s Pure Food and Drug definition, pure caffeine is a drug.

109. USP drug standards are organized as drug monographs which includes “caffeine: caffeine common name and its synonyms is 1,3,7 – Trimethylxanthine”.⁵

- a) Appearance is a white crystalline powder that is odorless
- b) Toxic if swallowed, harmful if inhaled;
- c) Label elements: “skull and crossbones,” and word “DANGER”,
- d) Recommended restrictions, “Not for administration to humans or animals”.

110. A drug with a name recognized in the USP-NF must comply with the identity/identification of its monograph, or be deemed adulterated, misbranded, or both.⁶

111. Defendants have successfully avoided meaningful regulation of its product by the U.S. Food and Drug Administration (FDA) by classifying their product as a “dietary supplement”.

112. A dietary supplement is a product taken by mouth that contains a “dietary ingredient” intended to supplement or enhance the diet.

113. Defendants manufacture, label, sell, advertise, promote, supply and distribute caffeine powder as a “dietary supplement” without FDA approval.

114. Unlike drug products that must be proven safe and effective for their intended use before marketing, there are no provisions in the law for the FDA to “approve” dietary supplements for safety or effectiveness before they reach the consumer and/or end user.

⁵ www.usp.org/pdf/EN/referenceStandards/msds/1086006.pdf

⁶ www.usp.org/about-usp/legal-recognition/usp-us-law

115. Because Defendants label their pure caffeine powder as a “dietary supplement”, they are responsible for determining that pure caffeine powder is safe.

116. The State of Ohio Food & Drug Safety Act, O.R.C. §3715.83 sets forth conditions, in addition to O.R.C. §3715.59, under which “dietary supplements”, are adulterated.

117. Despite the Defendants’ knowledge of the significant risks associated with ingestion of caffeine powder, Defendants’ product fails to alert users of the significant risks associated with ingestion of caffeine powder.

118. Defendants failed to alert users of the known risks and side effects of ingesting caffeine powder, including the risk of cardiac arrhythmia and cardiac arrest from which Plaintiff’s decedent ultimately died.

119. Beyond its failure to warn of or to disclose to consumers/users information related to the significant risks associated with caffeine powder, Defendants intentionally withheld, suppressed and concealed information relating to the risks of adverse health effects upon consumption/ingestion of their product.

120. Defendants failed to conduct adequate testing, studies or clinical testing and research regarding caffeine powder’s effects upon ingestion of this product.

121. Despite any of Defendants’ representations to the contrary, the caffeine powder ingested by Plaintiff’s decedent was not safe, nor fit for the use for which it was intended.

122. Defendants’ failures in designing, manufacturing, marketing, promoting, supplying, advertising, warning, labeling and/or selling caffeine powder directly and

proximately caused Plaintiff's decedent to suffer cardiac arrhythmia and cardiac arrest which ultimately caused his death.

123. Defendants must comply with 21 CFR 330 and 21 CFR 340, when engaged in the business of designing, licensing, manufacturing, testing, advertising, warranting, distributing, supplying, selling and/or introducing into the stream of commerce their product known as Hard Rhino Pure Caffeine Anhydrous USP Pharma Grade Powder (Caffeine Powder).

124. Defendants' failure to comply with 21 CFR 330 and 21 CFR 340 makes their product (caffeine powder) a misbranded drug.

125. To be considered GRAS (Generally Recognized As Safe), there must be "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

126. Defendants' failure to comply with 21 CFR 330 and 21 CFR 340 means that the product (caffeine powder) is not GRAS (Generally Recognized As Safe).

127. Defendants' failure to comply with the OTC (over-the-counter) monographs for their caffeine powder makes their product an unapproved new drug.

128. Defendants' improperly labeled their caffeine powder as a "dietary supplement", rather than over-the-counter stimulant drug, in violation of State and Federal laws and regulations.

129. Defendants sought to evade the safety standards that apply to over-the-counter drugs by labeling their product as a "dietary supplement".

130. Defendants, including Defendant Amazon.com, failed to follow their own policies that are in place for the safety of the consumers, public and ultimate users of pure caffeine powder.

131. Defendants, including Defendant Amazon.com, failed to follow their own policies that are in place for the safety of the public, consumers and users of pure caffeine powder in promoting, advertising, supplying, offering for sale and selling an unsafe product.

132. Defendants, including Defendant Amazon.com, promoted, advertised, supplied and sold a dangerous product, caffeine powder, while failing to follow their own policies and procedures that are in place for the safety of the public, consumers and users.

133. Defendants' actions are a flagrant disregard of the safety of persons, such as Logan Stiner, who might be harmed by this product.

