

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

██████████ and ██████████
██████████, Minors, by and through their
Next Friend TRISHA HALE,
3314 Melody Lane
St. Joseph, Missouri 64503

Plaintiffs,

v.

ENLIGHTENED READING, INC., d/b/a
EROTIC CITY,

SERVE: Registered Agent
Richard Martin
1044 Main Street, Suite 900
Kansas City, Missouri 64105

and

NOVACARE, L.L.C.,

SERVE: Registered Agent
State Agent and Transfer
Syndicate, Inc.
112 North Curry Street
Carson City, Nevada 89703

and

IMPULSARIA, L.L.C.,

SERVE: Registered Agent
Spiegel & Utrera, P.A.
1785 East Sahara Ave., Suite 490
Las Vegas, Nevada 89104

Defendants.

Case No.:

Division:

PETITION FOR DAMAGES

COME NOW Plaintiffs, [REDACTED] and [REDACTED], by and through their Next Friend, Trisha Hale, and for their cause of action against Defendants Enlightened Reading, Inc., d/b/a Erotic City, NovaCare, L.L.C., and Impulsaria, L.L.C., state and allege as follows:

PARTIES

1. Minor Plaintiffs, [REDACTED] and [REDACTED], are the surviving children of David McElwee, deceased. Minor Plaintiffs are residents and citizens of the State of Missouri, residing in St. Joseph, Missouri.
2. [REDACTED] and [REDACTED] are minors under the age of fourteen (14) and the natural children of David McElwee, deceased. Therefore, Plaintiffs are in the class of persons entitled to bring a cause of action for the wrongful death of David McElwee, deceased, pursuant to R.S.Mo. Section 537.080.
3. Trisha Hale is the natural mother and guardian of minors [REDACTED] and [REDACTED]. Trisha Hale will serve as [REDACTED] and [REDACTED] Next Friend for the purpose of bringing and prosecuting this wrongful death action.
4. Defendant Enlightened Reading, Inc., d/b/a Erotic City (hereinafter "Defendant Erotic City"), is a Missouri corporation in good standing and can be served through its registered agent Richard Martin, 1044 Main Street, Suite 900, Kansas City, Missouri 64105. At all times mentioned herein, Defendant Enlightened Reading, Inc., was engaged in the business of marketing and/or selling a product containing sildenafil citrate and/or sulfoildenafil, and known as "Stiff Nights" at a business owned by Defendant

Enlightened Reading, Inc., known as Erotic City located at 8401 E. Truman Road, Kansas City, Jackson County, Missouri 64126.

5. Defendant NovaCare, L.L.C. (hereinafter "Defendant NovaCare"), is a Nevada limited liability company with its registered agent as State Agent and Transfer Syndicate, Inc., located at 112 North Curry Street, Carson City, Nevada 89703. At all times mentioned herein, Defendant NovaCare engaged in the business of designing, manufacturing, marketing and selling a product containing sildenafil citrate and/or sulfoildenafil known as "Stiff Nights" and was doing business in the State of Missouri through its agents, employees and/or servants as well as Defendant Erotic City.

6. Defendant NovaCare was, at all times complained of herein, doing acts of business in the State of Missouri and such acts constituted the nexus of the damages complained of herein. Defendant NovaCare designed, manufactured, marketed, sold, distributed and furnished in a national marketing scheme a defective and misbranded product which foreseeably found its way into the State of Missouri resulting in the incident and damages complained of herein. Defendant NovaCare designed, manufactured, marketed, sold, distributed and furnished the "Stiff Nights" product ingested by decedent David McElwee resulting in his death in the State of Missouri and giving rise to Plaintiffs' cause of action.

7. Defendant Impulsaria, L.L.C. (hereinafter "Defendant Impulsaria"), is a Nevada limited liability company with its registered agent as Spiegel & Utrera, L.L.C, located at 1785 East Sahara Avenue, Suite 490, Las Vegas, Nevada 89104. At all times mentioned herein, Defendant Impulsaria engaged in the business of designing, manufacturing, marketing and selling a product containing sildenafil citrate and/or

sulfoaildenafil known as “Stiff Nights” and was doing business in the State of Missouri through its agents, servants and/or employees as well as Defendant Erotic City.

