



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DAVID BROWN and DENISE FULLER,  
Individually and as Co-Personal  
Representatives of the Estate of DENNIS  
BROWN, and MARY BROWN,

Plaintiffs,

v.

PANERA BREAD COMPANY and  
PANERA, LLC

Defendants.

C.A. No.:

JURY TRIAL DEMANDED

**PRAECIPE**

TO: Prothonotary  
Superior Court of the State of Delaware  
Leonard L. Williams Justice Center  
500 North King Street  
Wilmington, DE 19801

**PLEASE ISSUE SUMMONS** directing the Sheriff of New Castle County to serve Summons, Complaint, and related pleadings upon Defendant Panera Bread Company, by service upon their registered agent, Corporation Service Company, 241 Little Falls Drive, Wilmington, Delaware 19808.

**PLEASE ISSUE SUMMONS** directing the Sheriff of New Castle County to serve Summons, Complaint, and related pleadings upon Defendant Panera, LLC, by service upon their registered agent, Corporation Service Company, 241 Little Falls Drive, Wilmington, Delaware 19808.

***SHELBY & LEONI***

***/s/Robert J. Leoni***

Robert J. Leoni, I.D. #2888

221 Main Street

Wilmington, DE 19804

(302) 995-6210

*Attorney for Plaintiffs*

DATE: December 4, 2023



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DAVID BROWN and DENISE FULLER,  
Individually and as Co-Personal Representatives of  
the Estate of DENNIS BROWN, and MARY  
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**THE STATE OF DELAWARE:  
TO THE SHERIFF OF NEW CASTLE COUNTY:  
YOU ARE COMMANDED:**

To summon the above-named defendant, so that, within 20 days after service hereof upon Defendant exclusive of the day of service, Defendant shall serve upon Robert J. Leoni, Esquire, Plaintiff's attorney, whose address is 221 Main Street, Wilmington, DE 19804, an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense).

To serve upon Defendant a copy hereof and of the Complaint (and of the affidavit of demand if any has been filed by Plaintiff).

Dated:

**COLLEEN REDMOND**  
*Prothonotary*

\_\_\_\_\_  
*Per Deputy*

**TO THE ABOVE-NAMED DEFENDANT:**

In case of your failure, within 20 days after service hereof upon you, exclusive of the day of service, to serve on Plaintiff's attorney named above an answer to the Complaint (and, if an affidavit of demand has been filed, an affidavit of defense), judgment by default will be rendered against you for the relief demanded in the Complaint (or in the affidavit of demand, if any).

**COLLEEN REDMOND**  
*Prothonotary*

\_\_\_\_\_  
*Per Deputy*



**SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)**

COUNTY:   N     K     S  

CIVIL ACTION NUMBER: \_\_\_\_\_

CIVIL CASE CODE:   CPRL  

CIVIL CASE TYPE:   Products Liability    
(SEE REVERSE SIDE FOR CODE AND TYPE)

|   |   |
|---|---|
| <p><b>CAPTION:</b></p> <p>DAVID BROWN and DENISE FULLER,<br/>Individually and as Co-Personal<br/>Representatives of the Estate of DENNIS<br/>BROWN, and MARY BROWN.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">V.</p> <p>PANERA BREAD COMPANY and<br/>PANERA, LLC,</p> <p style="text-align: center;">Defendants.</p> | <p>NAME AND STATUS OF PARTY FILING DOCUMENT:</p> <p><u>DAVID BROWN and DENISE FULLER and MARY BROWN,</u><br/><u>PLAINTIFFS</u></p> <p>DOCUMENT TYPE: (E.G., COMPLAINT; ANSWER WITH COUNTERCLAIM)</p> <p><u>COMPLAINT, ANSWERS TO FORM 30 INTERROGATORIES</u></p> <p>ARBITRATION _____ NON-ARBITRATION <u>  X  </u><br/>(CERTIFICATE OF VALUE MAY BE REQUIRED)</p> <p>JURY DEMAND <u>  √  </u> YES _____ NO _____</p> <p>TRACK ASSIGNMENT REQUESTED: (CIRCLE ONE)</p> <p>EXPEDITED      <b>STANDARD</b>      COMPLEX</p> |
| <p>ATTORNEY NAME:</p> <p>Robert J. Leoni, Esquire<br/>Bar ID # 2888<br/><b>SHELBY &amp; LEONI</b><br/>221 MAIN STREET<br/>WILMINGTON, DELAWARE 19804</p> <p>TELEPHONE NUMBER:<br/>(302) 995-6210</p> <p>FAX NUMBER:<br/>(302) 995-6121</p> <p>E-MAIL ADDRESS:<br/><u>  rleoni@mslde.com  </u></p>   | <p>IDENTIFY ANY RELATED CASES NOW PENDING IN THE SUPERIOR COURT BY CAPTION AND CIVIL ACTION NUMBER INCLUDING JUDGE'S INITIALS</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>EXPLAIN THE RELATIONSHIP(S): _____</p> <p>_____</p> <p>_____</p> <p>OTHER UNUSUAL ISSUES THAT EFFECT CASE MANAGEMENT:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>(IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH PAGES)</p>  |

**THE PROTHONOTARY WILL NOT PROCESS THE COMPLAINT, ANSWER OR FIRST RESPONSIVE PLEADING IN THIS MATTER FOR SERVICE UNTIL THE CASE INFORMATION STATEMENT (CIS) IS FILED. THE FAILURE TO FILE THE CIS AND TO HAVE THE PLEADING PROCESSED FOR SERVICE MAY RESULT IN THE DISMISSAL OF THE COMPLAINT OR MAY RESULT IN THE ANSWER OR FIRST RESPONSIVE PLEADING BEING STRICKEN.**



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

DAVID BROWN and DENISE FULLER,  
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Defendants.

