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Candy Russell Clrk
Case Number:20CI0125
Judge:MCCARTHY, GEORGE P

IN THE COMMON PLEAS COURT OF ATHENS COUNTY, OHIO

Wade Wiant and Kathleen Wiant as Co-Administrators of the Estate of Collin Lewis Wiant c/o Cooper & Elliott, LLC 2175 Riverside Drive Columbus, Ohio 43221,	:	**Case No.**
	:	**Judge**
Plaintiff,	:	
v.	:	
	:	**JURY DEMAND ENDORSED HEREON**
Silver Serpent, LLC c/o Joshua A. Liles, Registered Agent 202 East Central Avenue Miamisburg, Ohio 45342	:	
and	:	
James D. Wanke 55 North Court Street Athens, Ohio 45701	:	
and	:	
Stephan B. Lewis 13867 Tinker Street Murray City, Ohio 43144	:	
and	:	
John or Jane Doe Defendants Who Sold or Participated in the Sale of the Substances to Mr. Androsac,	:	
Defendants.	:	

COMPLAINT

This case arises from the wrongful death of Collin Wiant, a student at Ohio University. On or about November 11, 2018, the Silver Serpent, by and through its agents, owners, and/or employees, negligently and/or recklessly sold the nitrous oxide that proximately caused the death of Collin Wiant.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, The Estate of Collin Lewis Wiant, was opened in Franklin County, Ohio and Wade and Kathleen Wiant have been appointed as Co-Administrators by the Franklin County Probate Court. Wade and Kathleen Wiant are Collin's parents. Collin is also survived by his four siblings.

2. Defendant Silver Serpent, LLC is an Ohio limited liability company with its principal place of business at 55 North Court Street, Athens, Ohio 45701. Silver Serpent is a late-night market located in Athens, Ohio that sells tobacco products, vape accessories, local art, and nitrous oxide.

3. Defendant James D. Wanke is an Ohio resident who was employed by Silver Serpent on or about November 11, 2018 and sold or participated in the improper sale of nitrous oxide to Ohio University student Joshua Androsac. At all times relevant hereto, Defendant Wanke was an employee and agent of and acting for, under the direction of, and on behalf of Silver Serpent, LLC.

4. Defendant Stephan B. Lewis is an Ohio resident who was employed by Silver Serpent on or about November 11, 2018 and sold or participated in the improper sale of nitrous oxide to Mr. Androsac. At all times relevant hereto, Defendant Lewis was an employee and agent of and acting for, under the direction of, and on behalf of Silver Serpent, LLC.

5. The term "Silver Serpent" below is used collectively to refer to all defendants.

6. John and Jane Doe defendants are those individuals as of now unidentified who sold or participated in the improper sale of nitrous oxide to Mr. Androsac.

7. This Court has jurisdiction over the parties and this case because the events giving rise to this lawsuit occurred in Athens County; defendants reside and/or conduct business in Athens County; and the acts giving rise to this case occurred in Athens County.

8. Venue is proper in this Court because defendants resides in and/or conduct business in Athens County and the events giving rise to this action occurred in Athens County, Ohio.

BACKGROUND FACTS

9. On or about November 11, 2018, Silver Serpent sold nitrous oxide, also called "whippets," to Joshua Androsac.

10. At the time Silver Serpent sold, dispensed and/or distributed the nitrous oxide to Androsac, Androsac was under age twenty-one.

11. Androsac did not purchase the nitrous oxide for any lawful medical, dental, or clinical purpose.

12. Silver Serpent negligently and/or recklessly failed to take steps to ensure that Mr. Androsac was at least 21 years old – the minimum required age to legally purchase nitrous oxide in the State of Ohio – before selling him the "whippets."

13. A reasonably prudent person in defendants' position would have anticipated that it was likely that Mr. Androsac would dispense and/or distribute the nitrous oxide he purchased from the Silver Serpent to other persons under the age of 21 years old, and that such act created a likelihood of harm or injury to those persons.

14. The nitrous oxide sold by the Silver Serpent was dispensed and/or distributed to Collin Wiant.

15. Shortly after the nitrous oxide was dispensed and/or distributed to Collin Wiant, Collin started having trouble breathing.

16. At approximately 2:50 a.m. on November 12, 2018, a 911 call was made indicating that Collin Wiant was unresponsive inside the house at 45 Mill Street in Athens, Ohio.

17. Collin Wiant died shortly after the 911 call was made. His body was found surrounded by drug paraphernalia, including cannisters of nitrous oxide.