8. Defendant Impulsaria was, at all times complained of herein, doing acts of business in the State of Missouri and such acts constituted the nexus of the damages complained of herein. Defendant Impulsaria designed, manufactured, marketed, sold, distributed and furnished in a national marketing scheme a defective and misbranded product which foreseeably found its way into the State of Missouri resulting in the incident and damages complained of herein. Defendant Impulsaria designed, manufactured, marketed, sold, distributed and furnished the “Stiff Nights” product ingested by decedent David McElwee resulting in his death in the State of Missouri and giving rise to Plaintiffs’ cause of action.

AGENCY

9. At the time of the tortious acts complained of herein, and at all times mentioned, Defendants Erotic City, NovaCare, L.L.C., and Impulsaria, L.L.C., were acting by and through their servants, employees, and/or agents. At the time of the negligent acts complained of herein, and at all times mentioned, Defendants NovaCare, L.L.C., and Impulsaria, L.L.C., were acting by and through their servants, employees, and/or agents, including, but not limited to, Kelly Dean Harvey (NovaCare) and Erb Avore (Impulsaria), and at the time of the tortious acts complained of herein, Kelly Dean Harvey and Erb Avore were acting within the course and scope of their employment and/or agency with Defendants NovaCare and Impulsaria respectively.

VENUE & JURISDICTION

10. Venue is proper in the County of Jackson, State of Missouri, pursuant to R.S.Mo. Section 508.040 in that Plaintiffs' cause of action accrued in the County of Jackson, State of Missouri. Specifically, decedent David McElwee purchased and ingested all or a substantial part of "Stiff Nights" in Jackson County, Missouri, and his resulting death giving rise to Plaintiffs' cause of action occurred within Jackson County, Missouri.

11. This Court has jurisdiction over these Defendants as these Defendants committed tortious acts within the State of Missouri and have the requisite contacts with the State of Missouri for personal jurisdiction as set out more fully hereinafter. Defendant Erotic City is a Missouri resident corporation. Furthermore, Defendant NovaCare and Defendant Impulsaria placed "Stiff Nights" in the stream of commerce in Missouri. Furthermore, Defendants NovaCare and Impulsaria sell their products to consumers in Missouri and advertise their products as part of a nationwide system of retailers and market their products in Missouri. Additionally, this Court has jurisdiction over Defendants in that said Defendants have the requisite contacts with the State of Missouri by conducting substantial and continuous business in Missouri sufficient to satisfy due process requirements.

FACTS OF THE OCCURRENCE

12. From March of 2007 through the present day Defendant NovaCare and Defendant Impulsaria, and each of them, jointly and severally, designed, manufactured, marketed and sold their product, "Stiff Nights," to the public, including decedent David McElwee, through a nationwide advertising campaign promoting "Stiff Nights" as a

convenient, scientific and medically safe way to treat erectile dysfunction (ED) and enhance male sexual performance.

13. Defendants NovaCare and Impulsaria promoted “Stiff Nights” as a “dietary supplement” and “Male Sexual Stimulant.”

14. Defendants NovaCare and Impulsaria represented to the public, including decedent David McElwee, that “Stiff Nights” was a “dietary supplement” that was “100% natural” and “100% safe.”

15. Defendants NovaCare and Impulsaria represented to the public, including decedent David McElwee, that “Stiff Nights” contained “all natural ingredients” that reduced the risk of certain side effects associated with similar ED drugs such as Viagra.

16. Defendant Erotic City sold “Stiff Nights” to the public, including decedent David McElwee, at its store located at 8401 E. Truman Road, Kansas City, Jackson County, Missouri 64126, by and through its business relationship and business dealings with Defendants NovaCare and Impulsaria in the State of Missouri.

17. On or about September 22, 2012, decedent David McElwee purchased “Stiff Nights” from Defendant Erotic City’s store in Kansas City.