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**COMPLAINT**

**THE PARTIES**

1. Plaintiff David Brown is an adult person residing at 5528 Pulaski Avenue, Philadelphia, PA 19144.
2. Plaintiff Denise Fuller is an adult person residing at 13900 Myrtlewood Drive, Orlando, FL 32832.
3. Plaintiff Mary Brown is an adult person residing at 9682 Lake Nona Village Place, Apt 212 Orlando, FL 32827.
4. Plaintiffs are the mother, sister, and brother of the decedent, 46-year-old Dennis Brown who was residing at 1717 County Road 220, Apartment 3602, Fleming Island, FL 32003 at the time of his death.

5. Defendant Panera Bread Company (“PBC”) is a Delaware corporation whose registered agent is Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808. PBC’s principal place of business is in Missouri at 3630 S. Geyer Road, Suite 100, St. Louis, MO 63127. Accordingly, PBC is a citizen of Delaware and Missouri.

6. Defendant Panera, LLC (“PLLC”) is a Delaware limited liability company whose registered agent is Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

7. PLLC is a single-member limited liability company, with PBC as its sole member. Because PBC is a Delaware corporation with its principal place of business in Missouri, PLLC also is a citizen of Delaware and Missouri.

8. PBC is a chain bakery café offering food and beverages at various locations in 46 states, the District of Columbia, and Canada, including 1510 County Road 220, Fleming Island, FL 32003, where Dennis purchased the product at issue in this case, Panera Charged Lemonade.

9. Defendant, PLLC and PBC (collectively “Defendants”) manufactures, distributes, markets, and sells the product at issue in this case, Panera Charged Lemonade.

## OPERATIVE FACTS

10. The preceding paragraphs are incorporated by reference as if fully set forth herein.

11. Dennis was an independent 46-year-old man living with a chromosomal deficiency disorder, developmental delay, and ADHD.

12. Secondary to his chromosomal disorder, he had a mild intellectual disability and blurry vision, but with the help of his loving life coaches and supportive family, was able to be gainfully employed and live independently.

13. He also had high blood pressure and did not consume energy drinks.

14. Dennis was a member of the Clay County Change Makers Self-Advocacy Group and was a passionate advocate for community safety and inclusion for people with disabilities.

15. Dennis was also a great lover of animals.

16. Dennis was a high school graduate and worked for nearly seventeen years at Publix Super Markets.

17. Dennis loved his job, his coworkers, and the customers he served.

18. He would pack customers' bags, walk them to their cars, talk about their day, and share words of comfort.

19. Following his work shifts at Publix, Dennis would often go to PBC for meals up to three times a week.

20. PBC was a brand known to Dennis and advertised itself as a healthier and “clean” fast food chain restaurant for adults and children alike.

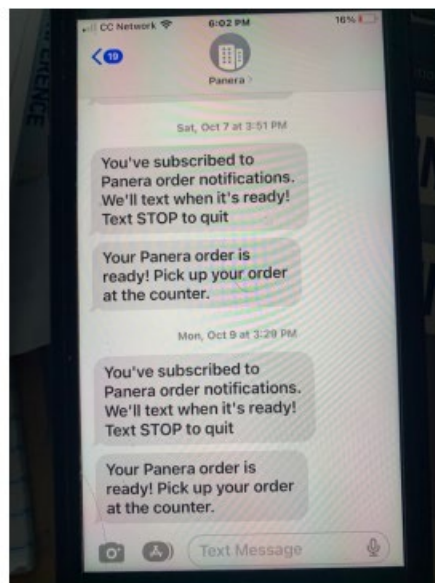
21. Dennis was a loyal consumer to PBC.

22. On or about September 27, 2023, Dennis began ordering the Panera Charged Lemonade.

23. Dennis, who only drank water, root beer, iced tea, and lemonade purchased a Panera Charged Lemonade (Mango Yuzu Citrus) at the PBC located at 1510 County Road 220, Fleming Island, FL 32003.

24. Dennis, who was very habitual, ordered the Panera Charged Lemonade on September 28<sup>th</sup>, October 2<sup>nd</sup>, October 4<sup>th</sup>, October 5<sup>th</sup>, and October 7<sup>th</sup>.

25. On or about October 9, 2023, after finishing his work shift, Dennis went to PBC and ordered his meal at approximately 3:29 PM.





26. Dennis again purchased a Panera Charged Lemonade (Mango Yuzu Citrus) at the PBC located at 1510 County Road 220, Fleming Island, FL 32003.

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**OCT 9**

**You Pick 2, Mango Yuzu Citrus Charged Lemonade, Brownie**

**Dine In · 1510 County Road 220**

**Order #989252574**

27. The display of Panera Charged Lemonade at the retail store at 1510 County Road 220, Fleming Island, FL 32003 was offered side-by-side with all of the store's non-caffeinated and/or less caffeinated drinks; it was not advertised as an "energy drink" nor were there any warnings to consumers.

28. The Panera Charged Lemonade was not behind the counter.

29. The Panera Charged Lemonade is an unregulated beverage which includes no warning of any potentially dangerous effects, even the life-threatening effects on blood pressure, heart rate, and/or brain function.

30. The Panera Charged Lemonade is an unregulated beverage which includes no warning of any risks of ingesting these concentrated amounts of caffeine in connection with the stimulants and sugar.