134. In October, 1994, President Clinton signed into law the Dietary Supplement Health and Education Act (DSHEA). This law amended the Federal Food Drug and Cosmetic Act and caused a new regulatory framework for the safety and labeling of dietary supplements.

135. Under (DSHEA), Defendants are responsible for determining that the "dietary supplement" it manufactures or distributes is safe and that any representations or claims made about it are substantiated by adequate evidence to show that they are not false or misleading.

136. Defendants while intentionally mislabeling and then marketing their product, caffeine powder, as a dietary supplement failed to follow the safety laws and regulations in place for "dietary supplements".

137. The FDA issued a “warning” about powdered pure caffeine being marketed as a “dietary supplement” by Defendants and others directly to consumers and sold in bulk bags on the internet.⁷

138. The FDA warning letter states that “pure caffeine is a powerful stimulant” and “it is nearly impossible to accurately measure powdered pure caffeine with common kitchen measuring tools”.

139. On December 16, 2014, Michael Landa, the director of the FDA’s Center for Food Safety and Applied Nutrition posted a blog regarding the “Tragic Deaths” of two young men who died after using powdered pure caffeine.⁸

140. Michael Landa’s blog states that pure caffeine powder is “readily available for purchase online and is packaged in the same way as protein powder and marketed as a source of energy rather than a stimulant”.

141. Defendants marketed pure caffeine powder online, and packaged it in the same way protein powder is packaged.

142. Defendants marketed pure caffeine powder as a source of energy.

143. On December 22, 2014, Deputy Commissioner of Foods at the FDA Michael Taylor, stated that it is “inherently irresponsible” to market (caffeine powder) because it is such a potentially dangerous product.⁹

144. Defendants were “inherently irresponsible” when they marketed pure powdered caffeine in bulk in a flagrant disregard for the safety of the public.

⁷ www.fda.gov/Food/RecallsOutbreaksEmergencies/SafetyAlertsAdvisories/ucm405787.htm

⁸ [Tragic Deaths Highlight the Dangers of Powdered Pure Caffeine](http://blogs.fda.gov/fdavoices/index.php/2014/12/tragic-deaths-highlight-the-dangers-of-powdered-pure-caffeine/#sthash.QnpQ457W.dpuf), Posted on **December 16, 2014** by **FDA Voice**

– See more at: <http://blogs.fda.gov/fdavoices/index.php/2014/12/tragic-deaths-highlight-the-dangers-of-powdered-pure-caffeine/#sthash.QnpQ457W.dpuf>

⁹ http://www.nytimes.com/aponline/2014/12/23/us/politics/ap-us-caffeine-powder.html?_r=0

145. The FDA has stated that pure powdered caffeine is a “pure chemical” and the difference between a safe amount and a lethal dose is very small.

146. The FDA has stated that pure caffeine powder is a “powerful drug”.

147. On December 22, 2014, Deputy Commissioner of Foods at the FDA Michael Taylor, called pure powdered bulk caffeine “a dangerous, potent drug, that, if taken in as a little as a teaspoon, runs the risk of being a lethal overdose to people”.¹⁰

148. The leading trade association representing dietary supplement and functional food manufacturers and ingredient suppliers, The Council for Responsible Nutrition (CRN) issued a statement that “direct-to-consumer sales of pure caffeine is an unreasonable risk to public health”.¹¹

149. The leading trade association for dietary supplement industry also stated that consumers are “unable to properly measure it (pure caffeine powder) into doses containing safe levels of caffeine”.¹²

150. Defendants marketed, promoted, offered for sale, sold, supplied and delivered its bulk pure caffeine powder as a “dietary supplement” so that it would not be regulated by the FDA and as a result it’s impossible to know what dose you are consuming, even if you measure the powder carefully.

151. Defendants promoted, advertised, distributed, supplied, offered for sale and sold a powerful drug under the guise of a “dietary supplement” in the State of Ohio, including the County of Lorain, and City of Elyria.

¹⁰ *Id.*

¹¹ <http://www.crnusa.org/CRNPR15-CRNCommendsRestrictionsPurePowderedCaffeine012715.html>

¹² *Id.*

COUNT I
VIOLATION OF OHIO FOOD & DRUG SAFETY ACT
O.R.C. 3715
R.C. §3715.52 PROHIBITED ACTS
ADULTERATED DRUGS
UNAPPROVED NEW DRUG

152. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth herein in the following paragraphs.

153. Defendants manufacture, design, market, produce, distribute, sell, expose, hold or offer for sale, deliver, and/or provide Pure Caffeine Anhydrous USP Pharma Grade Powder (caffeine powder).