18. The toxicology report shows that Collin Wiant died of asphyxiation due to nitrous oxide ingestion.

19. The nitrous oxide that caused Collin Wiant's death were sold by Silver Serpent.

20. On November 18, 2019, Silver Serpent was charged in connection with Collin's death.

COUNT ONE – NEGLIGENCE PER SE
(Against All Defendants)

21. Plaintiff repeats and realleges the preceding paragraphs as if fully rewritten herein.

22. R.C. § 2925.32(B)(2)—entitled trafficking in harmful intoxicants – improperly dispensing or distributing nitrous oxide—provides that "[e]xcept for lawful medical, dental, or clinical purposes, no person shall knowingly dispense or distribute nitrous oxide to a person under age twenty-one."

23. R.C. § 3719.01(E) defines the term "dispense" as "sell, leave with, give away, dispose of, or deliver."

24. R.C. § 3719.01(F) defines the term "distribute" as "to deal in, ship, transport, or deliver…"

25. In violation of R.C. § 2925.32(B)(2), Silver Serpent dispensed and/or distributed nitrous oxide to Joshua Androsac on or about November 11, 2018.

26. Joshua Androsac's date of birth is May 5, 1999. He was under age twenty-one at the time Silver Serpent dispensed the nitrous oxide.

27. The nitrous oxide sale to Joshua Androsac was not for any lawful medical, dental, or clinical purpose.

28. Silver Serpent had a duty not to dispense and/or distribute nitrous oxide to a person under age twenty-one, except for a lawful medical, dental, or other clinical purpose.

29. Silver Serpent violated the foregoing duty by negligently and/or recklessly dispensing and/or distributing nitrous oxide to Joshua Androsac on or about November 11, 2018, which proximately resulted in the death of Collin Wiant.

30. In particular, Silver Serpent negligently and/or recklessly failed to take steps to determine whether Mr. Androsac was at least twenty-one years old and was a proper purchaser of the nitrous oxide.

31. As a result, Silver Serpent was negligent *per se*.

32. As a direct and proximate result of Defendant's unlawful conduct, Collin Wiant suffered a wrongful death and his Estate has sustained economic loss, pain and suffering, loss of consortium, mental anguish, loss of services, and all other remedies permitted under Ohio law.

COUNT TWO – NEGLIGENCE
(Against All Defendants)

33. Plaintiff repeats and realleges the preceding paragraphs as if fully rewritten herein.

34. Silver Serpent had a duty to operate its business in a safe and reasonable manner, and to avoid violating city and state laws and ordinances regulating the operation of businesses that sell nitrous oxide.

35. Silver Serpent violated its duties by selling nitrous oxide to Joshua Androsac without asking for identification to verify Mr. Androsac's age and/or without requiring Joshua Androsac to complete the necessary paperwork before purchasing the nitrous oxide.

36. As a direct and proximate result of Defendant's unlawful conduct, Collin Wiant suffered a wrongful death and his Estate has sustained economic loss, pain and suffering, loss of consortium, mental anguish, loss of services, and all other remedies permitted under Ohio law.

COUNT THREE – NEGLIGENCE
(Against Silver Serpent, LLC)

37. Plaintiff repeats and realleges the preceding paragraphs as if fully rewritten herein.

38. Defendants Wanke and Lewis were acting as Silver Serpent, LLC's agents and within the scope of their agency at all relevant times because the acts by them alleged herein were committed within the scope of their employment with Silver Serpent, LLC and were calculated to facilitate and/or promote the business of Silver Serpent, LLC.

39. Pursuant to the doctrine of *respondeat superior* or vicarious liability, because Defendants Wanke and Lewis were acing as Silver Serpent, LLC's agents and within the scope of their agency at all relevant times, and/or because Silver Serpent, LLC ratified the actions of these Defendants, Silver Serpent, LLC is vicariously liable for all damages caused by Defendant Wanke and Lewis.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court award Judgment against Defendants and for Plaintiff as follows:

a) Compensatory damages on each claim set forth in the Complaint in excess of $25,000.00 (this is the jurisdictional minimum required for a complaint in Ohio as plaintiff will seek a Judgment of substantially more at trial to reflect the value of the loss of this young life);

(b) Punitive damages in an amount to be determined at trial;

(c) Plaintiff's attorney fees and costs of this action;

(d) Such additional relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Rex H. Elliott
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of the Estate of Collin Lewis Wiant

JURY DEMAND

Pursuant to Rule 38(B) of the Ohio Rules of Civil Procedure, plaintiff hereby demands a trial by Jury.

/s/ Rex H. Elliott