31. The Panera Charged Lemonade is an unregulated beverage which includes no advertisement as an "energy" drink and, instead, are represented as

“clean” and akin to Panera Dark Roast coffee, when they contain not only caffeine, but also the stimulant guarana and exorbitant amounts of sugar.

32. Panera Charged Lemonade is advertised as “Plant-based and Clean with as much caffeine as our Dark Roast coffee” in small print and suggests “Sip, ENJOY, Repeat. Unlimited Sip Club.”

33. Accordingly, Dennis consumed the Panera Charged Lemonade, reasonably confident it was a traditional lemonade containing a reasonable amount of caffeine safe for him to drink.

34. Upon information and belief, during his ninety-minutes at PBC, Dennis refilled his charged lemonade two additional times.

35. Dennis had a known habit of drinking three beverages in a row.

36. On October 9, 2023, on or around 5:16 PM, Dennis left PBC to walk home.



37. Following his consumption of the Panera Charged Lemonade, Dennis, while walking from the PBC to his home, suffered a cardiac event.

38. After being found unresponsive on the sidewalk at approximately 5:45 PM, Dennis was pronounced dead at the scene.



39. Defendants design, formulate, manufacture, market, warrant, promote, distribute, and sell to consumers at their retail locations a product called Panera Charged Lemonade.

40. Defendants sell the Panera Charged Lemonade at one of their retail stores located at 1510 County Road 220, Fleming Island, FL 32003.

41. Panera Charged Lemonade is a beverage designed by Defendants that contains the following ingredients: water, caffeinated mango yuzu citrus flavored syrup (water, apple juice concentrate, sugar, citric acid), caffeine, coffee extract (source of caffeine), guarana extract (source of caffeine), acerola powder, ascorbic acid, natural flavor (mango, yuzu, and citrus natural flavors with other natural flavors), beta-carotene (color), and agave lemonade base (water, sugar, lemon juice, lemon juice concentrate, agave, natural flavors).

42. Many ingredients in the Panera Charged Lemonade are classified as “stimulants” by the Centers for Disease Control, which warns that ingredients for consumption classified as “stimulants” may have dangerous health effects by increasing blood pressure, heart rate, breathing, as well as dangerous effects on the nervous system.<sup>1</sup>

43. The caffeine content of the Panera Charged Lemonade ranges from 260 milligrams in 20 fluid ounces (regular size) to 390 milligrams in 30 fluid ounces (large size, Sip Club size).

44. At 30 fluid ounces, Panera Charged Lemonade exceeds the combined contents of 12 fluid ounces of Red Bull (114 milligrams caffeine) and 16 fluid ounces of Monster Energy Drink (160 milligrams caffeine).

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<sup>1</sup> *The Buzz on Energy Drinks*, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/healthyschools/nutrition/energy.htm> (last visited Jul. 12, 2023).

45. At 30 fluid ounces, Panera Charged Lemonade exceeds the combined contents of three 12 fluid ounces of Red Bull (114 milligrams caffeine).

46. The caffeine content of Panera Dark Roast coffee ranges from merely 161 milligrams in 12 fluid ounces (small coffee), 216 milligrams in 16 fluid ounces (medium coffee), and 268 milligrams in 20 fluid ounces (large coffee).

47. The sugar content of Panera Charged Lemonade ranges from 82 grams to 124 grams of sugar, exceeding the combined contents of both a 12-fluid-ounce Red Bull (27 grams of sugar) and 16-fluid-ounce Monster Energy Drink (54 grams of sugar).

48. The low end of the sugar content of Panera Charged Lemonade (82 grams of sugar) is equivalent to 20.5 teaspoons of sugar, and the high end (124 grams of sugar) is equivalent to 29.75 teaspoons of sugar.

49. Panera Charged Lemonade is defective in design because it is a dangerous drink.

50. Defendants knew or should have known that the Panera Charged Lemonade, as designed and formulated, once consumed, could injure children, pregnant and breastfeeding women, and people sensitive to caffeine by causing catastrophic injuries and/or death.

51. Due to the defective and unreasonably dangerous design of Panera Charged Lemonade, consumers were and continue to be at an increased risk of injury while consuming the dangerous beverage.

52. Due to the unreasonably dangerous and defective design of Panera Charged Lemonade, as described throughout this Complaint, Dennis suffered a cardiac event which resulted in his death.

53. Panera Charged Lemonade is also defectively manufactured because it is mixed in-house by Panera employees.

54. This manufacturing is inherently dangerous because Panera Charged Lemonade involves mixing unsafe ingredients at certain concentrations.

55. Knowing this, before and during the marketing and sale of the Panera Charged Lemonade, Defendants knew or should have known that proper quality control for manufacturing and/or mixing the product was crucial to consumer safety, and that permitting their employees to mix the product could result in an increased risk of causing permanent and catastrophic injuries to consumers—especially in a vulnerable population, children, pregnant and breastfeeding women, and caffeine-sensitive individuals.

56. Due to the unreasonably dangerous and defective manufacturing of Panera Charged Lemonade, as described throughout this Complaint, Dennis experienced a cardiac event which resulted in his death.

57. Defendants also failed to properly warn consumers of their dangerous product, Panera Charged Lemonade.

58. Defendants did not market, advertise, and sell Panera Charged Lemonade in the store as an “energy drink,” which is a drink containing large amounts of caffeine, added sugar, other additives, and stimulants, such as guarana and/or taurine and/or L-carnitine (“stimulants”).

59. Instead, Defendants market, advertise, and sell Panera Charged Lemonade as a product that is “Plant-based and Clean with as much caffeine as our Dark Roast Coffee.”

