

IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA

LAUREN BETANCOURT,

Plaintiffs,

v.

QUALITEST PRODUCTS, INC.  
BRENN DISTRIBUTION, INC.  
ENDO PHARMACEUTICALS, INC.,  
ENDO PHARMACEUTICALS HOLDINGS, INC.

Defendants.

CIVIL ACTION  
FILE NO.:

3971-2

2011A

Conform Copy

COMPLAINT FOR DAMAGES

The Plaintiff, LAUREN BETANCOURT, individually and on behalf of all others similarly situated, sue the Defendants, Foreign Corporations.

JURISDICTION AND VENUE:

1.

This is a class action for damages in excess of \$5,000,000. The Plaintiff is a resident of the State of Georgia.

2.

Defendant QUALITEST PRODUCTS, INC. [hereinafter "Defendant QUALITEST"], a foreign corporation doing business within the State of Georgia with its principal offices located in Huntsville, Alabama. It has appointed THE CORPORATION COMPANY as its registered agent located at 60 Commerce Street, Montgomery, Alabama 36103.

3.

Defendant BRENN DISTRIBUTION, INC. [hereinafter "Defendant BRENN"], is a foreign corporation doing business within the State of Georgia with its principal offices located in

COBB COUNTY GA  
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Huntsville, Alabama. It has appointed WILLIAM S. PROPST, SR., as its registered agent located at 401 Meridian Street, Ste. 300, Huntsville, Alabama 35801.

4.

Defendant ENDO PHARMACEUTICALS, INC., is a foreign corporation doing business within the State of Georgia with its principal offices located in Newark, Delaware. It has appointed THE CORPORATION TRUST COMPANY, as its registered agent located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

5.

Defendant ENDO PHARMACEUTICALS HOLDINGS, INC., is a foreign corporation doing business within the State of Georgia with its principal offices located in Newark, Delaware. It has appointed THE CORPORATION TRUST COMPANY, as its registered agent located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

6.

Defendants ENDO PHARMACEUTICALS, INC. and ENDO PHARMACEUTICALS HOLDINGS, INC. shall hereinafter be referred to collectively as "Defendants ENDO".

7.

Venue is proper in Cobb County, Georgia in that the Defendants have conducted business within Cobb County, Georgia and they have committed torts within Cobb County, Georgia.

8.

This action arose from the manufacture, packaging, and distribution of birth control pills which were placed in the stream of commerce by the Defendants and as a result was to them foreseeably marketed and distributed within the State of Georgia, among other places. Consumption of the product within the State of Georgia by the Plaintiff resulted in a pregnancy, injuries to her and

to her child *In Utero*.

**FACTS COMMON TO ALL COUNTS**

**9.**

At all times material hereto, Defendants QUALITEST, BRENN, and ENDO manufactured, packaged, sold, and distributed birth control pills, including bulk products, which included those birth control pills with trademarks Cyclofem 1/35, Cyclofem 7/7/7, Emoquette, Gildess FE 1.5/30, Gildess FE 1/20, Orsythia, Previfem, and Tri-Previfem [hereinafter "BIRTH CONTROL PILLS"]. Defendants QUALITEST, BRENN, and ENDO acted in concert in so doing.

**10.**

When the BIRTH CONTROL PILLS were delivered to the Plaintiff, they were defectively and dangerously manufactured, packaged, and distributed.

**11.**

The BIRTH CONTROL PILLS purchased by the Plaintiff were packaged such that select blisters found inside the pill box were rotated 180 degrees within the card, reversing the weekly tablet orientation. As a result of the packaging error, the daily regimen for the BIRTH CONTROL PILLS left women without adequate contraception and at risk for unwanted pregnancy.

**12.**

Plaintiff used the BIRTH CONTROL PILLS as directed by the Defendants.

**13.**

Plaintiff brings this suit to recover damages for the unwanted pregnancy and serious and permanent injuries sustained by her and her child *In Utero* as a legal result of ingesting the BIRTH CONTROL PILLS for its intended purpose.

