

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

KAREN CHAPLIN and JASON POLITTE,

Plaintiffs,

v.

**UNITED BRANDS PRODUCTS DESIGN
DEVELOPMENT AND MARKETING,
INC. d/b/a UNITED BRANDS
CORPORATION, et al.**

Defendants.

Case No. 20SL-CC06071

Division 21

JURY TRIAL DEMANDED

SECOND AMENDED PETITION

COME NOW Plaintiffs Karen Chaplin and Jason Politte, by and through their undersigned counsel, and for their cause of action against Defendants Trenton Geiger, Douglas Geiger, Cathy Geiger, TAUC Properties, LLC, Total Access Urgent Care 22, LLC, Coughing Cardinal, LLC, and United Brands Products Design Development and Marketing d/b/a United Brands Corporation, state as follows:

PARTIES, JURISDICTION, AND VENUE

1. At all times pertinent hereto, Plaintiff Karen Chaplin was the mother and Plaintiff Jason Politte was the father of Decedent Marissa Politte, who died on October 18, 2020. Karen Chaplin, in her capacity as the mother of Decedent, and Jason Politte, in his capacity as the father of Decedent, have standing to institute and prosecute this claim under and by virtue of Section 537.080 RSMo, which is commonly known as the Missouri “Wrongful Death Statute.”

2. At all times pertinent hereto, Defendant Trenton Geiger is and was a resident of St. Louis County, State of Missouri.

3. At all times pertinent hereto, Defendant Douglas Geiger is and was a resident of St. Louis County, State of Missouri. Defendant Douglas Geiger is the father of Defendant Trenton Geiger.

4. At all times pertinent hereto, Defendant Cathy Geiger is and was a resident of St. Louis County, State of Missouri. Defendant Cathy Geiger is the mother of Defendant Trenton Geiger.

5. At all times pertinent hereto, Defendant TAUC Properties, LLC, (“TAUC Properties”) is and was a Missouri limited liability corporation, which at all times relevant herein had an ownership and/or operational control interest in a Total Access Urgent Care medical facility located at 2501 Clarkson Road, Ballwin, Missouri (“2501 Clarkson TAUC”) and the common areas and sidewalks surrounding it.

6. At all times pertinent hereto, Defendant Total Access Urgent Care 22, LLC, (“Total Access”) is and was a Missouri limited liability corporation, which at all times relevant herein had an ownership and/or operational control interest in the 2501 Clarkson TAUC and the common areas and sidewalks surrounding it.

7. At all times pertinent hereto, Coughing Cardinal, LLC (“Coughing Cardinal”) is and was a Missouri limited liability corporation. Coughing Cardinal operates a head shop located at 2131 Barret Station Road in St. Louis County, Missouri. Coughing Cardinal sells nitrous oxide, otherwise known as whippets, to the public. Coughing Cardinal supplied the whippets used by Trenton Geiger on October 18, 2020.

8. United Brands Products Design Development and Marketing d/b/a United Brands Corporation (“United Brands”) is a California Corporation with its principal place of business in Santa Clara County, California. At all times relevant, United Brands designed, manufactured,

sold, or distributed nitrous oxide chargers under the “WhipIt!® ” trade name. United Brands designed, manufactured, sold, or distributed the “WhipIt!®” nitrous oxide chargers that are the subject of this lawsuit, including the “Whip-It” nitrous oxide chargers at issue in this lawsuit.

9. Personal Jurisdiction is proper over Defendants because Defendants are domiciled or otherwise reside in Missouri, because Defendants committed tortious actions in Missouri, because Defendants conduct substantial business in Missouri, and because Defendants entered into contracts in Missouri, and maintain minimum contacts in Missouri such that the maintenance of this lawsuit in Missouri does not offend traditional notions of fair play and substantial justice.

10. Venue is proper in this Court as the incident giving rise to this action occurred in St. Louis County, Missouri.

FACTUAL ALLEGATIONS

I. NITROUS OXIDE, OR “WHIP-ITS”: A HARMFUL AND ADDICTIVE DRUG.

11. Nitrous oxide, commonly known as laughing gas or nitrous oxide, is a colorless, odorless, non-flammable gas.

12. Nitrous oxide is manufactured and sold for various purposes including as a whipping propellant for food grade aerosols.

13. However, it is well known to the public, in particular Defendant Coughing Cardinal and Defendant United Brands, that nitrous oxide is often sold and used as an illicit drug.

14. Nitrous oxide is known as “Whip-Its” among illicit users.

15. Food-grade nitrous oxide is sold in canisters called chargers:



Figure 1 Example of a Nitrous "Cream" Charger

16. These chargers are designed, manufactured, and sold in various quantities.
17. When used illicitly, nitrous chargers are placed in “crackers” or “cream and desert whippers,” punctured, and inhaled. In some cases, nitrous oxide chargers are used to fill balloons and then inhaled.
18. Unlike medical grade nitrous oxide, food-grade nitrous oxide is not combined with oxygen, resulting in higher concentrations of pure nitrous oxide. Inhalation of high concentrations of nitrous oxide deprives the body of oxygen. Depriving the brain of oxygen can cause nerve damage, unconsciousness, and even death.
19. Inhaling nitrous oxide can result in euphoric, dissociated, and out-of-body experiences. It causes the user to get very dizzy, light-headed, and giggly. The high is brief but very intense.
20. Nitrous oxide is addictive. There are millions of users across the United States.
21. Nitrous oxide side effects include nausea, vomiting, dizziness, and B-12 deficiency which can result in numbness in fingers and toes, lung collapse, blood vessel hemorrhage in the lungs, heart attacks, seizures, comas, asphyxiation and death. The repeated use of nitrous oxide can cause serious and permanent physical and neurological injuries. Nitrous oxide has been tied to innumerable injuries and deaths.
22. Numerous innocent pedestrians like Marissa Politte have been killed by drivers addicted to and high on nitrous oxide.