60. The fact that Defendants do not specify what size of Panera Dark Roast coffee is akin to a Panera Charged Lemonade makes this representation ambiguous and unhelpful to consumers.

61. Panera Dark Roast coffee has no sugar.

62. Panera Dark Roast coffee’s only ingredient is “Arabica Coffee.”

63. Panera Charged Lemonade does not declare the total quantity of caffeine from all sources on the container itself—rather, it merely compares it to an unspecified size of Panera Dark Roast coffee, a beverage which does not contain the added stimulants of sugar and guarana.

64. Panera Charged Lemonade contains the stimulant guarana as another source of caffeine content.

65. Panera Charged Lemonade is a juice beverage marketed to children and adults alike, and it was displayed and offered in PBC stores in the same or similar manner and location in which they offer all other non-caffeinated juice beverages.

66. This marketing is especially dangerous to a vulnerable population, children and adults who would reasonably believe this product was lemonade and safe for consumption.

67. Consumers are not provided a factual basis for understanding it is an energy drink containing exorbitant amounts of caffeine, caffeine sources, stimulants, and sugar.

68. Panera Charged Lemonade is not in compliance with the labeling or marketing commitments adopted by the American Beverage Association, which is the trade association representing the broad spectrum of companies that manufacture and distribute non-alcoholic beverages, including energy drinks, in the United States.<sup>2</sup>

69. Before and during the marketing and sale of the Panera Charged Lemonade, Defendants knew or should have known that the defective and unreasonably dangerous design of Panera Charged Lemonade could cause

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<sup>2</sup>*ABA Guidance for the Responsible Labeling and Marketing of Energy Drinks*, AM. BEVERAGE ASS'N, <https://www.energydrinkinformation.com/files/resources/2014-energy-drinks-guidance-approved-by-bod-43020c.pdf> (last visited July 17, 2023).



catastrophic injuries, including, *inter alia*, heart arrhythmias, cardiac arrest, and/or death.

70. Knowing this, before and during the marketing and sale of the Panera Charged Lemonade, Defendants knew or should have known that (1) proper notice of the product's exorbitant caffeine content was required and (2) that the omission of such consumer notice increased the risk of causing permanent and catastrophic injuries, especially to vulnerable populations, children, pregnant and breastfeeding women, and caffeine-sensitive individuals (e.g., those with underlying heart problems).

71. Defendants knew or should have known that displaying the Panera Charged Lemonade in the same manner and location in which PBC offers all other non-caffeinated juice beverage options increased the risk of causing permanent and catastrophic injuries to consumers unaware of the beverages' serious differences.

72. In addition, Defendants knew or should have known that failing to advertise the Panera Charged Lemonade as an energy drink increased the risk of causing permanent and catastrophic injuries to consumers.

73. Despite knowing that the design of the Panera Charged Lemonade caused and increased the risk of causing permanent and catastrophic injuries and death, Defendants continued to advertise, market, and sell Panera Charged Lemonade as a safe-for-all beverage.

74. Defendants even included Panera Charged Lemonade as part of their “Sip Club”—whereby they encouraged Sip Club members to drink unlimited Panera Charged Lemonade every day.

75. The defective design and manufacturing of the Panera Charged Lemonade caused, increased the risk of harm, and/or was a substantial contributing cause of causing permanent and catastrophic injuries to consumers, including Dennis.

76. The failure to warn of the risk of severe injury or death to consumers, including Dennis, as described throughout this Complaint, caused, increased the risk of harm, and/or was a substantial contributing cause of causing permanent and catastrophic injuries to consumers, including Dennis.

77. As set forth more fully below, Defendants engaged in negligent, reckless, intentional, fraudulent, reckless, and/or outrageous misconduct which caused, increased the risk of harm, and/or was a substantial contributing cause of Plaintiffs’ and Dennis’ injuries and damages which include, but are not limited to, the following:

- a. untimely death at 46 years old;
- b. cardiac arrest;
- c. hypoxia;
- d. pain and suffering;
- e. loss of enjoyment of life and life’s pleasures;
- f. mental anguish;
- g. emotional distress;
- h. disfigurement;

- i. embarrassment;
- j. future lost wages;
- k. loss of future earning capacity;
- l. funeral expenses;
- m. medical expenses;
- n. all damages recoverable under the Survival Action;
- o. all damages recoverable under the Wrongful Death Action; and
- p. all damages as set forth in greater detail in Plaintiffs' Complaint and as permitted by Delaware law.

78. As a direct and proximate result of the negligence, recklessness, willful and wantonness of Defendants, jointly and severally, and by and through their respective actual and apparent agents, employees, and servants, Dennis died.

79. As a direct and proximate result of the negligence, recklessness, willful and wantonness and breaches in the standard of care by Defendants, Dennis, while living, incurred losses and expenses.

80. As a further and direct proximate cause of the negligence, recklessness, willful and wantonness and breaches in the standard of care by Defendants, Dennis, while living, incurred pain and suffering, mental anguish, emotional pain and suffering and other associated damages.

81. As a result of the negligence, recklessness, willful and wantonness of Defendants, the individual Plaintiffs suffered the loss of services, society, comfort, and companionship of Dennis.

**COUNT I – NEGLIGENCE**  
**PLAINTIFFS v. ALL DEFENDANTS**

82. Plaintiffs incorporate by reference all the above paragraphs as though set forth fully herein.

83. At all relevant times hereto, it was Defendants' duty to use reasonable care in the design, manufacturing, formulation, marketing, sale, promotion, and/or distribution of Panera Charged Lemonade.