154. Caffeine powder is a drug pursuant to O.R.C. §3715.01 Pure Food and Drug Law Definitions, Section (A)(3)(a), which states that a “drug” means articles recognized in the United States pharmacopeia and national formulary, or any supplement to them.

155. Defendants’ “dietary supplement” caffeine powder is adulterated as set forth O.R.C. §3715.83.

156. Defendants violated three sections of the Ohio Pure Food and Drug Law; O.R.C. sections 3715.52(A)(1), 3715.52(A)(2) and 3715.52(A)(3).

157. Defendants’ acts and/or causing the manufacturing, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded are a violation of O.R.C. §3715.52 (A)(1).

158. Defendants’ acts and/or causing the adulteration or misbranding of any food, drug, device, or cosmetic is a violation of O.R.C. §3715.52 (A)(2).

159. Defendants’ acts of receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof

for pay or otherwise of their caffeine powder (drug) are in violation of O.R.C. §3715.52(A)(3).

160. Defendants' violation(s) of Ohio's Food and Drug Safety Act constitutes negligence per se.

161. As a direct and proximate result of the Defendants negligence Plaintiff's decedent, Logan Stiner, suffered damages including, but not limited to, personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and death.

162. In addition, as a direct and proximate result of the Defendants' negligence Plaintiff's decedent, Logan Stiner's parents and other next-of-kin have suffered individual damages all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01, including, but not limited to, economic harm and loss of consortium due to the injuries and death of Logan Stiner, and will continue to suffer said damages, harm and loss of consortium in the future.

COUNT II

VIOLATION OF OHIO FOOD & DRUG SAFETY ACT
O.R.C. 3715
MISBRANDED DRUG O.R.C. §3715.64

163. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

164. Defendants' caffeine powder label is false or misleading and violates O.R.C. §3715.64(A)(1).

165. Defendants' caffeine powder label fails to reveal material facts with respect to consequences which may result from the use of their product.

166. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(4) including failure to have the proper symbol to identify the drug, as set forth in the USP.

167. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(5).

168. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(5) including failure to be in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

169. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(6).

170. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(7) (a) because it does not have adequate directions for use.

171. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(7)(b) because it does not contain adequate warnings against use or against unsafe dosage or methods or duration of administration or application, presented in a manner and form as necessary for protection of the users.

172. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(8).

173. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(10)(a).

174. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(11).

175. Defendants' caffeine powder label violates O.R.C. §3715.64(A)(12)(a).

176. Defendants' violation(s) of Ohio's Food and Drug Safety Act constitutes negligence per se.

177. As a direct and proximate result of the Defendants negligence Plaintiff's decedent, Logan Stiner, suffered damages including, but not limited to, personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and ultimately his death.

178. In addition, as a direct and proximate result of Defendants' negligence Plaintiff's decedent, Logan Stiner's parents and other next-of-kin have suffered individual damages all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01, including, but not limited to, economic harm and loss of consortium due to the injuries and death of Logan Stiner, and will continue to suffer said damages, harm and loss of consortium in the future.

COUNT III

VIOLATION OF OHIO FOOD & DRUG SAFETY ACT
O.R.C. 3715
ADULTERATED DIETARY SUPPLEMENT O.R.C. §3715.83

179. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

180. O.R.C. §3715.83 sets forth when a Dietary Supplement is adulterated. In addition to the conditions specified in §3715.59 of the Revised Code, a dietary supplement is adulterated if it presents a significant or unreasonable risk of illness or injury under the conditions of use recommended or suggested in its labeling or, if there is no recommended or suggested conditions of use under the ordinary conditions of use.

181. The label on Defendants “dietary supplement” is the following:

Suggested Use: An average cup of coffee contains 95mg (1/32 tsp) of caffeine.

182. Defendants’ pure caffeine powder presents a significant or unreasonable risk of injury under the conditions of use recommended or suggested on its label and therefore under O.R.C. §3715.83 is adulterated.

183. Defendants’ caffeine powder is highly concentrated pharma grade form that makes it difficult to differentiate between a safe dose and a lethal dose.

184. Defendants’ caffeine powder presents an “unreasonable risk” of injury and is adulterated under Ohio’ Food and Drug Safety Act when used as suggested.

185. Defendants’ violation(s) of Ohio’s Food and Drug Safety Act constitutes negligence per se.

186. As a direct and proximate result of the Defendants negligence Plaintiff’s decedent, Logan Stiner, suffered damages including, but not limited to, personal injury,

bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and ultimately his death.

