

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CHARLES PATRICK BRENNAN	§	
AND MARY BRENNAN,	§	
INDIVIDUALLY, AND AS HEIRS	§	
AT LAW TO THE ESTATE OF	§	
COLBY PATRICK BRENNAN,	§	CA NO. _____
DECEASED,	§	
	§	
VS.	§	
	§	
POWDER CITY, LLC.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW, CHARLES PATRICK BRENNAN AND MARY BRENNAN, INDIVIDUALLY, AND AS HEIRS AT LAW TO THE ESTATE OF COLBY PATRICK BRENNAN, DECEASED (hereinafter sometimes collectively referred to as the “Plaintiffs”, unless otherwise referenced) and files their Original Complaint against Defendant **POWDER CITY, LLC** (“Defendant” or “Defendant Powder City”) and for cause of action against the Defendant would show as follows:

**I.
Parties**

1. Plaintiffs Charles Patrick Brennan and Mary Brennan are residents of Harris County, Texas, located within the Southern District of Texas, Houston Division. They are the surviving biological parents of their late son, Colby Patrick Brennan (sometimes referred to as “decedent”), who died as a result of the wrongful acts and/or omissions of Defendant Powder City, LLC., as set forth herein. Plaintiffs are the sole heirs of their late son and decedent, Colby Patrick Brennan. No estate was/is necessary under Texas law as there were/are no outstanding debts.

2. Defendant Powder City, LLC is a foreign out-of-state corporation with its home office and principal place of business located at 160 South Hartman Street, York, Pennsylvania 17403. Defendant conducts business and was conducting business within the State of Texas at all times pertinent to the facts and claims alleged herein. The Defendant's contacts with the State of Texas are sufficient such that this Court has personal jurisdiction over this Defendant. The Defendant has not designated an agent for service in the State of Texas. Pursuant to Texas' Long-Arm Statute, the registered agent of Defendant Powder City for service of process in the State of Texas is the Secretary of State of the State of Texas, which then can forward process to this Defendant at its home address and principal place of business, located at 160 South Hartman Street, York, Pennsylvania 17403. Therefore, the Plaintiffs request that the Defendant Powder City be served through its registered agent, the Texas Secretary of State, via Certified Mail, Return Receipt Requested.

II. Jurisdiction

3. This Court has jurisdiction pursuant to 28 U.S.C. Section 1332 on the basis of diversity of citizenship between the parties at the time of the filing of this Complaint. The amount in controversy, exclusive of Court costs, exceeds \$75,000.

4. Plaintiffs will show that at all times material and pertinent to the claims alleged herein, Defendant maintained substantial contacts within the State of Texas; among other things and without limitation, the Defendant has an internet presence in Texas (and nationwide) at www.powdercity.com, which is an inter-active site at/on which drugs and materials/products are marketed and can be purchased. As a part of that, customers/consumers like the decedent can, in and from Texas, order and purchase such drugs and materials/products online. The decedent's death was caused by the Defendant's wrongful acts and omissions with regard to its marketing and

selling a drug, Tianeptine, online via its website and thus, the Defendant's contacts with and in Texas give rise to and directly relate to the claims alleged herein. Therefore, this Court has both general and specific jurisdiction over Defendant Powder City.

III. **Venue**

5. Venue is proper under 28 U.S.C. Section 1391.

IV. **Factual Background**

6. In approximately late July, 2015, the Decedent, Colby Brennan, purchased an order of Tianeptine (sometimes referred to hereafter "the drug") from Defendant Powder City. Powder City failed to provide critical information to Colby Brennan regarding the safe usage of the drug. To this extent, without limitation, the Tianeptine drug which Powder City marketed online and sold to the decedent contained *no warnings and entirely inadequate instructions* regarding proper and safe usage, proper and safe dosage, the risk of abuse/over-use, the risks of the drug, the potential toxic risk/effect of the drug, potential side-effects, potential risk and/or complicating factors, or any necessary information which a consumer like Colby Brennan would reasonably need in order to safely use and consume the drug. In fact, *no instructions* were provided regarding the risks and dangers of the drug; the potential toxic risk/effect of the drug; complicating factors in taking the drug; the potential risk of abuse/over-use; the effect/potential effect of a consumer's/user's pre-existing conditions and/or how the drug may act/react/interact if a consumer/user was taking other drugs/medicine(s); or any other instructions regarding safe usage. And by 2015, Powder City knew, or should have known, that by 2012, in view of its characteristics and otherwise, the Tianeptine drug "entered the same class as narcotics". Further, the Tianeptine

drug is a well-known antidepressant and has characteristics which are substantially similar to tricyclic antidepressant drugs.

7. On information and belief, for some period of time, in other countries, Tianeptine cannot be legally sold without a prescription and/or there are other issues regarding the legality of marketing and selling the drug the way in which the Defendant was doing so. Even further, there is growing evidence in regard to the tendencies for abuse/overuse of the Tianeptine drug, which accentuates the need for Powder City to have provided necessary and critical information to consumers like the decedent about the proper and safe usage of the drug and the risks and dangers associated with its use.

8. Despite all of the foregoing, in 2015, Defendant Powder City was continuing to market and sell the Tianeptine drug as a purported “supplement” and Defendant did not require a prescription.

9. In approximately March, 2016, Defendant Powder City discontinued its marketing and selling of Tianeptine. Defendant Powder City knew or should have known that it should have discontinued marketing and selling the Tianeptine well before that. On information and belief, Defendant discontinued marketing and selling the Tianeptine drug because it already knew and had known for a period of time that in view of the drug’s characteristics; it being within the class of narcotics; its propensity for abuse/overuse; that consumers were misinformed about the proper and safe usage of the drug and the risks associated with it.