84. This duty required Defendants to ensure that its product did not pose an unreasonable risk of bodily harm to Dennis and all other consumers, and similarly required Defendants to warn of side effects, risks, and dangers associated with the consumption of Panera Charged Lemonade.

85. At all relevant times hereto, Defendants knew or should have known of the foreseeable risk of cardiac-related injuries inherent in consuming Panera Charged Lemonade.

86. Defendants breached the duty of care they assume and owe to consumers and were negligent, careless, and reckless in designing, formulating, manufacturing, marketing, selling, promoting, and distributing Panera Charged Lemonade in one or more of the following respects:

- a. the Panera Charged Lemonade was designed such that it could cause cardiac-related injuries to persons, especially to a vulnerable population, children, pregnant and breastfeeding women, and caffeine-sensitive individuals;

- b. the Panera Charged Lemonade is manufactured and formulated in-store by employees such that its caffeine content is not controlled and, in turn, has an innate and dangerous potential to vary;
- c. the Panera Charged Lemonade marketing, labeling, and/or packaging misrepresented the beverage as a harmless fruit juice beverage when it is akin to an energy drink;
- d. the Panera Charged Lemonade marketing and/or website misrepresented the beverages caffeine content as “as much as [their] dark roast coffee,” when a large Panera Dark Roast coffee contains 268 milligrams of caffeine, and a large Panera Charged Lemonade has 390 milligrams of caffeine;
- e. the Panera Charged Lemonade was offered without limit even though Defendants knew or should have known of the risks associated with exorbitant caffeine and stimulant consumption;
- f. the Panera Charged Lemonade marketing, labeling, and/or packaging misrepresented the beverage’s potential to cause cardiac-related injuries, especially to a vulnerable population, in children, pregnant and breastfeeding women, and caffeine-sensitive individuals;
- g. Defendants failed to adequately inform and warn consumers of the beverage’s high caffeine content and related propensity to cause cardiac-related injuries, especially to a vulnerable population, in children, pregnant and breastfeeding women, and caffeine-sensitive individuals;
- h. Defendants designed, formulated, assembled, manufactured, sold, promoted, supplied, and/or distributed a product in a defective condition;
- i. Defendants designed, formulated, assembled, manufactured, sold, promoted, supplied, and/or distributed a product that was unreasonably dangerous to consumers;
- j. Defendants designed, formulated, assembled, manufactured, sold, promoted, supplied, and/or distributed a product which was not

reasonably fit, suitable, or safe for its intended and represented purpose;

- k. Defendants designed, formulated, assembled, manufactured, sold, promoted, supplied, and/or distributed a product which could be designed more safely;
- l. Defendants marketed the Panera Charged Lemonade as “safe” and “plant-based”;
- m. Defendants failed to adequately inform and warn consumers that the Panera Charged Lemonade was designed such that it can cause cardiac-related injuries in persons who consume it;
- n. Defendants failed to adequately inform and warn consumers that the Panera Charged Lemonade is not a traditional caffeine-free lemonade such that it is similar to an energy drink;
- o. Defendants failed to adequately inform and warn consumers that the Panera Charged Lemonade was designed in such a way that it is not safe for consumption, including a vulnerable person, children, pregnant and breastfeeding women, and caffeine-sensitive individuals;
- p. Defendants failed to adequately inform and warn consumers that the Panera Charged Lemonade is assembled in-store by employees such that its caffeine content and stimulants are not controlled and, in turn, has an innate potential to vary dangerously;
- q. Defendants failed to cease manufacturing or otherwise alter the composition of Panera Charged Lemonade to produce a safer alternative, despite the fact that Defendants knew or should have known that such drinks posed a serious risk of bodily harm to consumers;
- r. Defendants inaccurately and misleadingly marketed the Panera Charged Lemonade as an “energy drink” on the PBC website, but not in the store setting;

- s. Defendants failed to conduct post-marketing surveillance to determine the safety of Panera Charged Lemonade;
- t. Defendants inaccurately and misleadingly marketed the Panera Charged Lemonade as safe and “clean”;
- u. Defendants inaccurately and misleadingly marketed and offered the Panera Charged Lemonade as a fruit juice beverage, displaying it in the same or similar manner and location in which PBC offers all other non-caffeinated juice beverage options;
- v. Defendants inaccurately and misleadingly marketed the Panera Charged Lemonade’s caffeine content on PBC’s website as “as much as [Panera’s] dark roast coffee”; and
- w. other negligence regarding Panera Charged Lemonade that may be identified during discovery

87. Defendants’ negligence, carelessness, and recklessness in designing, formulating, manufacturing, marketing, promoting, and selling Panera Charged Lemonade was the direct and proximate cause of Dennis’s injuries and damages, as previously set forth herein.

88. Defendants knew or should have known that consumers, including Dennis, would accept the material misrepresentations made regarding the nature and safety of Panera Charged Lemonade as true and accurate.

89. Defendants designed, manufactured, and sold the Panera Charged Lemonade knowing that the product was defective because it contained stimulants causing cardiac arrhythmias and other cardiac-related injuries—especially in a

vulnerable population, children, pregnant and breastfeeding women, and caffeine-sensitive individuals, such as those with underlying heart conditions.

90. Defendants designed, manufactured, and sold the Panera Charged Lemonade knowing that the product was defective because it contained almost the maximum amount of caffeine suggested by the FDA per day, but also contained additional stimulants and sugar and induced unlimited refills on the dangerous beverages.