18. Thereafter, on or about September 24, 2012, Decedent McElwee consumed and ingested all or a substantial part of “Stiff Nights.”

19. On or about September 25, 2012, decedent David McElwee suffered a loss of blood pressure resulting in unconsciousness and ultimately leading to cardiac arrest after consuming “Stiff Nights.”

20. The hypotension and cardiac arrest sustained by decedent David McElwee was a direct and proximate result of his consumption and ingestion of “Stiff Nights,” which

contained a controlled ingredient, sildenafil citrate and/or sulfoildenafil, without being labeled as unreasonably dangerous and defective as hereinafter set out with more particularity.

21. “Stiff Nights” is a product which has serious side effects and health risks, including headaches, heartburn, facial blushing, upset stomach, life-threatening hypotension, heart failure and sudden death. Because of the serious and permanent health risks posed by sulfoildenafil-containing products, such as “Stiff Nights,” The United States Food and Drug Administration (FDA) has banned the use of sildenafil citrate and/or sulfoildenafil in the manufacture of similar over-the-counter products, including “Stiff Nights.”

22. From March 8, 2010 through March 22, 2010, the FDA conducted an inspection of Defendant NovaCare’s manufacturing facility located at 330 West 6100 South, Salt Lake City, Utah 84047. During the inspection, samples of the ingredients used by Defendant NovaCare in the manufacture of “Stiff Nights” were collected.

23. On or about December 28, 2010, the FDA determined Defendant NovaCare’s products, including “Stiff Nights,” contained sulfoildenafil, an analogue of sildenafil, the active pharmaceutical ingredient in Viagra.

24. On or about December 28, 2010, the FDA determined that the label of the “Stiff Nights” product containing the statements “Stiff Nights,” “Male Sexual Stimulant,” “Regain the Thunder,” and “Erection Booster Blend™,” all of which appeared on the label of the “Stiff Nights” product purchased by decedent David McElwee, make clear that “Stiff Nights” is a drug under The Food, Drug, and Cosmetic Act because the statements are intended to affect the structure or function of the human body.

25. On or about December 28, 2010, the FDA determined that sulfoildenafilafil is a synthetic active pharmaceutical ingredient and is not a dietary ingredient as defined by The Food, Drug, and Cosmetic Act.

26. On or about December 28, 2010, the FDA found that “Stiff Nights” is a “drug” within the meaning of The Food, Drug, and Cosmetic Act.

27. On or about December 28, 2010, the FDA found that “Stiff Nights” would be considered a “new drug” as defined by The Food, Drug, and Cosmetic Act because the product is not generally recognized as safe and effective for use under the conditions prescribed, recommended, or suggesting on the product labeling.

28. On or about December 28, 2010, Defendant NovaCare was informed by the FDA that pursuant to The Food, Drug, and Cosmetic Act, a “new drug” may not be introduced or delivered for introduction into interstate commerce unless an FDA-approved application is in effect for the product.

29. On or about December 28, 2010, Defendant NovaCare was informed by the FDA that the distribution and sale of “Stiff Nights” without an FDA-approved application violated The Food, Drug, and Cosmetic Act.

30. On or about December 28, 2010, Defendant NovaCare was informed by the FDA that “Stiff Nights” is a “prescription drug” as defined by The Food, Drug, and Cosmetic Act because, in light of the product’s toxicity or other potentially harmful effect, the method of the product’s use, or the collateral measures necessary to the product’s use, “Stiff Nights” is not safe for use except under the supervision of a practitioner licensed by law to administer the product.

31. Additionally, the FDA found that “Stiff Nights” was considered a “misbranded drug” under The Food, Drug, and Cosmetic Act because the labeling of “Stiff Nights” failed to bear adequate directions for the product’s intended use.

32. The FDA further determined that “Stiff Nights” was “misbranded” pursuant to The Food, Drug, and Cosmetic Act because the label on “Stiff Nights” failed to disclose the presence of sulfoildenafil. Therefore, on December 28, 2010, the FDA found that the “Stiff Nights” labeling was “false and misleading” pursuant to The Food, Drug, and Cosmetic Act.