23. Nitrous oxide is particularly dangerous because it is made readily available through an illicit distribution chain maintained by Defendant United Brands.

II. AN ILLICIT NITROUS OXIDE DISTRIBUTION RING ORCHESTRATED BY DEFENDANTS UNITED BRANDS, COUGHING CARDINAL, AND OTHERS.

24. United Brands, for more than 20 years, has distributed and sold nitrous oxide across the United States, including the sale of millions of chargers into Missouri.

25. United Brands, since the early 2000s, has known about the illicit market for its nitrous oxide chargers. And since that time, it has improperly and unethically sought to exploit this illicit market through their marketing and by making sales to retailers, including tobacco stores and head shops that have no plausible reason to sell food products, but rather sell only smoke inhalation products and drug paraphernalia. This includes making dozens of sales to Defendant Coughing Cardinal.

26. Prior to October 18, 2020, United Brands was well aware of the harm that is caused in the community by these unethical practices, including the fact that pedestrians have been injured and killed by individuals who purchase its nitrous oxide from a head shop or smoke shop, and operate a vehicle, with disastrous consequences.

27. Prior to October 18, 2020, United Brands had actual knowledge that multiple states' legislatures and attorney generals have attempted to close down this illicit nitrous oxide drug ring by seeking to prohibit sales of nitrous oxide by smoke shops and head shops, like Defendant Coughing Cardinal.

28. Prior to October 18, 2020, United Brands, knowing that such regulation would eat into its profits, hired lobbyists and fought against such legislative measures, and has continued to pour nitrous oxide into Missouri through head shops. This includes selling, directly and indirectly, nitrous oxide to Defendant Coughing Cardinal.

29. Coughing Cardinal is a popular head shop located in St. Louis County.

30. Coughing Cardinal sells tobacco products and items that can only be fairly characterized as drug paraphernalia, including pipes, bongos, one-hitters, roach clips, dabs, and drug detox kits.

31. Despite having actual knowledge of the nature of Defendant Coughing Cardinal's store, and knowing that Coughing Cardinal was going to sell nitrous oxide to the public for use as a recreational drug, United Brands sold outrageous quantities of nitrous oxide chargers directly to Coughing Cardinal.

32. By the sheer volume of sales, United Brands knew or should have known Coughing Cardinal was distributing its nitrous oxide as a recreational drug. United Brands continued to supply Coughing Cardinal with nitrous oxide anyway.

33. At all times relevant, Coughing Cardinal knew about the illicit market for nitrous oxide, and that its customer base would use, and be interested in, nitrous oxide as an illicit drug. Despite this knowledge, and the harm it could cause its patrons, and third parties like Marissa Politte, Coughing Cardinal chose to sell nitrous oxide to those it knew, or should have known, were purchasing the nitrous oxide to use as an illicit drug, including Defendant Trenton Geiger.

34. Prior to October 18, 2020, Defendant Trenton Geiger was, upon information and belief, addicted to nitrous oxide sold by Defendant Coughing Cardinal and United Brands.

35. Prior to October 18, 2020, Coughing Cardinal sold Whip-It! brand nitrous oxide to Trenton Geiger, though it knew or should have known he intended to inhale the nitrous for recreational use.

36. The nitrous oxide sold by Coughing Cardinal to Defendant Trenton Geiger was designed, manufactured, and/or distributed into the stream of commerce and to Coughing Cardinal by Defendant United Brands.

37. Defendant United Brands has intentionally poured illicit drugs into Missouri, with complete disregard for the safety of others, including Decedent Marissa Politte.

38. Together, United Brands and Coughing Cardinal, with deliberate and flagrant disregard for the rights of others, have operated a drug distribution ring. United Brands serves as the supplier. Coughing Cardinal serves as the drug dealer. Together, Defendant United Brands and Coughing Cardinal sold a drug they know is addictive and prone to abuse to individuals they know are using their product as a recreational drug. United Brands and Coughing Cardinal did so with an explicit profit motive, with a deliberate and flagrant disregard for the consequences.

39. On October 18, 2020, Marissa Politte suffered the consequences of Defendant United Brands and Coughing Cardinal's unconscionable scheme.

III. THE OCTOBER 18, 2020 INCIDENT

40. On October 18, 2020, Defendant Geiger, addicted to nitrous oxide, got behind the wheel of a 2004 Honda Pilot.

41. Defendant Geiger drove northbound on Clarkson Road.

42. Upon information and belief, he inhaled a Whip-it! brand nitrous oxide charger supplied to him by Defendant Coughing Cardinal and designed, manufactured, and distributed by United Brands as he drove the subject vehicle.

43. The Whip-it! caused him to pass out behind the wheel.

44. Marissa Politte was an employee working at the 2501 Clarkson TAUC.

45. Her shift ended.

46. She assembled her belongings and exited through the front door of the facility.

47. As Marissa was just outside the front door of the 2501 Clarkson TAUC, she was struck by Defendant Trenton Geiger's vehicle and pushed through the front door and into the building, causing catastrophic injuries that would ultimately lead to her death.

48. Upon arriving at the scene, police searched Trenton Geiger's vehicle, and discovered a used lime green cartridge of "Whip-It" nitrous oxide near the driver's seat along with numerous lime green cartridges of "Whip-It" nitrous oxide that were unused.

49. Also inside of Trenton Geiger's vehicle was a clear glass pipe (approximately 6 and $\frac{3}{4}$ inches in length) containing burned drug residue, a clear glass pipe (approximately 5 inches in length) containing a burned drug residue, a container with a yellow gelatinous substance, a container with a brown gelatinous substance, a black metal grinder with drug residue, a black plastic cigar cutter with drug residue, four folded pieces of wax paper containing a dried yellow substance, a butane torch, a metal pick with a brown gelatinous residue, and a glass jar containing various drug paraphernalia.