91. By failing to give Dennis warning of the potential and reasonably foreseeable consequences of using the product and by its material misrepresentations, Defendants acted with wanton and willful disregard of Dennis's health and rights.

92. At all times, Defendants knew or should have known that there was a high degree of probability of harm to Dennis and acted with a reckless indifference to the potential and foreseeable consequences of Defendants' defective product by selling a dangerous product for consumption that contained high levels of caffeine, stimulants, and sugar and making the product available for unlimited refills.

93. At all times, Defendants knew or should have known of the serious harm that could result from their conduct as it is well-known that high amounts of caffeine and stimulants can be dangerous to consumers, especially to a vulnerable



population, in children, pregnant and breastfeeding women, and caffeine-sensitive individuals.

94. At all times, Defendants knew or should have known that there was a high degree of probability of harm to Dennis and acted with a reckless indifference to the potential and foreseeable consequences of Defendants' defective product by ignoring the media coverage on the dangerousness of the product and consumers' complaints relating to the dangerous of the product.

95. Defendants knew or should have known, or recklessly disregarded, the likelihood that such serious harm would arise from their conduct.

**WHEREFORE**, Plaintiffs demand judgment against the Defendants, jointly and severally, for special damages, general damages, including pain and suffering, punitive damages, pre- and post-judgment interest pursuant to Title 6 Delaware Code and 10 Del. C. §3724, costs, and any other relief the Court deems appropriate.

**COUNT II – FRAUD**  
**PLAINTIFFS v. ALL DEFENDANTS**

96. Plaintiffs incorporate by reference all the above paragraphs as though set forth fully herein.

97. At all relevant times hereto, Defendants knew or should have known of the foreseeable risk of cardiac-related injuries inherent in the Panera Charged Lemonade given the known contents of the drink.

98. At all relevant times hereto, Defendants had a duty to disclose the material facts to its consumers that the Panera Charged Lemonade was an energy drink that contained high amounts of caffeine, stimulants and sugar and was dangerous for consumption especially to a vulnerable population, in children, pregnant and breastfeeding women, and caffeine-sensitive individuals.

99. Defendants negligently and recklessly misrepresented and failed to disclose material facts regarding the safety of the Panera Charged Lemonade in one or more of the following respects:

- a. inaccurately marketing the Panera Charged Lemonade “plant-based” and “clean” inducing consumers to believe that their product is safe for consumption;
- b. serving this dangerous Panera Charged Lemonade knowing that consumers believe PBC to be a healthier alternative to fast food and inducing consumers to believe their product is safe for consumption;
- c. including the Panera Charged Lemonade as part of the unlimited Sip Club membership inducing consumers to believe that unlimited refills of their product are safe for consumption;
- d. knowing that the Panera Charged Lemonade contained not only large amounts of caffeine but also stimulants and not marketing it as an energy drink;
- e. knowing that the Panera Charged Lemonade was an energy drink and failing to market it as an energy drink to consumers in the store setting;
- f. concealing the fact the Panera Charged Lemonade is an energy drink and not safe especially to a vulnerable population, in children, pregnant and breastfeeding women, and caffeine-sensitive individuals;

- g. marketing the Panera Charged Lemonade as an energy drink on the PBC website, but concealing this information in the store setting;
- h. inaccurately marketing and offering the Panera Charged Lemonade as a safe lemonade beverage, displaying it in the same or similar manner and location in which Panera offers all other beverage options as opposed to behind the counter;
- i. inaccurately marketing, labeling, and/or packaging misrepresented the beverage as a safe lemonade beverage when it is an energy drink containing more caffeine, sugar and stimulants than 3 Red Bulls;
- j. misrepresenting the safety of the product in failing to warn of the beverage's potential to cause cardiac-related injuries, especially to a vulnerable population, in children, pregnant and breastfeeding women, and caffeine-sensitive individuals;
- k. inaccurately marketing the Panera Charged Lemonade's caffeine content "as much as [Panera's] dark roast coffee" when it not only has more caffeine in its large size drink, but also contains stimulants and sugar;
- l. knowing that consumers would obtain a large cup and/or refill the Panera Charged Lemonade as part of the unlimited Sip Club membership and failing to disclose the material facts regarding that dangerous consumption; and
- m. other misrepresentations regarding Panera Charged Lemonade that may be identified during discovery.

100. Defendants knew or should have known that consumers, including Dennis, would accept the material misrepresentations made regarding the nature and safety of Panera Charged Lemonade as true and accurate.

101. Defendants knew or should have known that consumers, including Dennis, would rely on the material misrepresentations made regarding the safety of Panera Charged Lemonade when deciding whether to consume it.

102. Defendants materially represented the nature of Panera Charged Lemonade with the intent to induce consumers, including Dennis, to purchase and consume it.

103. Dennis justifiably relied on Defendants' material misrepresentations regarding the safety of the Panera Charged Lemonade when deciding to consume it.

104. As a direct and proximate result of Defendants' material misrepresentations, Dennis suffered severe injuries and damages from consuming Panera Charged Lemonade in a reasonably foreseeable manner, as previously set forth herein.

105. At all times, Defendants knew there was a high degree of probability of harm to Dennis and acted with a reckless indifference to the potential and foreseeable consequences of Defendants' defective product.

106. At all times, Defendants knew of the serious harm that could result from their conduct.

107. Defendants knew or recklessly disregarded the likelihood that such serious harm would arise from their conduct.

**WHEREFORE**, Plaintiffs demand judgment against the Defendants, jointly and severally, for special damages, general damages, including pain and suffering, punitive damages, pre- and post-judgment interest pursuant to Title 6 Delaware Code and 10 Del. C. §3724, costs, and any other relief the Court deems appropriate.