**14.**

Each of the Plaintiffs who ingested the BIRTH CONTROL PILLS has a claim for reimbursement of monies spent for the defective product, an unwanted pregnancy, and/or medical complications caused by the unwanted pregnancy as enumerated above.

**CLASS REPRESENTATION ALLEGATIONS**

**15.**

The case is maintainable on behalf of the Class under Rule 23 of the Georgia Rules of Civil Procedure, subsections (b)(3) with respect to monetary relief.

**16.**

There are questions of law and fact common to the claims of the Plaintiff and the Class members, including, but not limited to:

- (a) whether the BIRTH CONTROL PILLS as delivered to the Plaintiff were defectively and dangerously designed, manufactured, and distributed;
- (b) whether the BIRTH CONTROL PILLS were unreasonably dangerous and defective for its reasonably foreseeable uses;
- (c) whether the BIRTH CONTROL PILLS were fit for the purpose for which it was intended;
- (d) whether the Defendants were negligent in their failure to properly design, manufacture, inspect, and test the BIRTH CONTROL PILLS, and to warn the Plaintiff and the Class of defects in the BIRTH CONTROL PILLS;
- (e) whether the Defendants made misrepresentations or omissions about the BIRTH CONTROL PILLS that were deceptive and unfair; and
- (f) whether such misrepresentations and omissions were likely to mislead and deceive

a consumer acting reasonably.

17.

Plaintiff's claims and defenses are typical of the claims and defenses belonging to absent members of the Class, because Defendants uniformly designed, manufactured, and distributed the BIRTH CONTROL PILLS to the Plaintiff and the Class and uniformly made misrepresentations regarding its risks and effectiveness.

18.

The members of the Class are so numerous that joinder of all their members would be impractical. The BIRTH CONTROL PILLS have been used by thousands of persons within the State of Georgia and elsewhere.

19.

The class is defined and described as follows:

**All persons who, within the applicable limitations period, purchased and/or used and ingested the BIRTH CONTROL PILLS.**

Excluded from the proposed class are (i) Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant, and Defendant's legal representatives, predecessors, successors and assigns and (ii) the judge and staff to whom this case is assigned, and any member of the judge's immediate family. The requirements for maintaining this action as a class action are satisfied as follows.

20.

Plaintiffs will fairly and adequately assert and protect the interests of absent members of the Class because she has retained counsel competent and experienced in complex litigation and have no interest adverse to any absent Class members.

21.

Class certification is proper under Georgia Rule of Civil Procedure 23(b)(3), because common issues of law and fact predominate over any questions affecting only individual members of the Class, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The common issues of law and fact that predominate over questions affecting individual members are set forth above. Class certification is superior because it will avoid a repetition of the same evidence in multiple proceedings, Class members will have little interest in controlling the litigation of separate claims and there is no pending class action litigation of which Plaintiffs are aware that adjudicates the issues raised in this complaint, the forum is desirable, and there should not be significant difficulties in the management of the case given that the damages will be readily ascertainable as will be the identities of class members through notice procedures typically utilized in like cases.

**COUNT ONE**

**STRICT LIABILITY BY ALL DEFENDANTS**

Plaintiff LAUREN BETANCOURT, individually and on behalf of all others similarly situated, reallege paragraphs 1-21 and incorporate them herein by reference and further allege:

22.

Defendants QUALITEST, BRENN, and ENDO are strictly liable to Plaintiff for designing, manufacturing, packaging, and/or distributing by placing in the stream of commerce the BIRTH CONTROL PILLS which was unreasonably dangerous and defective for its reasonably foreseeable uses because of the aforesaid defects.

23.

The said Defendants defectively marketed the BIRTH CONTROL PILLS by failing to warn

or to adequately warn the Plaintiff of the defects.

**24.**

As a legal result of Defendants' negligence, Plaintiff is pregnant and has and may suffer injuries, and her child *In Utero* has or may suffer injuries.

WHEREFORE, the Plaintiffs individually and on behalf of the Class sue the Defendants, QUALITEST, BRENN, and ENDO, seek damages, together with costs of suit, and such further relief as the court deems proper, and respectfully request a jury trial.