50. At the scene of the collision, Defendant Trenton Geiger admitted that as he was driving northbound on Clarkson Road, he passed out, resulting in his vehicle veering across Clarkson Road, striking Marissa, and crashing into the building.

51. Also at the scene, it was determined that Defendant Trenton Geiger had gathered additional used "Whip-It" cartridges from his car and thrown them into the woods in an attempt to destroy the evidence of his drug use immediately prior to the collision.

IV. THE NEGLIGENT ENTRUSTMENT OF THE SUBJECT VEHICLE BY DEFENDANTS DOUGLAS AND CATHY GEIGER TO DEFENDANT TRENTON GEIGER.

52. At the time of the collision, Defendant Trenton Geiger was operating the subject 2004 Honda Pilot owned by Defendants Douglas and Cathy Geiger.

53. Defendants Douglas and Cathy Geiger are the parents of 20-year-old Defendant Trenton Geiger.

54. At the time of the incident, and prior to the incident, Defendant Trenton Geiger lived with Defendants Douglas and Cathy Geiger.

55. On the day of the collision, as the parents of Defendant Trenton Geiger, and as someone that he lived with for many years, Defendants Douglas and Cathy Geiger knew, or in the exercise of due care, should have known, of Defendant Trenton Geiger's reckless and irresponsible conduct, including his addiction to nitrous oxide and drug use and drug use while operating a motor vehicle. They entrusted him with the subject vehicle anyway.

V. DEFENDANTS TAUC PROPERTIES AND/OR TOTAL ACCESS FAILURE PROPERLY DESIGN AND MAINTAIN SIDEWALKS AND ENTRANCES PURSUANT TO INDUSTRY STANDARDS.

56. Defendants TAUC Properties and/or Total Access and/or additional entities affiliated with them own and/or operate over 26 different locations of urgent care medical facilities in the metropolitan St. Louis area, each of which is branded as "Total Access Urgent Care" ("TAUC").

57. TAUC facilities are located in areas that have high volumes of vehicle traffic, often at intersections of major roads, so as to increase visibility of the business for potential customers.

58. Defendants TAUC Properties and/or Total Access and/or additional entities affiliated with them have owned and/or operated and/or maintained these medical facilities in the metropolitan St. Louis area since approximately 2008.

59. Defendants TAUC Properties and/or Total Access constructed and opened the 2501 Clarkson Road TAUC in approximately 2018.

60. The 2501 Clarkson Road TAUC is located at the intersection of Clarkson Road and Kehrs Mill Road. At this intersection, Clarkson Road has 7 lanes of traffic and Kehrs Mill Road has 5 lanes of traffic.

61. Thousands of cars go through this intersection every day and hundreds of accidents occur each year at this intersection and in the area surrounding the intersection.

62. The front door entrance to the 2501 Clarkson Road TAUC, which is where TAUC staff, customers, and patients enter and leave the facility, is located less than 29 yards from the roadway in certain areas.

63. The crash at 2501 Clarkson Road TAUC was not the first time a vehicle had crashed into a TAUC medical facility.

64. Vehicles crash into storefronts, commercial buildings, and pedestrian areas more than 60 times every day in the United States, with as many as 500 deaths and more than 4000 injured each year. Defendants TAUC Properties and/or Total Access knew, or should have known, these facts before October 18, 2020.

65. As of October 18, 2020, the City of Ballwin, Missouri had adopted by ordinance passed in 2018 the 2015 International Property Maintenance Code (“Code”).

66. Section 101.2 of the Code provides, in pertinent part: 101.2 Scope. The provisions of this code shall apply to all existing ...nonresidential structures and all existing premises and constitute minimum requirements and standards for premises,...and for a reasonable level of safety from...hazards;...the responsibility of owners, an owner’s authorized agent, operators and occupants;....

67. Section 101.3 of the Code provides: 101.3 Intent. This code shall be construed to secure its expressed intent, which is to ensure public health, safety, and welfare insofar as they are

affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein

68. Section 102.2 of the Code provides, in pertinent part: 102.2 Maintenance...Except as otherwise specified herein, the owner or the owner's authorized agent shall be responsible for the maintenance of buildings, structures and premises.

69. Section 301.2 of the Code provides, in pertinent part: 301.2 Responsibility. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises that are not in a...safe condition....Occupants are responsible for keeping in a...safe condition that part of the premises which they occupy and control.

70. Section 302.3 of the Code provides, in pertinent part: 302.3 Sidewalks and driveways. Sidewalks, walkways...parking spaces and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions.

71. Due to the building's close proximity to the busy intersection, as well as past incidents of vehicles crashing into TAUC facilities, Defendants TAUC Properties and Total Access knew, or should have known, there was a risk to its customers, patients, and staff of a vehicle entering the sidewalks, common areas, or crashing into the 2501 Clarkson Road TAUC.

72. Despite this knowledge, no barriers such as bollard posts or other architectural items were erected along the sidewalk or in front of the entrance to prevent vehicles from entering the sidewalks, common areas, or crashing into the 2501 Clarkson Road TAUC building. Such barriers were necessary to provide and maintain the premises free from hazardous conditions.

73. Defendants TAUC Properties and Total Access took no additional actions to maintain the property free from hazardous conditions and protect customers, patients, and employees of the TAUC from foreseeable risk of injury and death from vehicles.

74. Defendants TAUC Properties and Total Access knew or should have known its customers, patients, and employees at the 2501 Clarkson Road TAUC were at risk of injury and death from vehicles entering the sidewalks, common areas, or crashing into one of its buildings years before October 18, 2020.