**COUNT III – BREACH OF IMPLIED WARRANTIES OF  
MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**  
**PLAINTIFFS v. ALL DEFENDANTS**

108. Plaintiffs incorporate by reference all the above paragraphs as though set forth fully herein.

109. Defendants impliedly warranted that, among other things, Panera Charged Lemonade was safe, “clean,” and “plant-based” to members of the consuming public, including Dennis.

110. Defendants impliedly warranted that Panera Charged Lemonade was a harmless fruit juice beverage when it is actually akin to an energy drink.

111. Defendants impliedly warranted that by having Panera Charged Lemonade as part of their Sip Club membership, it was safe to members of the consuming public to drink refills of their product, including Dennis.

112. Defendants breached their duty to Dennis and Plaintiffs to ensure that the Panera Charged Lemonade was fit for its ordinary uses and reasonable expectations of the safety of lemonade at a restaurant like Panera Bread, including as a safe drink, and as stated above.

113. Defendants breached their duty to Dennis and Plaintiffs to ensure that the Panera Charged Lemonade was fit for its intended purposes, including as a safe drink, and as stated above and below.

114. Panera Charged Lemonade was not fit for its ordinary uses or intended purposes, as stated above and below.

115. Panera Charged Lemonade does not conform to these implied representations of safety because it contains an exorbitant amount of caffeine content and stimulants causing cardiac arrhythmias and other cardiac-related injuries, especially in a vulnerable population, children, pregnant and breastfeeding women, and caffeine-sensitive individuals.

116. Defendants breached their implied warranties to the consuming public, including, but not limited to, Dennis.

117. Defendants sold the Panera Charged Lemonade with the implied warranty that it was safe to consume by members of the public by not warning of its dangers, having it be readily accessible to all consumers to fill and refill, and having it be part of their Sip Club membership, including but not limited to, Dennis.

118. As a direct and proximate result of Defendants' breach of the implied warranties, Dennis suffered the injuries and damages set forth herein, entitling Plaintiffs to damages.

119. At all times, Defendants knew or should have known that there was a high degree of probability of harm to Dennis and acted with a reckless indifference to the potential and foreseeable consequences of Defendants' defective product.

120. At all times, Defendants knew or should have known of the serious harm that could result from their conduct.

121. Defendants knew or should have known, or recklessly disregarded, the likelihood that such serious harm would arise from their conduct.

**WHEREFORE**, Plaintiffs demand judgment against the Defendants, jointly and severally, for special damages, general damages, including pain and suffering, punitive damages, pre- and post-judgment interest pursuant to Title 6 Delaware Code and 10 Del. C. §3724, costs, and any other relief the Court deems appropriate.

**COUNT IV – WRONGFUL DEATH**  
**PLAINTIFFS v. ALL DEFENDANTS**

122. Plaintiffs incorporate by reference all the above paragraphs as though set forth fully herein.

123. Dennis Brown died on October 9, 2023.

124. The aforesaid actions of the Defendants, jointly and severally, and by and through their respective actual and apparent agents, employees and servants, caused Dennis' death.

125. Plaintiffs bring this Wrongful Death Action pursuant to 10 Del. C. § 3722 *et seq.*, as the surviving mother and siblings of Dennis Brown.

126. As a result of the aforesaid actions of the Defendants, the Plaintiffs suffered the loss of Dennis, as well as the loss of love, comfort, support, companionship, and society as each Plaintiff would have received from Dennis.

127. Plaintiffs have been caused to suffer mental anguish, grief, sorrow, in the past and will continue to suffer the same in the future as a result of the death of Dennis.

128. As Personal Representatives of the Estate of Dennis Brown, Plaintiffs assert and claims all damages as set forth in the Wrongful Death Act and supporting case law.

**WHEREFORE**, Plaintiffs demand judgment against the Defendants, jointly and severally, for special damages, general damages, including pain and suffering, punitive damages, pre- and post-judgment interest pursuant to Title 6 Delaware Code and 10 Del. C. §3724, costs, and any other relief the Court deems appropriate.

**COUNT V – SURVIVAL ACTION**  
**PLAINTIFFS v. ALL DEFENDANTS**

129. Plaintiffs incorporate by reference all the above paragraphs as though set forth fully herein.

130. As Personal Representatives of the Estate of Dennis Brown, Plaintiffs David Brown and Denise Fuller bring this action on behalf of the Estate of Dennis Brown in accordance with 10 Del. C. § 3701 *et seq.*



131. The aforesaid actions of the Defendants, jointly and severally, and individually and by and through their respective actual and apparent agents, employees, and servants, caused Dennis to suffer cardiac arrest, suffer conscious pain and suffering, and the other damages and injuries detailed in the paragraphs above, until Dennis's untimely death.

132. As Personal Representatives of the estate of Dennis Brown, Plaintiffs assert and claims all damages as set forth in the Survival Act and supporting case law.

**WHEREFORE**, Plaintiffs demand judgment against the Defendants, jointly and severally, for special damages, general damages, including pain and suffering, punitive damages, pre- and post-judgment interest pursuant to Title 6 Delaware Code and 10 *Del. C.* §3724, costs, and any other relief the Court deems appropriate.