33. On December 28, 2010, the FDA determined that “Stiff Nights” was also “misbranded” pursuant to The Food, Drug, and Cosmetic Act because the product’s labeling lacked adequate warnings for the protection of users.

34. The “Stiff Nights” product consumed by decedent David McElwee on or about September 24, 2012, was designed and manufactured by Defendant NovaCare and Defendant Impulsaria, and each of them, jointly and severally, with the above-mentioned defects and containing sildenafil citrate and/or sulfoildenafil.

CAUSES OF ACTION

A. NEGLIGENCE

COUNT I—WRONGFUL DEATH (Plaintiffs v. Erotic City, NovaCare, L.L.C., and Impulsaria, L.L.C.)

COME NOW Plaintiffs, and for Count I of their cause of action against Defendants, and each of them, jointly and severally, allege and state as follows:

35. Plaintiffs re-allege and incorporate by reference paragraphs one (1) through thirty-four (34) as if fully set forth herein.

36. David McElwee sustained a fatal injury and his fatal injury was directly and proximately caused by the negligence of Defendants Erotic City, NovaCare and Impulsaria, by and through their agents, servants and/or employees, and Defendants are guilty of one or more of the following acts of negligence and carelessness and breached their duties to exercise ordinary care, to wit:

- a. in negligently and carelessly manufacturing, distributing and selling “Stiff Nights” to the public, including David McElwee, with the chemical sildenafil citrate and/or sulfoildenafil as an ingredient in the product;
- b. in negligently and carelessly failing to warn the public, including David McElwee, that the combination of sildenafil citrate and/or sulfoildenafil and other chemicals posed serious health risks and side effects;
- c. in negligently and carelessly failing to warn the public, including David McElwee, that “Stiff Nights” contained sildenafil citrate and/or sulfoildenafil, an analogue of sildenafil;
- d. in negligently and carelessly failing to warn the public, including David McElwee, that “Stiff Nights” may interact in dangerous ways with other drugs prescribed to the consumer, including decedent David McElwee;
- e. in negligently and carelessly failing to warn the public, including David McElwee, that “Stiff Nights” can lower blood pressure to dangerous levels;

- f. in negligently and carelessly failing to adequately test “Stiff Nights”;
- g. in negligently and carelessly promoting “Stiff Nights” as a dietary supplement;
- h. in negligently and carelessly failing to conduct clinical trials on “Stiff Nights”; and
- i. in negligently and carelessly promoting “Stiff Nights” as a medically safe way to treat erectile dysfunction.

37. As a direct result of the negligence of the Defendants, and each of them, jointly and severally, by and through their agents, servants and/or employees, decedent David McEwlee purchased, consumed and ingested “Stiff Nights” and suffered multiple injuries and ultimately died.

38. Plaintiffs and the survivors of David McElwee have lost the services, companionship, comfort, support, guidance, instruction and training of their father.

39. Plaintiffs and the survivors have incurred funeral bills and the cost of burial. David McElwee sustained a traumatic injury. As a direct and proximate result of consuming and ingesting “Stiff Nights”, decedent David McElwee experienced pain and suffering, suffered a loss of consciousness, never woke up, and ultimately died. Any medical expenses incurred as a result of efforts to save his life are recoverable items of damages as well as all categories of damages set forth in R.S.Mo. § 537.090, and are damages Plaintiffs and the survivors are entitled to recover. There were aggravating circumstances attendant on the death of David McElwee in that Defendants knew or could have known about the dangerous and defective characteristics of “Stiff Nights.” Plaintiffs

are entitled to an award of damages against all Defendants in an amount which is fair, reasonable and just.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, jointly and severally, in an amount which the Court deems fair and reasonable, in excess of \$25,000.00, together with prejudgment interest and their costs herein expended.

COUNT II—DESIGN DEFECT
(Plaintiffs v. NovaCare, L.L.C., and Impulsaria, L.L.C.)