75. Defendants TAUC Properties and Total Access knew or should have known before October 18, 2020 that having the main entrance to the 2501 Clarkson Road TAUC less than 30 yards from a busy intersection with no barriers to prevent vehicle incursion onto the sidewalk or into the medical facility was an unsafe, hazardous condition that unnecessarily and unreasonably endangered customers, patients, and employees inside the facility and those on the sidewalk outside of the facility.

76. As a direct and proximate result of the negligence of Defendants, Decedent Marissa Politte was struck and killed, and suffered substantial conscious pain and suffering between the time of the incident and her death later at the hospital.

COUNT I - NEGLIGENCE

UNITED BRANDS

77. Plaintiffs incorporate the above allegations as though fully set forth herein.

78. At all times relevant, Defendant United Brands owed the public, including Decedent, a duty to exercise reasonable care in designing, manufacturing, marketing, supplying, selling, leasing, or otherwise distributing and placing in the stream of commerce nitrous oxide chargers, including the WhipIt!® branded nitrous oxide chargers at issue in this lawsuit.

79. Defendant United Brands sold and distributed WhipIt!® branded nitrous oxide chargers in the regular course of its business throughout the United States, including into Missouri.

80. Defendant United Brands failed to exercise ordinary care thereby breaching its duty owed to Plaintiff in others in one or more of the following respects:

- a. Defendant United Brands negligently and carelessly supplied nitrous oxide chargers to Coughing Cardinal for use as a recreational drug;
- b. Defendant United Brands negligently and carelessly supplied nitrous oxide chargers to Coughing Cardinal when it knew or should have known Coughing Cardinal was reselling the nitrous oxide as a recreational drug;
- c. Defendant United Brands negligently and carelessly supplied Coughing Cardinal with obscene amounts of nitrous oxide that indicated Coughing Cardinal was reselling nitrous oxide as a recreational drug;
- d. Defendant United Brands negligently and carelessly promoted and encouraged the recreational nitrous oxide use;
- e. Defendant United Brands negligently and carelessly targeted, through their internet and social media advertising, potential users of recreational nitrous oxide use, including the demographic of Defendant Trenton Geiger;
- f. Defendant negligently and carelessly marketed nitrous oxide with items associated with drug culture, including butane torches, in packaging and merchandise suggestive of recreational use;
- g. Defendant negligently and carelessly failed to adequately warn, instruct, or direct consumers about the consequences of inhaling nitrous oxide; and
- h. Such further negligence and carelessness as discovery and the evidence will reveal.

81. Defendant United Brands had actual knowledge that its distribution chain, including its end retail customers like Coughing Cardinal, were purchasing nitrous oxide with intent to redistribute it to customers like Defendant Trenton Geiger for use as a recreational drug, and with flagrant and willful disregard for the consequences, continuously supplied Coughing Cardinal with nitrous oxide.

82. Defendant United Brands knew or should have known that injury and death was substantially likely to occur as a result of the intentional, reckless, and careless acts or omissions as described above.

83. As a direct and proximate result of the negligence of Defendant United Brands, Decedent Marissa Politte sustained catastrophic injuries to her head and body that lead to her death, as well as conscious pain and suffering from the time of injury to the time of her death.

84. As a direct and proximate result of the negligence of Defendant United Brands, pursuant to § 537.090 RSMo., Plaintiffs are entitled to recover damages that the Decedent suffered between the time of injury and the time of death and for the recovery of which she might have maintained an action had death not ensued, including pain and suffering from the time of the injury to the time of death; pecuniary losses suffered by reason of her death; funeral expenses; the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death; and mitigating or aggravating circumstances.

85. The aforesaid acts, omissions and/or representations of Defendant united Brands were outrageous and showed a complete indifference and/or conscious and reckless disregard for the rights and/or safety of the Decedent, and therefore, Plaintiffs are entitled to punitive damages from Defendant United Brands to punish and to deter Defendant and others from similar conduct in the future.

WHEREFORE, Plaintiff prays for judgment against Defendant United Brands for a fair and reasonable amount in excess of twenty-five thousand dollars (\$25,000.00), for punitive damages, for costs herein incurred, prejudgment interest, post judgment interest, and for such further relief as may be just and proper under the circumstances.

COUNT II - STRICT PRODUCTS LIABILITY

UNITED BRANDS

86. Plaintiffs incorporate the above allegations as though fully set forth herein.

87. The WhipIt!® nitrous oxide chargers were designed, manufactured, assembled, inspected, marketed, sold, and otherwise distributed by United Brands in the regular course of its business.

88. At the time of Decedent's injuries and death, the subject nitrous oxide chargers were in a defective condition and were unreasonably dangerous when put to their reasonably anticipated use in that:

- a. The subject nitrous oxide chargers were sold for recreational use;
- b. The subject nitrous oxide chargers were designed to promote recreational use;
- c. The subject nitrous oxide chargers were of inappropriate size;
- d. The subject nitrous oxide chargers were provided to consumers in unreasonable quantities;
- e. The subject nitrous oxide chargers are addictive;
- f. The subject nitrous oxide chargers failed to contain adequate guarding which allows for repetitive recreational use;
- g. The subject nitrous oxide chargers failed to incorporate abuse-deterrent designs;
- h. The subject nitrous oxide chargers failed to contain an adequate warning; and
- i. Such further defects as discovery and the evidence shall reveal.

89. As a direct and proximate result of the negligence of Defendant United Brands, Decedent Marissa Politte sustained catastrophic injuries to her head and body that lead to her death, as well as conscious pain and suffering from the time of injury to the time of her death.

90. As a direct and proximate result of the negligence of Defendant United Brands, pursuant to § 537.090 RSMo., Plaintiffs are entitled to recover damages that the Decedent suffered between the time of injury and the time of death and for the recovery of which she might have maintained an action had death not ensued, including pain and suffering from the time of the injury to the time of death; pecuniary losses suffered by reason of her death; funeral expenses; the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death; and mitigating or aggravating circumstances.