10. On the morning of July 29, 2015, Colby Brennan took/ingested Tianeptine which he had purchased from the Defendant. Later that same day, Colby Brennan tragically died. The Harris County Institute of Forensic Sciences (“the Institute”) investigated his death and concluded that Colby Brennan’s death was caused by the “toxic effects of Tianeptine”.

V.
Plaintiffs' Claims Against Defendant Powder City

Strict Products Liability

11. Plaintiffs incorporate all of the facts and allegations set forth above.

12. The Defendant injected the Tianeptine drug into the stream of commerce by marketing and selling it to consumers like Colby Brennan; the Tianeptine drug was unreasonably dangerous in view of the Defendant's failure to provide adequate warnings and instructions regarding its safe usage; and the unreasonably dangerous nature of the was a producing cause of the decedent's death. Thus, the Defendant is liable under the Restatement (Second) of Torts, Section 402 and Texas strict product liability law.

13. As set forth above, among other things, the Defendant failed to provide *anything resembling adequate warnings or instructions* regarding the proper usage, the safe usage, the proper dosage, the risks and dangers of the drug, the potential toxic risk/effect of the drug, the risk of abuse/overuse, potential side-effects, and/or potential risk and/or complicating factors of the drug. In fact, *no instructions* were provided regarding the risks and dangers of the drug; the potential toxic risk/effect of the drug; complicating factors in taking the drug; the potential risk of abuse/over-use; the effect/potential effect of a consumer's/user's pre-existing conditions and/or how the drug may act/react/interact if a consumer/user was taking other drugs/medicine(s); or any other instructions regarding safe usage. Consumers like the decedent were left to fare on their own, although Defendant knew or should have known of the dangers and risks of marketing and selling the drug without any warnings and woefully inadequate instructions.

14. Further, the dangers and risks of the Tianeptine drug, without reasonable and adequate warnings and instructions, rendered the Tianeptine drug unreasonably dangerous and

such dangers and risks were well beyond the common knowledge of the ordinary user/consumer, like the decedent.

15. In addition, under the Restatement (Second) of Torts, Section 401, strict liability is imposed upon a seller like the Defendant for harm from a dangerous product if the seller does not warn users of the dangers or otherwise fails to protect them.

16. With all of this, the Tianeptine was unreasonably dangerous as marketed and sold to the decedent and the Defendant's failure to adequately and reasonably warn and instruct the decedent was a direct and producing cause of his death. Therefore, the Defendant is liable based on strict products liability (Restatement Sections 401 and 402) under applicable Texas product liability law.

Negligence

17. Independently, Defendant Powder City obviously knew that it was marketing and selling the Tianeptine drug to consumers in general, which included the decedent. Thus, it owed a duty of reasonable care to provide sufficient and reasonable/adequate warnings and instructions in regard to the safe usage of the Tianeptine drug. As set forth above, among other things, the Defendant failed to provide *anything resembling adequate warnings or instructions* regarding the proper usage, the safe usage, the proper dosage, the risks and dangers of the drug, including its potential toxic effect, the risk of abuse/overuse, potential side-effects, and/or potential risk and/or complicating factors. In fact, *no instructions* were provided regarding the risks and dangers of the drug; the potential toxic risk/effect of the drug; complicating factors in taking the drug; the potential risk of abuse/over-use; the effect/potential effect of a consumer's/user's pre-existing conditions and/or how the drug may act/react/interact if a consumer/user was taking other drugs/medicine(s); or any other instructions regarding safe usage. Defendant knew or should have

known that the Tianeptine drug was dangerous; had serious side-effects; had a propensity toward users' abuse/overuse; could be toxic; and could be mis-used/abused — all of which rendered the Tianeptine drug very dangerous without sufficient, adequate, and reasonable warnings and instructions regarding its safe usage. Defendant breached its duty of reasonable care which it owed to the decedent in failing to provide warnings and instructions to the decedent about the safe usage of the Tianeptine drug. The Defendant's negligent breach of duty proximately caused the decedent's death and the Plaintiff's damages and losses.

VI. **Damages**

18. The decedent, Colby Patrick Brennan, suffered conscious pain and suffering before his death. Plaintiffs, as sole heirs of his estate, seek damages on behalf of his estate. Beyond that, Plaintiffs seek all other recoverable damages under their survival action on behalf of the decedent's estate, including but not limited to all medical expenses, funeral expenses, and all other recoverable damages.

19. Plaintiffs Charles Patrick Brennan and Mary Brennan, individually, as the natural biological parents of the decedent, are also entitled to recover compensation and damages for their immense and severe past and future mental anguish, loss of companionship and society, and all other damages to which they are entitled under their wrongful death claims in their individual capacities.

20. In addition, Plaintiffs seek pre-judgment and post-judgment at the highest rate allowed by applicable law, to begin accruing at the earliest available time and date. Plaintiffs also seek Court costs.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Charles Patrick Brennan And Mary Brennan, Individually, And As Heirs At Law To The Estate Of Colby Patrick Brennan, Deceased, respectfully pray that Defendant Powder City, LLC, be served with process and that upon final trial in this case, Plaintiffs have and recover damages against the Defendant as set forth above as the sole heirs at law to the Estate of the Decedent, Colby Patrick Brennan (their survival claims); all damages to which they are entitled in the individual capacities (their wrongful death claims), and all other damages to which they are entitled to recover under applicable Texas law in their individual and representative capacities, and all other relief to which they may be entitled under the Federal Rules of Civil Procedure, including Federal Rule 54, and otherwise, at law or in equity, to which Plaintiffs may show themselves to be entitled.

Respectfully submitted,

By: /s/ Steve E. Couch
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