COME NOW Plaintiffs, and for Count II of their cause of action against Defendants, and each of them, jointly and severally, allege and state as follows:

40. Plaintiffs re-allege and incorporate by reference paragraphs one (1) through thirty-nine (39) as if fully set forth herein.

41. Defendants designed, manufactured, marketed and sold “Stiff Nights.”

42. “Stiff Nights” is defective and unreasonably dangerous in its design in that:

- a. it contained sildenafil citrate and/or sulfoildenafil; and
- b. it consisted of chemical and/or herbal combinations, including sildenafil citrate and/or sulfoildenafil, which posed serious health risks.

43. The aforementioned characteristics created an unreasonably dangerous risk of harm to persons using “Stiff Nights,” including decedent David McElwee, such as headaches, heartburn, facial blushing, upset stomach, life-threatening hypotension, heart failure and sudden death.

44. Defendants were negligent in that Defendants failed to use ordinary care to design “Stiff Nights” to be reasonably safe when Defendants knew, or in the exercise

of ordinary care should have known, that “Stiff Nights” created an unreasonably dangerous risk of harm in its design.

45. As a direct and proximate result of Defendants' negligence in the design of “Stiff Nights,” David McElwee suffered hypotension resulting in death. Plaintiffs have lost the services, companionship, comfort, support, guidance, instruction and training of their father.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, jointly and severally, in an amount which the Court deems fair and reasonable, in excess of \$25,000.00, together with prejudgment interest and their costs herein expended.

COUNT III—FAILURE TO WARN
(Plaintiffs v. Erotic City, NovaCare, L.L.C., and Impulsaria, L.L.C.)

COME NOW Plaintiffs, and for Count III of their cause of action against Defendants, and each of them, jointly and severally, allege and state as follows:

46. Plaintiffs re-allege and incorporate by reference paragraphs one (1) through forty-five (45) as if fully set forth herein.

47. Defendants designed, manufactured, marketed and sold “Stiff Nights.”

48. Defendants knew or had reason to know that “Stiff Nights” was likely to be unreasonably dangerous in that:

- a. it contained sildenafil citrate and/or sulfoildenafil; and
- b. it consisted of chemical and/or herbal combinations, including sildenafil citrate and/or sulfoildenafil, which posed serious health risks.

49. The aforementioned characteristics created an unreasonably dangerous risk of harm to persons using “Stiff Nights,” including decedent David McElwee, such as headaches, heartburn, facial blushing, upset stomach, life-threatening hypotension, heart failure and sudden death.

50. Defendants had no reason to believe that the users of its product, including decedent David McElwee, would realize the aforesaid dangerous characteristics of “Stiff Nights.”

51. Defendants were negligent and failed to use ordinary care to warn or to adequately warn of the dangerous characteristics of “Stiff Nights,” which characteristics Defendants knew or in the exercise of ordinary care should have known, in that Defendants:

- a. failed to warn that the combination of sildenafil citrate and/or sulfoildenafil and other chemicals posed serious health risks and side effects;
- b. failed to warn that “Stiff Nights” contained sildenafil citrate and/or sulfoildenafil, an analogue of sildenafil;
- c. failed to warn that the chemical and/or herbal combinations of “Stiff Nights” posed serious health risks and side effects;
- d. failed to warn that “Stiff Nights” may interact in dangerous ways with other drugs prescribed to the consumer, including decedent David McElwee;
- e. failed to warn that “Stiff Nights” can lower blood pressure to dangerous levels;

- f. failed to warn that “Stiff Nights” had not been adequately tested;
- g. failed to warn that “Stiff Nights” was not a proprietary blend of natural herbs;
- h. failed to warn that “Stiff Nights” was not an all natural product;
- i. failed to warn that “Stiff Nights” was not a scientifically proven or medically safe way to treat erectile dysfunction;
- j. failed to warn adequately that the consumption of “Stiff Nights” with other medications should not be done; and
- k. failed to warn that “Stiff Nights” had not been approved by The Food and Drug Administration as a “drug” safe for introduction or delivery for introduction into interstate commerce or consumption by the consumer.

52. Decedent David McElwee consumed and ingested “Stiff Nights” in a manner reasonably anticipated and without knowledge of its dangerous characteristics.