91. The aforesaid acts, omissions and/or representations of Defendant united Brands were outrageous and showed a complete indifference and/or conscious and reckless disregard for the rights and/or safety of the Decedent, and therefore, Plaintiffs are entitled to punitive damages from Defendant United Brands to punish and to deter Defendant and others from similar conduct in the future.

WHEREFORE, Plaintiff prays for judgment against Defendant United Brands for a fair and reasonable amount in excess of twenty-five thousand dollars (\$25,000.00), for punitive damages, for costs herein incurred, prejudgment interest, post judgment interest, and for such further relief as may be just and proper under the circumstances.

COUNT III – NEGLIGENCE

COUGHING CARDINAL

92. At all times relevant, Defendant Coughing Cardinal owed the public, including Decedent, a duty to exercise reasonable care in designing, manufacturing, marketing, supplying, selling, leasing, or otherwise distributing and placing in the stream of commerce nitrous oxide

chargers and paraphernalia, including the WhipIt!® nitrous oxide chargers and paraphernalia at issue in this lawsuit.

93. Defendant Coughing Cardinal sold and distributed WhipIt!® nitrous oxide chargers and drug paraphernalia in the regular course of its business.

94. Defendant Coughing Cardinal failed to exercise ordinary care thereby breaching its duty to Plaintiff and others in one or more of the following respects:

- a. Defendant negligently and carelessly dispensed nitrous oxide chargers;
- b. Defendant negligently and carelessly dispensed nitrous oxide chargers when it knew or had reason to know that they were going to be used as a recreational drug;
- c. Defendant negligently and carelessly dispensed nitrous oxide chargers with reckless disregard as to whether the substance was likely to be consumed by the person to whom it is supplied as a recreational drug;
- d. Defendant negligently and carelessly sold nitrous oxide and drug paraphernalia for recreational use;
- e. Defendant negligently and carelessly distributed nitrous oxide chargers and drug paraphernalia;
- f. Defendant negligently and carelessly distributed nitrous oxide chargers abreast drug paraphernalia, promoting and encouraging nitrous oxide abuse;
- g. Defendant negligently and carelessly purchased nitrous oxide chargers and paraphernalia with the intent to market and distribute these items for illicit and recreational purposes;
- h. Defendant negligently and carelessly failed to institute and maintain adequate policies and procedures for ensuring the nitrous oxide chargers it sold were not utilized for illicit purposes;
- i. Defendant negligently and carelessly promoted and encouraged abuse of nitrous oxide;
- j. Defendant negligently and carelessly marketed, distributed, and/or sold defectively designed and unreasonably dangerous nitrous oxide containers;
- k. Defendant negligently and carelessly marketed, distributed, and/or sold nitrous oxide containers with labels that are false and misleading;

- l. Defendant negligently and careless failed to adequately warn, instruct, or direct consumers not to inhale or consume nitrous oxide; and
- m. Such further negligence as discovery in the evidence will reveal.

95. Defendant Coughing Cardinal knew or should have known that its customers, including Defendant Trenton Geiger, were purchasing its nitrous oxide with the intent to use as a recreational drug. Defendant nonetheless persisted in selling and distributing nitrous oxide chargers to Defendant Trenton Geiger and the public with reckless disregard as to whether it was likely to be consumed by Plaintiff for as a recreational drug.

96. Defendant Coughing Cardinal knew or should have known that death or severe bodily injury was substantially likely to occur as a result of the intentional, reckless, and careless acts or omissions as described above.

97. As a direct and proximate result of the negligence of Defendant Coughing Cardinal, Decedent Marissa Politte sustained catastrophic injuries to her head and body that lead to her death, as well as conscious pain and suffering from the time of injury to the time of her death.

98. As a direct and proximate result of the negligence of Defendant Coughing Cardinal, pursuant to § 537.090 RSMo., Plaintiffs are entitled to recover damages that the Decedent suffered between the time of injury and the time of death and for the recovery of which she might have maintained an action had death not ensued, including pain and suffering from the time of the injury to the time of death; pecuniary losses suffered by reason of her death; funeral expenses; the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death; and mitigating or aggravating circumstances.

99. The aforesaid acts, omissions and/or representations of Defendant Coughing Cardinal were outrageous and showed a complete indifference and/or conscious and reckless

disregard for the rights and/or safety of the Decedent, and therefore, Plaintiffs are entitled to punitive damages from Defendant Coughing Cardinal to punish and to deter Defendant and others from similar conduct in the future.

WHEREFORE, Plaintiff prays for judgment against Defendant Coughing Cardinal for a fair and reasonable amount in excess of twenty-five thousand dollars (\$25,000.00), for punitive damages, for costs herein incurred, prejudgment interest, post judgment interest, and for such further relief as may be just and proper under the circumstances.

COUNT IV - STRICT PRODUCTS LIABILITY

COUGHING CARDINAL

100. Plaintiffs incorporate the above allegations as though fully set forth herein.

101. The WhipIt!® nitrous oxide chargers were designed, manufactured, assembled, inspected, marketed, sold, and otherwise distributed by Defendant Coughing Cardinal in the regular course of its business.

102. At the time of Decedent's injuries and death, the subject nitrous oxide chargers were in a defective condition and were unreasonably dangerous when put to their reasonably anticipated use in that:

- a. The subject nitrous oxide chargers were sold for recreational use;
- b. The subject nitrous oxide chargers were designed to promote recreational use;
- c. The subject nitrous oxide chargers were of inappropriate size;
- d. The subject nitrous oxide chargers were provided to consumers in unreasonable quantities;
- e. The subject nitrous oxide chargers are addictive;
- f. The subject nitrous oxide chargers failed to contain adequate guarding which allows for repetitive recreational use;

- g. The subject nitrous oxide chargers failed to incorporate abuse-deterrent designs;
- h. The subject nitrous oxide chargers failed to contain an adequate warning; and
- i. Such further defects as discovery and the evidence shall reveal.