187. In addition, as a direct and proximate result of Defendants' negligence Plaintiff's decedent, Logan Stiner's parents and other next-of-kin have suffered individual damages all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01, including, but not limited to, economic harm and loss of consortium due to the injuries and death of Logan Stiner, and will continue to suffer said damages, harm and loss of consortium in the future.

COUNT IV

STRICT PRODUCTS LIABILITY DESIGN DEFECT O.R.C. §2307.75

188. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

189. Defendants are the manufacturers, designers, marketers, distributors, promoters, suppliers and sellers of caffeine powder.

190. The caffeine powder manufactured, designed, marketed, distributed, promoted and sold by Defendants was expected to and did reach Logan Stiner, without any alterations or changes.

191. The caffeine powder manufactured, designed, marketed, distributed, promoted and sold by Defendants was defective in design or formulation, because when

it left the hands of Defendants, the foreseeable risks of the product exceeded the benefits associated with its design or formulation.

192. Pure caffeine powder had potential risks and side effects that were known or knowable to Defendants by use of scientific knowledge available at the time of design, manufacturing, marketing, promoting, distribution and/or sale of pure caffeine powder consumed by Plaintiff's decedent. Defendants knew or should have known of the defective condition, characteristics, and risks associated with Hard Rhino pure caffeine powder as set forth herein.

193. The potential risks and side effects associated with Hard Rhino pure caffeine powder presented and continues to present, a substantial danger when caffeine powder is used or misused in an intentional or reasonable foreseeable way (i.e. ingested orally).

194. Ordinary consumers and users would not have recognized the potential risks and side effects associated with ingesting Hard Rhino caffeine powder.

195. The caffeine powder manufactured, designed, marketed, distributed, promoted and sold by Defendants was defective in design or formulation, because when it left the hands of the Defendants, it was more dangerous than an ordinary consumer would expect.

196. The foreseeable risks of caffeine powder includes an increase in the occurrence of overdose and the devastating harm, including significant increased risk of cardiac arrest, cardiac arrhythmias, strokes, blood clots, heart attacks and death.

197. Defendants knew or should have known that users of Hard Rhino pure caffeine powder, including Plaintiff's decedent would not realize the dangers presented by their product.

198. The fact that harm such as that suffered by Logan Stiner will occur from use of caffeine powder is completely foreseeable because caffeine powder is a drug recognized by the United States pharmacopeia and national formulary.

199. The likelihood that death and injury would result from the use of caffeine powder is very high, based upon USP Safety Data Sheet.

200. Caffeine powder, as manufactured, designed, marketed, distributed, promoted and sold by Defendants, is much more dangerous than an ordinary consumer/user would expect.

201. At the time Defendants manufactured, designed, marketed, distributed, promoted and sold caffeine powder, safer, more practical, alternative designs were available.

202. The caffeine powder promoted, manufactured, designed, marketed, distributed, promoted and sold by Defendants was not unavoidably unsafe.

203. Based upon the foregoing, the caffeine powder manufactured, designed, marketed, distributed, promoted and sold by Defendants was defective in design pursuant to O.R.C. §2307.75 at the time it left Defendants' control.

204. Defendants' violation(s) of O.R.C. §2307.75 constitutes negligence per se.

205. As a direct and proximate result of the defective design of caffeine powder consumed by Plaintiff's decedent, Logan Stiner, Plaintiffs' suffered damages including, but not limited to, personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and ultimately his wrongful death.

206. In addition, as a direct and proximate result of the defective design of caffeine powder consumed by Plaintiff's decedent, Logan Stiner, his parents and other next-of-kin have suffered individual damages all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01, including, but not limited to, economic harm and loss of consortium due to the injuries and death of Logan Stiner, and will continue to suffer said damages, harm and loss of consortium in the future.

207. Defendants' conduct as alleged in this Complaint shows that Defendants, (except Kidd) acted maliciously, with aggravated or egregious fraud, and/or intentionally disregarded Plaintiff's rights, so as to warrant the imposition of punitive damages.

COUNT V

STRICT PRODUCTS LIABILITY DUE TO INADEQUATE WARNING O.R.C. §2307.76

208. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

209. Defendants are the manufacturers, designers, marketers, distributors, promoters and sellers of caffeine powder.

210. It was reasonably foreseeable that young men such as Logan Stiner, would ingest caffeine powder, and would suffer devastating mental, physical injuries and death as a result.

211. The caffeine powder manufactured, designed, marketed, distributed, promoted and sold by Defendants was defective due to inadequate warning or instruction

pursuant to O.R.C. §2307.76, because at the time it left the control of Defendants and was supplied to Plaintiff's decedent, Logan Stiner, Defendants knew or should have known that their product was unreasonably dangerous as confirmed by the extensive body of published literature, including USP Safety Data Sheet, Ohio and Federal law.