53. As a direct result of Defendants’ failure to warn or failure to adequately warn about the dangerous characteristics of “Stiff Nights,” David McElwee suffered hypotension resulting in death. Plaintiffs have lost the services, companionship, comfort, support, guidance, instruction and training of their father.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, jointly and severally, in an amount which the Court deems fair and reasonable, in excess of \$25,000.00, together with prejudgment interest and Plaintiffs’ costs herein expended.

COUNT IV—MARKETING DEFECT
(Plaintiffs v. Erotic City, NovaCare, L.L.C., and Impulsaria, L.L.C.)

COME NOW Plaintiffs, and for Count IV of their cause of action against Defendants, and each of them, jointly and severally, allege and state as follows:

54. Plaintiffs re-allege and incorporate by reference paragraphs one (1) through fifty-three (53) as is fully set forth herein.

55. Defendants knew, or in the exercise of ordinary care should have known, that its marketing of “Stiff Nights” was defective.

56. Defendants negligently failed to market “Stiff Nights” in a reasonably safe manner, to wit:

- a. “Stiff Nights” contained inadequate, false, misleading and inaccurate precautions, warnings, instructions and/or labeling;
- b. “Stiff Nights” was not accompanied by timely, accurate, adequate, necessary or proper warnings, precautions, instructions and labeling regarding the permanent irreversible injury and complications associated with the use of the product;
- c. the packaging, instructions and labeling accompanying “Stiff Nights” minimized, trivialized and misled consumers, including decedent David McElwee, regarding its adverse affects;
- d. the product labeling misrepresented the benefits of “Stiff Nights”;
- e. the labeling of “Stiff Nights” failed to give adequate warning in a manner and form which could reasonably be expected to catch the attention of a reasonably prudent person;

- f. the labeling of “Stiff Nights” failed to give adequate warning in a manner and form which were comprehensible to the average user; and
- g. the labeling of “Stiff Nights” failed to convey a fair indication of the nature, frequency, severity and extent of danger.

57. As a direct and proximate result of Defendants' negligence, and each of them, jointly and severally, in the marketing of “Stiff Nights,” decedent David McElwee took, consumed, ingested and used “Stiff Nights” thereby suffering hypotension and death. Plaintiffs have lost the services, companionship, comfort, support, guidance, instruction and training of their father.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, jointly and severally, in an amount which the Court deems fair and reasonable, in excess of \$25,000.00, together with prejudgment interest and Plaintiffs' costs herein expended.

B. STRICT LIABILITY

**COUNT V—DESIGN DEFECT
(Plaintiffs v. NovaCare, L.L.C., and Impulsaria, L.L.C.)**

COME NOW Plaintiffs, and for Count V of their cause of action against Defendants, and each of them, jointly and severally, allege and state as follows:

58. Plaintiffs re-allege and incorporate by reference paragraphs one (1) through fifty-seven (57) as if fully set forth herein.

59. Defendants sold “Stiff Nights” in the course of their business.

60. At the time sold by Defendants, “Stiff Nights” was defective and unreasonably dangerous as designed when put to use in a reasonably anticipated manner in that:

- a. it contained sildenafil citrate and/or sulfoildenafil; and
- b. it consisted of chemical and/or herbal combinations, including sildenafil citrate and/or sulfoildenafil, which posed serious health risks.

61. The aforementioned design defects created an unreasonably dangerous risk of harm to persons using “Stiff Night,” including decedent David McElwee, such as headaches, heartburn, facial blushing, upset stomach, life-threatening hypotension, heart failure and sudden death.

62. Decedent David McElwee took, consumed, ingested and used “Stiff Nights” in a manner reasonably anticipated.

63. At the time David McElwee took, consumed, ingested and used “Stiff Nights,” said product was in substantially the same condition as when sold by Defendants.

64. As a direct and proximate result of the defective design of “Stiff Nights,” David McElwee suffered hypotension and ultimately died. Plaintiffs have lost the services, companionship, comfort, support, guidance, instruction and training of their father.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, jointly and severally, in an amount which the Court deems fair and reasonable, in excess of \$25,000.00, together with prejudgment interest and Plaintiffs’ costs herein expended.