103. As a direct and proximate result of the negligence of Defendant Coughing Cardinal, Decedent Marissa Politte sustained catastrophic injuries to her head and body that lead to her death, as well as conscious pain and suffering from the time of injury to the time of her death.

104. As a direct and proximate result of the negligence of Defendant Coughing Cardinal, pursuant to § 537.090 RSMo., Plaintiffs are entitled to recover damages that the Decedent suffered between the time of injury and the time of death and for the recovery of which she might have maintained an action had death not ensued, including pain and suffering from the time of the injury to the time of death; pecuniary losses suffered by reason of her death; funeral expenses; the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death; and mitigating or aggravating circumstances.

105. The aforesaid acts, omissions and/or representations of Defendant Coughing Cardinal were outrageous and showed a complete indifference and/or conscious and reckless disregard for the rights and/or safety of the Decedent, and therefore, Plaintiffs are entitled to punitive damages from Defendant Coughing Cardinal to punish and to deter Defendant and others from similar conduct in the future.

WHEREFORE, Plaintiff prays for judgment against Defendant Coughing Cardinal for a fair and reasonable amount in excess of twenty-five thousand dollars (\$25,000.00), for punitive

damages, for costs herein incurred, prejudgment interest, post judgment interest, and for such further relief as may be just and proper under the circumstances.

COUNT V - CIVIL CONSPIRACY

UNITED BRANDS AND COUGHING CARDINAL

106. Plaintiffs incorporate the above allegations as though fully set forth herein.

107. Defendants United Brands and Coughing Cardinal, and each of them, acting individually, jointly, and concurrently, conspired and agreed to commit the acts alleged in Counts I through V.

108. There may be additional person or entities who together conspired with Defendants United Brands and Coughing Cardinal to commit the acts alleged in Counts I through V but they are not joined here as their identities are not yet known.

109. Defendants, and each of them, reaped financial gain from the acts alleged in Counts I through V, which was the object of Defendants' course of action.

110. Defendants had a meeting of the minds on the object of the course of action.

111. To further the conspiracy, Defendants, and each of them, also committed an unlawful action in that Defendants knowingly and deceptively distributed nitrous oxide to the public knowing and intending that it was going to be sold and used for as a recreational drug.

112. As a result of Defendants collective actions, taken in furtherance of the above conspiracy, Defendant Trenton Geiger was able to purchase nitrous oxide chargers from Defendants for recreational purposes.

113. Defendants reaped financial gain through their unlawful actions in an amount to be determined.

114. As a direct and proximate result of Defendants' civil conspiracy, Decedent died and Plaintiffs and others suffered damages as set forth in this Petition, *supra*.

115. As a direct and proximate result of the negligence of Defendant Trenton Geiger, pursuant to § 537.090 RSMo., Plaintiffs are entitled to recover damages that the Decedent suffered between the time of injury and the time of death and for the recovery of which she might have maintained an action had death not ensued, including pain and suffering from the time of the injury to the time of death; pecuniary losses suffered by reason of her death; funeral expenses; the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death; and mitigating or aggravating circumstances.

116. The above acts of Defendants which constitute a civil conspiracy were carried out willfully, wantonly, intentionally, and maliciously, and with a conscious reckless disregard for the safety of the general public, including Plaintiff, thus justifying and requiring punitive damages to be assessed against Defendants in a sum that will deter Defendants and others from such misconduct in the future.

WHEREFORE, Plaintiff prays for judgment against Defendants for a fair and reasonable amount in excess of twenty-five thousand dollars (\$25,000.00), for punitive damages, costs herein incurred, prejudgment interest, post judgment interest, and for such other and further relief as may be just and proper.

COUNT VII – NEGLIGENCE

TRENTON GEIGER

117. Plaintiffs incorporate the above allegations as though fully set forth herein.

118. The aforesaid incident and resulting injuries to Decedent Marissa Politte and damages sustained by Plaintiffs were directly and proximately caused or contributed to be caused by the negligence and carelessness of Defendant Trenton Geiger in the operation, maintenance and control of his vehicle in the following respects:

- a. Defendant failed to keep a careful and adequate lookout; and/or
- b. Defendant operated his vehicle while impaired and/or under the influence of drugs; and/or
- c. Defendant failed to keep his vehicle in his lane of traffic; and/or
- d. Defendant drove his vehicle at a speed too fast for the conditions then and there existing; and/or
- e. Defendant drove his vehicle onto an area reserved for pedestrians; and/or
- f. Defendant failed to exercise the highest degree of care while operating his motor vehicle.

119. As a direct and proximate result of the negligence of Defendant Trenton Geiger, Decedent Marissa Politte sustained catastrophic injuries to her head and body that lead to her death, as well as conscious pain and suffering from the time of injury to the time of her death.

120. As a direct and proximate result of the negligence of Defendant Trenton Geiger, pursuant to § 537.090 RSMo., Plaintiffs are entitled to recover damages that the Decedent suffered between the time of injury and the time of death and for the recovery of which she might have maintained an action had death not ensued, including pain and suffering from the time of the injury to the time of death; pecuniary losses suffered by reason of her death; funeral expenses; the reasonable value of the services, consortium, companionship, comfort, instruction, guidance,

counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death; and mitigating or aggravating circumstances.

121. The aforesaid acts, omissions and/or representations of Defendant Trenton Geiger were outrageous and showed a complete indifference and/or reckless disregard for the rights and/or safety of the Decedent, and therefore, Plaintiff are entitled to punitive damages from Defendant Trenton Geiger to punish and to deter Defendant and others from like conduct.