212. Despite the fact that Defendants knew or should have known about the increased risk of injury and death with caffeine powder, Defendants failed to exercise reasonable care to adequately warn of the increased risk.

213. The caffeine powder manufactured, marketed, distributed, promoted, sold and supplied by Defendants was defective due to inadequate warning or instruction pursuant to O.R.C. §2307.76, because at the time it left the control of Defendants and was supplied to Plaintiff's decedent, Logan Stiner, Defendants knew or should have known that it was unreasonably dangerous.

214. The potential risks and side effects associated with Hard Rhino pure caffeine powder presented and continues to present, a substantial danger when caffeine powder is used or misused in an intentional or reasonable foreseeable way (i.e. ingested orally).

215. Despite Defendants' knowledge of the significant risks associated with ingestion of their pure caffeine powder, Defendants' product masks and otherwise fails to alert consumers and users like Plaintiff's decedent of the significant risks associated with ingestion of pure caffeine powder.

216. Despite the fact that Defendants knew or should have known about the increased risk of injury and/or death with ingestion of caffeine powder, Defendants failed to exercise reasonable care to adequately warn of the increased risk or injury and/or death with use of caffeine powder.

217. In fact, Defendants made no reference in the caffeine powder product label to the dose response relationship between caffeine powder and severe injury and/or death.

218. The caffeine powder manufactured, marketed, distributed, promoted, sold and supplied by Defendants was defective due to inadequate warning or instruction pursuant to O.R.C. §2307.76 because at the time it left the control of Defendants and was supplied to Plaintiff's decedent, Logan Stiner, Defendants knew or should have known that their product was unreasonably dangerous, as confirmed by the extensive body of published literature and its own internal data, because ingestion of pure caffeine powder significantly increases the risk of injury and death.

219. Despite the fact that Defendants knew or should have known about the increased risk of injury and death with the use of caffeine powder, Defendants failed to exercise reasonable care to adequately warn of the risk with use. In fact, Defendants made no reference in the caffeine powder product label to increased risk of injury and/or death.

220. The caffeine powder manufactured, marketed, distributed, promoted, sold and supplied by Defendants was defective due to inadequate warning or instruction pursuant to O.R.C. §2307.76 because at the time it left the control of Defendants and was supplied to Plaintiff's decedent, Logan Stiner, Defendants knew or should have known that the product was unreasonably dangerous, as confirmed by the extensive body of medical literature and USP because ingestion of pure caffeine substantially and significantly increases the risk of serious injuries and death.

221. Despite the fact that Defendants knew or should have known about the increased risk of injury and death, Defendants failed to exercise reasonable care to adequately warn of this increased risk.

222. The caffeine powder designed, licensed, manufactured, tested, advertised, warranted, distributed, supplied, promoted and/or sold by Defendants was defective due to inadequate warning or instruction pursuant to O.R.C. §2307.76 because at the time it left the control of Defendants and was supplied to Plaintiff's decedent, Logan Stiner, Defendants knew or should have known that their product was unreasonably dangerous for its intended use or any use.

223. The potential risks and side effects associated with Hard Rhino pure caffeine powder presented and continues to present, a substantial danger when caffeine powder is used or misused in an intentional or reasonable foreseeable way (i.e. ingested orally).

224. Despite the fact that Defendants knew or should have known that caffeine powder was unreasonably dangerous, Defendants failed to exercise reasonable care to adequately warn of the dangers from ingesting this product. Instead, Defendants designed, licensed, manufactured, tested, promoted, advertised, offered for sale, provided, sold, delivered and labeled this product as a "dietary supplement."

225. Despite the fact that Defendants knew or should have known that caffeine powder was a drug, Defendants failed to exercise reasonable care to adequately warn of the dangers from ingesting this drug. Instead, Defendants designed, licensed, manufactured, tested, promoted, advertised, offered for sale, provided, sold, delivered and labeled this drug as a "dietary supplement."

226. The caffeine powder designed, licensed, manufactured, tested, advertised, supplied, promoted and/or sold by Defendants was also defective due to inadequate warning or instruction pursuant to O.R.C. §2307.76 because at the time it left the control of Defendants and was supplied to Plaintiff's decedent, Logan Stiner, Defendants knew or should have known that their product was unreasonably dangerous for any use, as confirmed by the extensive body of medical literature and USP Safety Data Sheet.