***SHELBY & LEONI***

***/s/Robert J. Leoni***

Robert J. Leoni, I.D. #2888

221 Main Street

Wilmington, DE 19804

(302) 995-6210

*Attorney for Plaintiffs*

DATE: December 4, 2023



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DAVID BROWN, as Personal )  
Representative of the Estate of DENNIS )  
BROWN, Deceased and )  
DENISE FULLER, as Personal )  
Representative of the Estate of DENNIS )  
BROWN, Deceased )

CASE NO.:

Plaintiffs )

v. )

PANERA BREAD COMPANY and )  
PANERA, LLC )

TRIAL BY JURY DEMANDED

Defendants )

**PLAINTIFFS' ANSWERS TO FORM 30 INTERROGATORIES**

1. Give the name and present or last-known residential and employment address and telephone number of each eyewitness to the incident which is the subject of this litigation.

ANSWER: Detective Dan Cassani  
Clay County Sheriff's Office  
901 North Orange Avenue  
Green Cove Springs, FL 32043  
Phone: 904-264-6512

Clay County Fire Rescue  
BAT1, E17, E22, R22  
Green Cove Springs, FL 32043  
Phone: 904-284-7703

2. Give the name and present or last-known residential and employment address and telephone number of each person who has knowledge of the facts relating to the litigation.

ANSWER: David Brown (Brother of Dennis Brown)  
5528 Pulaski Avenue  
Philadelphia, PA 19144  
Phone: 215-407-0556

Denise Fuller (Sister of Dennis Brown)  
13900 Myrtlewood Drive  
Orlando, FL 32832  
Phone: 407-575-4929

DeAnn Burgess (Life Coach of Dennis Brown)  
167 Spicewood Circle E  
Middleburg, FL 32068  
Phone: 904-718-2062

Detective Dan Cassani  
Clay County Sheriff's Office  
901 North Orange Avenue  
Green Cove Springs, FL 32043  
Phone: 904-264-6512

Clay County Fire Rescue  
BAT1, E17, E22, R22  
Green Cove Springs, FL 32043  
Phone: 904-284-7703

Investigation is continuing and Plaintiffs reserve the right to supplement this answer.

3. Give the names of all persons who have been interviewed in connection with the above litigation, including the names and present or last-known residential and employment addresses and telephone numbers of the persons who made said interviews and the names and present or last-known residential and employment addresses and telephone numbers of persons who have the original and copies of the interview.

ANSWER: Investigation is continuing and Plaintiffs reserve the right to supplement this answer.

4. Identify all photographs, diagrams, or other representations made in connection with the matter in litigation, giving the name and present or last-known residential and employment address and telephone number of the person having the original and copies thereof. (In lieu thereof, a copy can be attached.)

ANSWER: See below. Investigation is continuing and Plaintiffs reserve the right to supplement this answer.

- 1) Photo of Dennis Brown provided by sister, Denise Fuller



- 2) Panera Bread Charged Lemonade Receipt of Dennis Brown

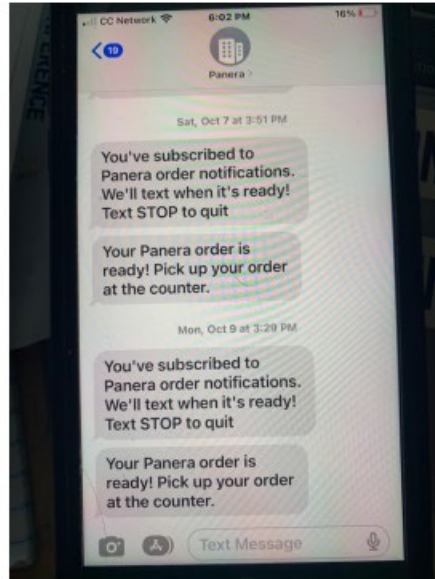
OCT 9

You Pick 2, Mango Yuzu Citrus Charged Lemonade, Brownie

Dine In · 1510 County Road 220

Order #989252574

- 3) Panera Bread Order Confirmation of Dennis Brown



4) Text to David Brown from Dennis Brown relating to timing at Panera Bread



5) Medical Emergency Alert of Dennis Brown death



5. Give the name, professional address, and telephone number of all expert witnesses presently retained by the party together with the dates of any written opinions prepared by said expert. If an expert is not presently retained, describe by type the experts whom the party expects to retain in connection with the litigation.

ANSWER: Objection, this interrogatory seeks information beyond the scope of Rule 26. Without waiving this objection, Plaintiffs expect to retain the appropriate medical, liability, vocational, and economic experts.

6. Give a brief description of any insurance policy, including excess coverage, that is or may be applicable to the litigation, including:

- a) The name and address of all companies insuring the risk;
- b) The policy number(s);
- c) The type of insurance;
- d) The amounts of primary, secondary, and excess coverage.

ANSWER: None as to Plaintiffs. Unknown as to Defendants.

7. Give the name, professional address, and telephone number of all physicians, chiropractors, psychologists, and physical therapists who have examined or treated you at any time during the ten year period immediately prior to the date of the incident at issue in this litigation.

ANSWER: Bud Wolfson, M.D.  
Baptist Primary Care – Reedy Branch  
10898 Baymeadows Road, Suite 300  
Jacksonville, FL 32256  
Phone: 904-363-2733

Michelle A. Prosje, Psy.D.  
Licensed Psychologist/Neuropsychologist  
NeuroBehavioral Specialists of Jacksonville, Inc.  
12443 San Jose Blvd STE 503  
Jacksonville, FL 32223  
Phone: 904-685-1234

Investigation is continuing and Plaintiffs reserve the right to supplement this answer.

**SHELBY & LEONI**

*/s/Robert J. Leoni*  
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221 Main Street  
Wilmington, DE 19804  
(302) 995-6210  
*Attorney for Plaintiffs*

Date: December 4, 2023