WHEREFORE, Plaintiffs pray for judgement against Defendant Trenton Geiger in a just and reasonable sum in excess of Twenty-Five Thousand Dollars (\$25,000.00) together, for costs expended herein, for punitive damages, for pre and post judgment interest, and for such other and further relief as the Court deems just and proper.

COUNT VIII - NEGLIGENT ENTRUSTMENT AGAINST

DOUGLAS GEIGER AND CATHY GEIGER

122. Plaintiffs incorporate the above allegations as though fully set forth herein.

123. On October 18, 2020, Defendant Trenton Geiger was operating a motor vehicle owned by Defendants Douglas Geiger and Cathy Geiger.

124. On October 18, 2020 Defendant Trenton Geiger was incompetent by reason of his habitual recklessness, including his habitual use of and addiction to drugs and use of drugs while operating a motor vehicle, including the motor vehicle owned by Defendants Douglas Geiger and Cathy Geiger.

125. As the parents of Defendant Trenton Geiger, and as individuals that lived in the same household as Defendant Trenton Geiger, Defendants Douglas Geiger and Cathy Geiger knew or should have known of Defendant Trenton Geiger's incompetence.

126. Despite such knowledge, on October 18, 2020 Defendants Douglas Geiger and Cathy Geiger entrusted Defendant with a 2004 Honda Pilot that they owned.

127. On October 18, 2020 Defendant Trenton Geiger operated the vehicle owned by Defendants Douglas Geiger and Cathy Geiger while under the influence of drugs, in keeping with the incompetence that was known or should have been known of by Defendants Douglas Geiger and Cathy Geiger.

128. While under the influence of drugs and operating Defendants' motor vehicle, Defendant Trenton Geiger struck Decedent Marissa Politte with the vehicle, pushing her through the front door of the TAUC and into the building, causing catastrophic injuries that would ultimately lead to her death.

129. The aforesaid incident and resulting injuries to Decedent Marissa Politte and damages sustained by Plaintiffs were directly and proximately caused or contributed to be caused by the negligence of Defendants Douglas and Cathy Geiger in their negligent entrustment of their 2004 Honda Pilot to Defendant Trenton Geiger.

130. As a direct and proximate result of the negligence of Defendants Douglas Geiger and Cathy Geiger, Decedent Marissa Politte sustained catastrophic injuries to her head and body that lead to her death, as well as conscious pain and suffering from the time of injury to the time of her death.

131. As a direct and proximate result of the negligence of Defendants Douglas Geiger and Cathy Geiger, pursuant to § 537.090 RSMo., Plaintiffs are entitled to recover damages that the Decedent suffered between the time of injury and the time of death and for the recovery of which she might have maintained an action had death not ensued, including pain and suffering from the time of the injury to the time of death; pecuniary losses suffered by reason of her death;

funeral expenses; the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death; and mitigating or aggravating circumstances.

WHEREFORE, Plaintiff prays for judgment against Defendants for a fair and reasonable amount in excess of twenty-five thousand dollars (\$25,000.00), for punitive damages, costs herein incurred, prejudgment interest, post judgment interest, and for such other and further relief as may be just and proper.

COUNT IX - NEGLIGENCE

TAUC PROPERTIES

132. Plaintiffs incorporate the above allegations as though fully set forth herein.

133. At all times pertinent hereto, Defendant TAUC Properties was engaged in the business of owning, operating, and maintaining medical facilities in the State of Missouri that individually and/or jointly with others, owned, operated, and/or maintained the 2501 Clarkson TAUC.

134. On October 18, 2020 Defendant TAUC Properties, by and through its employees and agents, was responsible for the maintenance, design, and construction of the parking lots, sidewalks, and common areas at the 2501 Clarkson TAUC, including keeping the sidewalks, walkways, parking spaces and similar areas in a proper state of repair and maintained free from hazardous conditions.

135. Due to the close proximity to a busy intersection, as well as past incidents of vehicles crashing into TAUC facilities, Defendant TAUC Properties knew or should have known there was a risk to its customers, patients, and staff of a vehicle entering the sidewalks, common areas, or crashing into the 2501 Clarkson TAUC building.

136. Despite this knowledge, no barriers such as bollard posts or other architectural items were erected along the sidewalk or in front of the entrance to prevent vehicles from entering the sidewalks, common areas, or crashing into the 2501 Clarkson TAUC building. Such barriers were necessary to provide and maintain the premises free from hazardous conditions.

137. Defendant TAUC Properties took no additional actions to maintain the property free from hazardous conditions and protect customers, patients, and employees of the 2501 Clarkson TAUC from foreseeable risk of injury and death from vehicles.

138. Defendant TAUC Properties knew or should have known its customers, patients, and employees at the TAUC were at risk of injury and death from vehicles entering the sidewalks, common areas, or crashing into one of its buildings years before October 18, 2020.

139. Defendant TAUC Properties knew or should have known before October 18, 2020 that having the main entrance to the 2501 Clarkson Road TAUC less than 30 yards from a busy intersection with no barriers to prevent vehicle incursion onto the sidewalk or into the medical facility was an unsafe, hazardous condition that unnecessarily and unreasonably endangered customers, patients, and employees inside the facility and those on the sidewalk outside of the facility.