**COUNT TWO**

**NEGLIGENCE OF ALL DEFENDANTS**

Plaintiff LAUREN BETANCOURT, individually and on behalf of all others similarly situated, reallege paragraphs 1-21 and incorporate them herein by reference and further allege:

**25.**

Defendants QUALITEST, BRENN, and ENDO were negligent in the following ways:

- (a) failing to adequately design, manufacture, and/or package the BIRTH CONTROL PILLS;
- (b) failing to properly inspect the BIRTH CONTROL PILLS;
- (c) failing to discover the defective condition;
- (d) failing to eliminate the defective condition in the BIRTH CONTROL PILLS before it was distributed by retailers;
- (e) failing to design, manufacture, package, inspect and test the BIRTH CONTROL PILLS to render the same suitable for its intended use;
- (f) failing to implement sufficient quality control to determine that the BIRTH

CONTROL PILLS were not properly packaged and was, thus, not safe for human consumption;

- (g) failing to warn retailers who sold the BIRTH CONTROL PILLS to Plaintiff, and/or Plaintiff of defects in the design, manufacture, packaging, inspection and/or distribution of the defective and unreasonably dangerous BIRTH CONTROL PILLS; and it otherwise in failing to exercise ordinary care under the circumstances then and there existing.

**26.**

Defendants QUALITEST, BRENN, and ENDO knew, or in the course of ordinary care should have known, that the BIRTH CONTROL PILLS was defective and unreasonably dangerous to those persons, including the Plaintiff, likely to use the product for the purpose and in the manner for which it was intended to be used.

**27.**

Defendants QUALITEST, BRENN, and ENDO owed the Plaintiff the duty of reasonable care when it designed, manufactured, packaged, and distributed the BIRTH CONTROL PILLS. Defendant violated this duty in the manner stated above.

**28.**

As a legal result of Defendant QUALITEST, BRENN, and ENDO's negligence, the Plaintiff is pregnant and she has suffered and may suffer bodily injury resulting in pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expensive health care and treatment, loss of earnings, and a loss of ability to earn money. And, her child *In Utero* may suffer from bodily injury.

WHEREFORE, the Plaintiff individually and on behalf of the Class sue Defendants QUALITEST, BRENN, and ENDO seek damages, together with costs of suit, and such further relief

as the court deems proper, and respectfully request a jury trial.

**COUNT THREE**

**BREACH OF WARRANTY BY ALL DEFENDANTS**

Plaintiffs LAUREN BETANCOURT, individually and on behalf of all others similarly situated, reallege paragraphs 1-21 and incorporate them herein by reference and further allege:

**29.**

Defendants QUALITEST, BRENN, and ENDO, by and through their sale and distribution of the BIRTH CONTROL PILLS, expressly and impliedly warranted to the public generally and to the Plaintiff specifically that the BIRTH CONTROL PILLS were fit for the purpose for which it was intended.

**30.**

Plaintiff made use of the product as alleged herein and relied on the express and implied warranties. Contrary thereto, the BIRTH CONTROL PILLS were not fit for its intended use, rendering it unreasonably dangerous.

**31.**

Defendants breached the express and implied warranties in the manner stated above.

**32.**

Defendants' breach of warranties and the dangerous and defective nature of the BIRTH CONTROL PILLS were a legal cause of the damages sustained by the Plaintiff.

WHEREFORE, the Plaintiff individually and on behalf of the Class sue the Defendants QUALITEST, BRENN, and ENDO, seek damages, together with costs of suit, and such further relief as the court deems proper, and respectfully request a jury trial.

**COUNT FOUR**

**VIOLATION OF STATE CONSUMER PROTECTION STATUTES**

Plaintiff sues the Defendant QUALITEST, BRENN, and ENDO by this count and reallege paragraphs 1-21 and incorporate them herein by reference and further allege:

**33.**

At all relevant times, there was in effect the Georgia Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-317 *et. seq.*, and other similar state acts. These statutes uniformly forbid consumer fraud in connection with the sale or advertisement of merchandise.