227. Despite the fact that Defendants knew or should have known that using caffeine powder created a substantially greater risk than other forms of caffeine, Defendants failed to exercise reasonable care to adequately warn of the unreasonable risk posed by use of caffeine powder that they designed, licensed, manufactured, tested, promoted, advertised, offered for sale, provided, sold, delivered and labeled as a "dietary supplement."

228. Beyond Defendants' failure to warn of or disclose to consumers and users information related to the significant risks associated with ingestion of Hard Rhino pure caffeine powder, Defendants intentionally withheld, suppressed and concealed from consumers and users information relating to the risks of adverse health effects upon ingestion of this product.

229. The caffeine powder designed, licensed, manufactured, tested, advertised, offered for sale, provided, warranted, distributed, supplied, and/or sold by Defendants was also defective pursuant to O.R.C. §2307.76 due to inadequate warning or instruction, because Defendants knew or should have known of the significantly increased risk of harm, serious injury and/or death from the ingestion of caffeine powder which is not an open and obvious danger or matter of common knowledge.

230. Defendants' violation(s) of O.R.C. §2307.76 constitutes negligence per se.

231. As a direct and proximate result of Logan Stiner's use of caffeine powder as manufactured, designed, marketed, distributed, promoted, offered for sale, provided, supplied and sold by Defendants, Plaintiff suffered damages including, but not limited to personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and death.

232. In addition, as a direct and proximate result of Plaintiff's decedent's use of defective caffeine powder consumed by Plaintiff's decedent, Logan Stiner, his parents and other next-of-kin have suffered individual damages all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01, including, but not limited to, economic harm and loss of consortium due to the injuries and death of Logan Stiner, and will continue to suffer said damages, harm and loss of consortium in the future.

233. Defendants' conduct as alleged in this Complaint shows that Defendants (except Kidd) acted maliciously, with aggravated or egregious fraud, and/or intentionally disregarded Plaintiff's rights, so as to warrant the imposition of punitive damages.

COUNT VI

STRICT PRODUCTS LIABILITY
NONCONFORMANCE WITH REPRESENTATIONS
O.R.C. §2307.77

234. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

235. Defendants are the manufacturers, designers, marketers, distributors, promoters, suppliers and/or sellers of caffeine powder.

236. At the time Defendants manufactured, designed, marketed, distributed, promoted, offered for sale, provided, supplied and sold caffeine powder, Defendants represented to consumers through the product label that the product was a “dietary supplement” and the benefits of caffeine powder in providing a “jolt,” a “pick-me-up,” etc., could outweigh the risk when ingested.

237. However, as described herein, Defendants’ caffeine powder failed to conform to these representations and instead is completely unacceptable for use, because the risk of injury and death is so high.

238. The failure of caffeine powder to conform to the representations made by Defendants in the product label, as described above, render the product defective pursuant to O.R.C. §2307.77.

239. Defendants’ violation(s) of O.R.C. §2307.77 constitutes negligence per se.

240. As a direct and proximate result of Logan Stiner’s use of defective caffeine powder, which failed to conform to manufacturer representations as described above, Plaintiff suffered damages including, but not limited to personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive

and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and death.

241. In addition, as a direct and proximate result of Plaintiff's decedent's use of defective caffeine powder consumed by Plaintiff's decedent, Logan Stiner, his parents and other next-of-kin have suffered individual damages including, but not limited to, economic harm and loss of consortium due to the injuries and death of Logan Stiner, and will continue to suffer said damages, harm and loss of consortium in the future.

242. Defendants' conduct as alleged in this Complaint shows that Defendants (except Kidd) acted maliciously, with aggravated or egregious fraud, and/or intentionally disregarded Plaintiff's rights, so as to warrant the imposition of punitive damages.

COUNT VII

NEGLIGENCE

243. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if full set forth in the following paragraphs.

244. Defendants had a duty to exercise reasonable care in the supplying and/or distribution of caffeine powder, including a duty to assure that the product did not cause unreasonable or unnecessary injury.

245. Defendants breached their duty of care to Plaintiff's decedent, Logan Stiner, through its negligent acts and omissions. Defendants did not exercise reasonable care in the warning, sale, promoting, supplying and/or distribution into the stream of commerce of caffeine powder in that Defendants knew or should have known that caffeine powder could cause serious injuries and death.

246. Defendants were negligent in the sale, promoting, supplying and/or distribution of caffeine powder in that it:

- a. failed to use due care in sale, promoting, supplying and/or distribution of caffeine powder so as to avoid or warn against the risks to consumers who used the caffeine powder;
- b. placed an unsafe product into the stream of commerce; and
- c. failed to discover or warn of the dangers associated with the use of caffeine powder despite having actual and/or constructive knowledge of such dangers.