140. Defendant TAUC Properties was negligent by reason of one or more of the following acts or omissions, each of which directly and proximately caused or contributed to cause the aforesaid incident and Decedent's injuries and death and Plaintiffs' damages in the following manner:

- a. Defendant TAUC Properties failed to erect bollards, barriers, or other architectural items designed to protect against vehicle intrusions onto the sidewalks, common areas, or crashing into 2501 Clarkson Road TAUC; and/or

- b. Defendant TAUC Properties failed to maintain 2501 Clarkson Road TAUC in a condition to keep it free from hazardous conditions that posed a danger to customers, patients, and staff of 2501 Clarkson Road TAUC; and/or
- c. Defendant TAUC Properties failed to protect customers, patients, and staff of 2501 Clarkson Road TAUC from hazardous conditions; and/or
- d. Defendant TAUC Properties failed to warn customers, patients, and staff of 2501 Clarkson Road TAUC of hazardous conditions of the property; and/or
- e. Defendant TAUC Properties failed to inspect the sidewalks and common areas surrounding 2501 Clarkson Road TAUC for dangerous and hazardous conditions, including the area in which Decedent Marissa Politte was struck by a vehicle driven by Defendant Trenton Geiger.

141. As a direct and proximate result of the negligence of Defendant TAUC Properties, Decedent Marissa Politte sustained catastrophic injuries to her head and body that lead to her death, as well as conscious pain and suffering from the time of injury to the time of her death.

142. As a direct and proximate result of the negligence of Defendant TAUC Properties, pursuant to § 537.090 RSMo., Plaintiffs are entitled to recover damages that the Decedent suffered between the time of injury and the time of death and for the recovery of which she might have maintained an action had death not ensued, including pain and suffering from the time of the injury to the time of death; pecuniary losses suffered by reason of her death; funeral expenses; the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death; and mitigating or aggravating circumstances.

WHEREFORE, Plaintiff prays for judgment against Defendant TAUC for a fair and reasonable amount in excess of twenty-five thousand dollars (\$25,000.00), for punitive damages, costs herein incurred, prejudgment interest, post judgment interest, and for such other and further relief as may be just and proper.

COUNT X - NEGLIGENCE

TOTAL ACCESS URGENT CARE LLC 22

143. Plaintiffs incorporate the allegations as though fully set forth herein.

144. At all times pertinent hereto, Defendant Total Access was engaged in the business of owning, operating, and maintaining medical facilities in the State of Missouri that individually and/or jointly with others, owned, operated, and/or maintained the 2501 Clarkson TAUC.

145. On October 18, 2020 Defendant Total Access, by and through its employees and agents, was responsible for the maintenance, design, and construction of the parking lots, sidewalks, and common areas at the 2501 Clarkson TAUC, including keeping the sidewalks, walkways, parking spaces and similar areas in a proper state of repair and maintained free from hazardous conditions.

146. Due to the close proximity to a busy intersection, as well as past incidents of vehicles crashing into TAUC facilities, Defendant Total Access knew or should have known there was a risk to its customers, patients, and staff of a vehicle entering the sidewalks, common areas, or crashing into the 2501 Clarkson TAUC building.

147. Despite this knowledge, no barriers such as bollard posts or other architectural items were erected along the sidewalk or in front of the entrance to prevent vehicles from entering the sidewalks, common areas, or crashing into the 2501 Clarkson Road TAUC building. Such barriers were necessary to provide and maintain the premises free from hazardous conditions.

148. Defendant Total Access took no additional actions to maintain the property free from hazardous conditions and protect customers, patients, and employees of the 2501 Clarkson TAUC from foreseeable risk of injury and death from vehicles.

149. Defendant Total Access knew or should have known its customers, patients, and employees at the were at risk of injury and death from vehicles entering the sidewalks, common areas, or crashing into one of its buildings years before October 18, 2020.

150. Defendant Total Access knew or should have known before October 18, 2020 that having the main entrance to the 2501 Clarkson Road TAUC less than 90 feet from a busy intersection with no barriers to prevent vehicle incursion onto the sidewalk or into the medical facility was an unsafe, hazardous condition that unnecessarily and unreasonably endangered customers, patients, and employees inside the facility and those on the sidewalk outside of the facility.

151. Defendant Total Access was negligent by reason of one or more of the following acts or omissions, each of which directly and proximately caused or contributed to cause the aforesaid incident and Decedent's injuries and death and Plaintiffs' damages in the following manner:

- a. Defendant Total Access failed to erect bollards, barriers, or other architectural items designed to protect against vehicle intrusions onto the sidewalks, common areas, or crashing into 2501 Clarkson Road TAUC; and/or
- b. Defendant Total Access failed to maintain 2501 Clarkson Road TAUC in a condition to keep it free from hazardous conditions that posed a danger to customers, patients, and staff of 2501 Clarkson Road TAUC; and/or
- c. Defendant Total Access failed to protect customers, patients, and staff of 2501 Clarkson Road TAUC from hazardous conditions; and/or
- d. Defendant Total Access failed to warn customers, patients, and staff of 2501 Clarkson Road TAUC of hazardous conditions of the property; and/or
- e. Defendant Total Access failed to inspect the sidewalks and common areas surrounding 2501 Clarkson Road TAUC for dangerous and hazardous conditions, including the area in which Decedent Marissa Politte was struck by a vehicle driven by Defendant Trenton Geiger.

152. As a direct and proximate result of the negligence of Defendant Total Access, Decedent Marissa Politte sustained catastrophic injuries to her head and body that lead to her death, as well as conscious pain and suffering from the time of injury to the time of her death.

153. As a direct and proximate result of the negligence of Defendant Total Access, pursuant to § 537.090 RSMo., Plaintiffs are entitled to recover damages that the Decedent suffered between the time of injury and the time of death and for the recovery of which she might have maintained an action had death not ensued, including pain and suffering from the time of the injury to the time of death; pecuniary losses suffered by reason of her death; funeral expenses; the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death; and mitigating or aggravating circumstances.

WHEREFORE, Plaintiff prays for judgment against Defendant Total Access for a fair and reasonable amount in excess of twenty-five thousand dollars (\$25,000.00), for punitive damages, costs herein incurred, prejudgment interest, post judgment interest, and for such other and further relief as may be just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon all counsel of record via the Missouri Court's ECF system on July 12, 2023.

/s/ John M. Simon _____