**34.**

The Plaintiff and the Class purchased and paid for the BIRTH CONTROL PILLS manufactured, packaged, promoted, and sold by the Defendants within the applicable limitations period.

**35.**

Pursuant to these statutes, the Defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacture, packaging, promotion, and sale of the BIRTH CONTROL PILLS to the Plaintiff and the Class members.

**36.**

Defendants intended that the Plaintiff and the Class members rely on its materially deceptive acts and practices and purchase the BIRTH CONTROL PILLS as a consequence of the deceptive practices and acts, including Defendants' misrepresentations and omissions of material fact with respect to the true nature of the BIRTH CONTROL PILLS.

**37.**

Defendants' deceptive and unfair representations and material omissions to the Plaintiff and

the Class members were, and are unfair and deceptive acts and practices.

**38.**

The Defendants' unfair and deceptive practices and acts were and are likely to mislead and deceive a consumer acting reasonably.

**39.**

Defendants' deceptive representations and material omissions to Plaintiff and the Class members respecting the BIRTH CONTROL PILLS were, and are, unfair and deceptive acts and practices.

**40.**

As a proximate result of the Defendants' unfair and deceptive practices and acts, Plaintiffs and the Class members have suffered damages as enumerated above, in an amount to be determined at trial.

WHEREFORE, the Plaintiff individually and on behalf of the Class sue the Defendants QUALITEST, BRENN, and ENDO, seek damages, together with attorney's fees and costs of suit, and such further relief as the court deems proper, and respectfully request a jury trial.

**COUNT FIVE**

**UNJUST ENRICHMENT**

The Plaintiffs sue the Defendants QUALITEST, BRENN and ENDO by this count and reallege paragraphs 1-21 and incorporate them herein by reference and further allege:

**41.**

The Plaintiffs and the Class members purchased BIRTH CONTROL PILLS manufactured, packaged, promoted, and sold by the Defendants and thereby conferred a benefit on the Defendants which the Defendants accepted and retained.

42.

To the detriment of the Plaintiff and members of the Class, Defendants have been, and continue to be, unjustly enriched as a result of the unlawful and/or wrongful collection of, inter alia, payments for the BIRTH CONTROL PILLS.

43.

Defendants have unjustly benefitted through the unlawful and/or wrongful collection of, inter alia, payments for the BIRTH CONTROL PILLS and continue to so benefit to the detriment and at the expense of the Plaintiff and members of the Class.

44.

Accordingly, Plaintiff and members of the Class seek full restitution of the Defendants' enrichment, benefits and ill-gotten gains acquired as a result of the unlawful and/or wrongful conduct alleged herein.

WHEREFORE, the Plaintiff individually and on behalf of the Class sue the Defendants QUALITEST, BRENN, and ENDO seek damages, together with attorney's fees and costs of suit, and such further relief as the court deems proper, and respectfully request a jury trial.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, individually and on behalf of the Class, pray that:

- (a) The Court determine that this action may be maintained as a class action pursuant to Rule 23(b)(3) of the Georgia Rules of Civil Procedure with respect to the claims for damages, and declaring Plaintiffs as representatives of the Class and Plaintiffs' counsel as counsel for the Class;
- (b) The conduct alleged herein be declared, adjudged and decreed to be unlawful;
- (c) Plaintiffs and the Class be granted an award of damages in such amount to be

determined at trial, with trebled damages as provided by law;

- (d) Plaintiff and the Class recover their costs of suit, including reasonable attorneys' fees and expenses as provided by law; and;
- (e) Plaintiff and the Class be granted such other, further, and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this court.

THIS the 30th day of September, 2011.

**STEVEN L. BEARD, P.C.**

BY: Steven L. Beard  
STEVEN L. BEARD  
Georgia State Bar No. 044475  
Attorneys for Plaintiffs

Signed by  
KDB w/  
express  
permission

**ROBERTSON, BODOH & NASRALLAH, LLP**

BY: [Signature]  
KEITH D. BODOH  
Georgia State Bar No. 065180  
Attorneys for Plaintiffs