247. Defendants knew or should have known that Plaintiff's decedent, Logan Stiner, could suffer injuries and death as a result of Defendants' failure to exercise ordinary care as described above.

248. As a direct and proximate result of Defendants' negligence, Plaintiff's decedent, Logan Stiner, ingested caffeine powder, and Plaintiff's decedent suffered damages including, but not limited to, personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and his wrongful death.

249. In addition, as a direct and proximate result of Defendants' negligence, Plaintiff's decedent ingested caffeine powder, and as a result Plaintiff's decedent, Logan Stiner's parents, brother, and other next-of-kin have suffered individual damages including, but not limited to, economic harm and loss of consortium due to the injuries and wrongful death of Logan Stiner and will continue to suffer said damages, harm and loss of consortium in the future, all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01.

250. Defendants' conduct as alleged in this Complaint shows that Defendants (except Kidd) acted maliciously, with aggravated or egregious fraud and/or intentionally disregarded Plaintiff's rights, so as to warrant the imposition of punitive damages.

COUNT VIII

BREACH OF IMPLIED WARRANTIES

251. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

252. Plaintiff's decedent ingested Hard Rhino pure caffeine powder that caused his injuries and death.

253. Defendants were and are in the business of manufacturing, designing, marketing, distributing, promoting, offering for sale, providing, supplying and selling Hard Rhino pure caffeine powder.

254. The Hard Rhino caffeine powder that Plaintiff's decedent ingested, and that caused his death, was harmful when ingested.

255. The harmful condition of Hard Rhino caffeine powder that Plaintiff's decedent ingested, and that caused his death, would not reasonably be expected by the average consumer/user.

256. Hard Rhino caffeine powder was a substantial factor in causing Plaintiff's decedents injuries and death.

257. Prior to Plaintiff's decedent's ingestion of Hard Rhino caffeine powder, Defendants impliedly warranted to Plaintiff's decedent and other consumers and users that Hard Rhino caffeine powder was of merchantable quality and safe and fit for the use for which it was intended.

258. Plaintiff's decedent reasonably relied entirely on the expertise, knowledge, skill, judgment, and implied warranty of Defendants in choosing to ingest Hard Rhino caffeine powder.

259. The Hard Rhino caffeine powder that Plaintiff's decedent ingested was neither safe for its intended use, nor of merchantable quality, in that it is a dangerous chemical, when put to its intended use, caused severe, permanent and fatal injuries to Plaintiff's decedent. As such, Hard Rhino caffeine powder, was not fit for the ordinary purpose for which such goods are used.

260. By selling, delivering, and/or distributing the defective Hard Rhino caffeine powder Defendants breached the implied warranty of merchantability and implied warranty of fitness.

261. As a direct and proximate result of Defendants' breach of implied warranty of merchantability and the implied warranty of fitness, Plaintiffs suffered the injuries herein described.

COUNT IX

NEGLIGENCE – DEFENDANT KIDD

262. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

263. Defendant Kidd negligently supplied and/or provided caffeine powder to Plaintiff's decedent, Logan Stiner, when she knew or should have known that the caffeine powder was dangerous.

264. Defendant Kidd negligently instructed and/or failed to instruct Plaintiff's decedent, Logan Stiner, as to the use of caffeine powder.

265. As a direct and proximate result of Defendant Kidd's negligence, Plaintiff's decedent, Logan Stiner, ingested a quantity of caffeine powder that caused him to suffer serious injuries and, ultimately, his death.

266. As a direct and proximate result of Defendants' negligence, Plaintiff's decedent, Logan Stiner, ingested caffeine powder, and Plaintiff's decedent suffered damages including, but not limited to, personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and his wrongful death.

267. In addition, as a direct and proximate result of Defendants' negligence, Plaintiff's decedent ingested caffeine powder, and as a result Plaintiff's decedent, Logan Stiner's parents, brother, and other next-of-kin have suffered individual damages, including, but not limited to, economic harm and loss of consortium due to the injuries and wrongful death of Logan Stiner and will continue to suffer said damages, harm and loss of consortium in the future, all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01.

COUNT X

NEGLIGENT ENTRUSTMENT – DEFENDANT KIDD

268. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

269. Defendant Kelsey Kidd negligently entrusted a dangerous substance to Plaintiff's decedent, Logan Stiner.

270. Defendant Kidd negligently supplied and/or provided caffeine powder to Plaintiff's decedent, Logan Stiner, when she knew or should have known that the caffeine powder was dangerous.

271. As a direct and proximate result of Defendant Kidd's negligence, Plaintiff's decedent, Logan Stiner, ingested a quantity of caffeine powder that caused him to suffer serious injuries and, ultimately, his death.