COUNT VI—FAILURE TO WARN
(Plaintiffs v. Erotic City, NovaCare, L.L.C., and Impulsaria, L.L.C.)

COME NOW Plaintiffs, and for Count VI of their cause of action against Defendants, and each of them, jointly and severally, allege and state as follows:

65. Plaintiffs re-allege and incorporate by reference paragraphs one (1) through sixty-four (64) as is fully set forth herein.

66. Defendants sold “Stiff Nights” in the course of their business.

67. At the time Defendants sold “Stiff Nights,” said product was unreasonably dangerous when put to use in a reasonably anticipated manner without knowledge of its characteristics in that:

- a. it contained sildenafil citrate and/or sulfoildenafil; and
- b. it consisted of chemical and/or herbal combinations, including sildenafil citrate and/or sulfoildenafil, which posed serious health risks.

68. The aforementioned characteristics created an unreasonably dangerous risk of harm to persons using “Stiff Nights,” such as decedent David McElwee, including headaches, heartburn, facial blushing, upset stomach, life-threatening hypotension, heart failure and sudden death.

69. Defendants failed to warn or failed to adequately warn of the dangerous characteristics of “Stiff Nights” in that Defendants:

- a. failed to warn that the combination of sildenafil citrate and/or sulfoildenafil and other chemicals posed serious health risks and side effects;
- b. failed to warn that “Stiff Nights” contained sildenafil citrate and/or sulfoildenafil, an analogue of sildenafil;
- c. failed to warn that the chemical and/or herbal combinations of “Stiff Nights” posed serious health risks and side effects;

- d. failed to warn that "Stiff Nights" may interact in dangerous ways with other drugs prescribed to the consumer, including decedent David McElwee;
- e. failed to warn that "Stiff Nights" can lower blood pressure to dangerous levels;
- f. failed to warn that "Stiff Nights" had not been adequately tested;
- g. failed to warn that "Stiff Nights" was not a proprietary blend of natural herbs;
- h. failed to warn that "Stiff Nights" was not an all natural product;
- i. failed to warn that "Stiff Nights" was not a scientifically proven or medically safe way to treat erectile dysfunction;
- j. failed to warn adequately that the consumption of "Stiff Nights" with other medications should not be done; and
- k. failed to warn that "Stiff Nights" had not been approved by The Food and Drug Administration as a "drug" safe for introduction or delivery for introduction into interstate commerce or consumption by the consumer.

70. Decedent David McElwee took, consumed, ingested and used "Stiff Nights" in a manner reasonably anticipated and without knowledge of its dangerous characteristics.

71. As a direct and proximate result of Defendants' failure to warn or failure to adequately warn about the dangerous characteristics of "Stiff Nights," David McElwee

suffered hypotension and ultimately died. Plaintiffs have lost the services, companionship, comfort, support, guidance, instruction and training of their father.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, jointly and severally, in an amount which the Court deems fair and reasonable, in excess of \$25,000.00, together with prejudgment interest and Plaintiffs' costs herein expended.

COUNT VII—MARKETING DEFECT
(Plaintiffs v. Erotic City, NovaCare, L.L.C., and Impulsaria, L.L.C.)

COME NOW Plaintiffs, and for Count VII of their cause of action against Defendants, and each of them, jointly and severally, allege and state as follows:

72. Plaintiffs re-allege and incorporate by reference paragraphs one (1) through seventy-one (71) as is fully set forth herein.

73. Defendants designed, manufactured, marketed and/or sold "Stiff Nights."

74. "Stiff Nights" was defective and unreasonably dangerous in its marketing at the time it was placed into the stream of commerce by Defendants.