272. As a direct and proximate result of Defendants' negligence, Plaintiff's decedent, Logan Stiner, ingested caffeine powder, and Plaintiff's decedent suffered damages including, but not limited to, personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and his wrongful death.

273. In addition, as a direct and proximate result of Defendants' negligence, Plaintiff's decedent ingested caffeine powder, and as a result Plaintiff's decedent, Logan Stiner's parents, brother, and other next-of-kin have suffered individual damages, including, but not limited to, economic harm and loss of consortium due to the injuries and wrongful death of Logan Stiner and will continue to suffer said damages, harm and

loss of consortium in the future, all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01.

COUNT XI

FRAUD

274. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

275. Defendants withheld and suppressed facts in its advertising, labeling, packaging, supplying, marketing, offering for sale, promotion and sale of caffeine powder that led consumers/users to falsely believe that the product posed no greater risk to the health of those that consumed it than did other products containing similar ingredients.

276. Due to potential risks associated with the ingestion of caffeine powder, Defendants owed a duty to disclose the truth about the significant adverse health effects associated with the ingestion of pure caffeine powder, but failed to do so.

277. Despite Defendants knowledge of the health risks associated with ingestion of pure caffeine powder, Defendants concealed these dangers and took steps in the advertising, packaging, marketing, offering for sale, promotion and sale of Hard Rhino caffeine powder to prevent consumers and users from learning the true facts about the product.

278. The concealment of the true facts about Hard Rhino caffeine powder was done with the intent to induce purchases and ingestion of Hard Rhino caffeine powder.

279. Defendants intended for consumers and users, like Plaintiff's decedent to rely on its advertising, marketing, promotion and/or sale of Hard Rhino caffeine powder, as well as the suppression of the true facts about the risks and dangers associated with ingestion of Hard Rhino caffeine powder.

280. The reliance by Plaintiff's decedent in ingesting Hard Rhino caffeine powder was reasonable and justified in that Defendants appeared to be, and represented themselves to be, reputable businesses that would disclose the truth about any potential harmful health effects of ingesting this product.

281. As a direct and proximate result of Defendants' fraudulent and deceitful actions as alleged, Plaintiff's decedent, Logan Stiner, ingested caffeine powder, and Plaintiff's decedent suffered damages including, but not limited to, personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and his wrongful death.

282. In addition, as a direct and proximate result of Defendants' fraudulent actions, Plaintiff's decedent ingested caffeine powder, and as a result Plaintiff's decedent, Logan Stiner's parents, brother, and other next-of-kin have suffered individual damages, including, but not limited to, economic harm and loss of consortium due to the injuries and wrongful death of Logan Stiner and will continue to suffer said damages, harm and loss of consortium in the future, all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01.

283. Defendants' conduct as alleged in this Complaint shows that Defendants (except Kidd) acted maliciously, with aggravated or egregious fraud, and/or intentionally disregarded Plaintiff's rights, so as to warrant the imposition of punitive damages.

COUNT XII

NEGLEGENGE PER SE

284. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

285. Defendants (except Kidd) violations of the aforementioned laws, statutes, and ordinances constitute negligence per se.

286. As a direct and proximate result of Defendants' negligence per se, Plaintiff's decedent, Logan Stiner, ingested caffeine powder, and Plaintiff's decedent suffered damages including, but not limited to, personal injury, bodily harm, emotional distress, pain and suffering, permanent physical, mental, neurologic, cognitive and behavioral injuries, loss of enjoyment of life, economic and non-economic damages, and his wrongful death.

287. In addition, as a direct and proximate result of Defendants' negligence per se, Plaintiff's decedent ingested caffeine powder, and as a result Plaintiff's decedent, Logan Stiner's parents, brother, and other next-of-kin have suffered individual damages including, but not limited to, economic harm and loss of consortium due to the injuries and wrongful death of Logan Stiner and will continue to suffer said damages, harm and loss of consortium in the future, all as set forth in Ohio Wrongful Death Statute, O.R.C. §2125.01.

288. Defendants' conduct as alleged in this Complaint shows that Defendants (except Kidd) acted maliciously, with aggravated or egregious fraud and/or intentionally disregarded Plaintiff's rights, so as to warrant the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants jointly and severally, for each cause of action in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) for compensatory damages together with interest, reasonable attorney fees, and costs of this action and applicable punitive damages as set forth above.

Respectfully submitted,

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Jury Demand

Now comes the Plaintiff, by and through counsel and respectfully demand that this instant action be tried by a jury.

Respectfully submitted,

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