75. "Stiff Nights" was defective in its marketing in that:

- a. it contained inadequate, false, misleading and inaccurate precautions, warnings, instructions and/or labeling;
- b. it was not accompanied by timely, accurate, adequate, necessary or proper warnings, precautions, instructions and labeling regarding the permanent irreversible injury and complications associated with the use of the product;
- c. the packaging, instructions and labeling accompanying the product minimized, trivialized and misled consumers, including decedent David McElwee, regarding its adverse affects;

- d. the product labeling misrepresented its benefits;
- e. the labeling failed to give adequate warning in a manner and form which could reasonably be expected to catch the attention of a reasonably prudent person;
- f. the labeling failed to give adequate warning in a manner and form which were comprehensible to the average user; and
- g. the labeling failed to convey a fair indication of the nature, frequency, severity and extent of danger.

76. As a direct and proximate result of said marketing defects, decedent David McElwee was not provided necessary and adequate information to determine the defective and unreasonably dangerous characteristics of "Stiff Nights."

77. As a direct and proximate result of said marketing defects, decedent David McElwee took, consumed, ingested and used "Stiff Nights" and thereby sustained hypotension and loss of life. Plaintiffs have lost the services, companionship, comfort, support, guidance, instruction and training of their father.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, jointly and severally, in an amount which the Court deems fair and reasonable, in excess of \$25,000.00, together with prejudgment interest and Plaintiffs' costs herein expended.

C. BREACH OF WARRANTY

**COUNT VIII—BREACH OF WARRANTY
(Plaintiffs v. Erotic City, NovaCare, L.L.C., and Impulsaria, L.L.C.)**

COME NOW Plaintiffs, and for Count VIII of their cause of action against Defendants, and each of them, jointly and severally, allege and state as follows:

78. Plaintiffs re-allege and incorporate by reference paragraphs one (1) through seventy-seven (77) as is fully set forth herein.

79. Defendants designed, manufactured, marketed and/or sold "Stiff Nights."

80. Defendants marketed "Stiff Nights" as a dietary supplement which was safe for its intended use of treating and preventing erectile dysfunction, and Defendants knew that consumers, including decedent David McElwee, would purchase "Stiff Nights" for said purposes.

81. Decedent David McElwee purchased "Stiff Nights."

82. Defendants expressly and impliedly represented that "Stiff Nights":

- a. was safe for its intended purpose;
- b. was an all natural product;
- c. would prevent erectile dysfunction;
- d. was clinically proven and safe;
- e. was laboratory tested for safety;
- f. would enhance male sexual performance;
- g. would increase male sexual stamina and endurance ;
- h. had no side effects; and
- i. would help consumers treat erectile dysfunction.

83. Defendants made said representations to induce consumers, including decedent David McElwee, to purchase "Stiff Nights."

84. Decedent David McElwee reasonably relied upon Defendants' representations and judgment that "Stiff Nights" was fit and safe for its intended use in purchasing said product.

85. At the time sold, "Stiff Nights" was not fit or safe for its intended use and did not conform to the representations made by Defendants.

86. As a direct and proximate result of "Stiff Nights" being unfit for its intended use and not conforming to the representations made by Defendants, Plaintiffs sustained damages as herein alleged.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, jointly and severally, in an amount which the Court deems fair and reasonable, in excess of \$25,000.00, together with prejudgment interest and her costs herein expended.

D. PUNITIVE DAMAGES

**COUNT IX—PUNITIVE DAMAGES
(Plaintiffs v. Erotic City, NovaCare, L.L.C., and Impulsaria, L.L.C.)**

COME NOW Plaintiffs, and for Count IX of their cause of action against Defendants, and each of them, jointly and severally, allege and state as follows:

87. Plaintiffs re-allege and incorporate by reference paragraphs one (1) through eighty-six (86) as is fully set forth herein.

88. At all times herein mentioned, the conduct of Defendants was willful, wanton, and demonstrated evil motive, complete indifference to or conscious disregard for the safety of the public, including decedent David McElwee, thereby entitling the jury to assess punitive damages hereunder to deter similar or like conduct in the future.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, jointly and severally, in an amount which the Court deems fair and reasonable for punitive damages, in excess of \$25,000.00, together with prejudgment interest and her costs herein expended.

Respectfully submitted,

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