

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KATHLEEN MOLLER

VERSUS

MARTIAN SALES, INC; JOPEN, LLC,
a Texas limited liability company;
JOHNSON FOODS, LLC, a Wyoming
limited liability company; LP IND., LLC,
a Wyoming limited liability company;
CAG HOLDINGS, LLC, a Wyoming
limited liability company; RMH
HOLDINGS, INC., a Wyoming
corporation; ABC INSURANCE
COMPANY and John Does 1-4.

* CIVIL ACTION NO. 24-0228-WBV-DPC

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* JUDGE WENDY B. VITTER

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* MAGISTRATE DONNA PHILLIPS

* CURRAULT

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**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT – DETERMINATION OF PIERCING THE VEIL, SINGLE
BUSINESS ENTERPRISE, AND ALTER EGO FOR JURISDICTIONAL PURPOSES**

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I. INTRODUCTION

The purpose of this Motion is to resolve the initial question of whether, for jurisdictional purposes, the defendants named in this litigation were acting as a single business enterprise, are subject to veil piercing, or, in the case of certain named individuals, whether the corporate defendants were in fact just the alter ego of these individuals. The facts adduced in jurisdictional discovery that will be discussed, *infra.*, are sufficient to establish jurisdiction over all defendants pursuant to veil piercing, single business enterprise, and/or alter ego. Finally, while the issue of evidence of financial and tax records production is still pending for decision before this Court and might add even more weight to Plaintiff's argument.

A. Background

This wrongful death action presents claims arising from the preventable death of Harmony Moller. On February 6, 2023, Harmony Moller died suddenly and unexpectedly at the age of 36. Third Amended Complaint ("TAC"), Dkt. No. 100, at ¶ 30. A postmortem exam determined the cause of death was "Abnormally high left coronary ostia takeoff exacerbated by mitragynine use." *Id.* at ¶ 33. Mitragynine is the most abundant active alkaloid in the Southeast Asian plant *Mitragyna Speciosa*, commonly known as kratom.¹ *Id.* at ¶ 34. The product leading to Harmony Moller's death was "OPMS kratom." *Id.* at ¶ 30.

¹ <https://www.merriam-webster.com/dictionary/mitragynine>



The OPMS kratom ingested by Harmony Moller before her death was product was purchased and packaged as depicted in the image above which is the actual package found with the decedent, in her bedroom, where she was found dead by Plaintiff. The “OPMS kratom powder” is a known trademark for Martian Sales. See, EX.s 11-14.²

B. Veil Piercing Allegations

All named Defendants, who are jointly referred to herein as the “OPMS Defendants,” work in unison to import, manufacture, process, market, distribute, sell, and post market surveil OPMS Kratom products. TAC, Dkt. No. 100, at ¶¶ 53-54 & 57-58. All entities in this stream of commerce are substantially intertwined, operate as one, share substantial responsibilities over OPMS, share in the accounting and finances related to OPMS, and are fraudulently operated to avoid liability arising from OPMS products, such that, as Plaintiff alleges, Defendants are alter egos of one another, operate as a single business enterprise, or otherwise merit veil piercing. *Id.* at ¶ 25.

² All exhibits are attached to Plaintiff’s Statement of Material Facts, which are incorporated here by reference. All exhibits number citations within this memo correspond to the same exhibit number as attached to Plaintiff’s Statement of Material Facts. All exhibits are true and correct copies of what they are stated to be.

Louisiana courts have consistently ruled that the corporate veil will be pierced, and members of an LLC will be held personally liable for company debts if they have engaged in fraud or if they have operated the LLC in a way that lends it to be the alter ego of themselves. Further, the veil may be pierced for jurisdictional purposes only.

II. RECORD EVIDENCE IN SUPPORT

Plaintiff has attached, or incorporates by reference, the following in support of this motion:

1. Plaintiff's Third Amended Complaint, Dkt. No. 100.
2. Plaintiff's Statement of Material Facts and Exhibits 1-42 attached thereto.
3. The Declaration of Kathy Leodler (Decl. of Leodler) and Exhibits A-1-H-3 attached thereto.

III. PROCEDURAL HISTORY

Plaintiff filed an initial complaint on January 24, 2024. Dkt. No. 1. A second amended complaint was filed on February 6, 2024, to address deficiencies regarding Defendants' corporate citizenship noted by the Court. Dkt. No. 7. Almost all initially named Defendants moved to dismiss the second amended complaint on May 9, 2024. Dkt. No. 31.³ On July 16, 2024, this Court entered an order denying the motions to dismiss and ordered the parties to engage in jurisdictional discovery, in part to explore the single business enterprise and alter ego theories asserted in Plaintiff's complaint. Dkt. No. 54.

The parties engaged in jurisdictional discovery, including the depositions of Martian Sales, LP, CAG, RMH, and Johnson Foods. Defendants also responded to written discovery.

³ Johnson Foods, LLC filed a motion to dismiss on May 28, 2024. Dkt. No. 45.

Plaintiff filed a third amended complaint on March 24, 2025, adding Nuza, Calibre, FMK, PNW, CC US, Palaio, Jennings, Gabbay, and Reilly as named parties. Dkt. No. 100. Defendants filed renewed motions to dismiss on May 23, 2025, arguing lack of personal jurisdiction and failure to state a claim. Dkt. No. 122.^{4 5}

As Plaintiff argues in its response to the pending motions to dismiss, this court has jurisdiction over Defendants as all, collectively combined to intentionally and deliberately enable the OPMS kratom product responsible for the death in this case to enter the national stream of commerce such that they satisfy the sufficient minimum contacts test for specific jurisdiction. However, to the extent this Court finds any one Defendant does not have sufficient minimum contacts with Louisiana, it should impute the contacts of any other Defendants under the single business enterprise, alter ego, or veil piercing theories proved herein. See *infra*. § V(B).

IV. QUESTION PRESENTED

Should the contacts of JOPEN, or any other party this Court finds subject to its jurisdiction, be imputed to all other defendants pursuant to findings of veil piercing, alter ego, or single business enterprise?

V. LEGAL STANDARD

A. Motion for Summary Judgment Standard of Review

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

⁴ JOpen is no longer challenging jurisdiction, however, to the extent that this Court finds that JOpen is the alter ego of David Gabbay, Mr. Gabbay is subject to jurisdiction of this Court. *Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653-54 (5th Cir.2002) (holding that “an individual can be bound by a corporation's voluntary submission to the personal jurisdiction of a court when the corporate veil has been pierced and the corporation is deemed to be the ‘alter ego’ of that individual”).

⁵ Defendants have attached extraneous evidence to their motion to dismiss meriting conversion of the motions to dismiss to summary judgment motions, thus these motions are intertwined and should be addressed together. FRCP 12(d).

Fed. R. Civ. P. 56. Materiality is a matter of substantive law, and “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “A fact is considered material when its existence or nonexistence may be essential to plaintiff’s cause of action under the applicable theory of recovery.” *Smith v. Our Lady of the Lake Hospital, Inc.*, 639 So. 2d 730, 751 (La. 1994). “A genuine issue is one about which reasonable persons could disagree.” *Hines v. Garrett*, 876 So. 2d 764, 765 (La. 2004). In determining whether a genuine issue of material fact exists, the court must view all evidence in the light most favorable to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 380 (2007). The party asserting that a material fact “cannot be or is genuinely disputed” must support the assertion by either:

- (1) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (2) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1)(A)–(B).

If the moving party has carried its burden, the non-movant must “come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The nonmoving party, however, cannot satisfy his summary judgment burden with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). “One of the principal purposes of the summary judgment rule is to

isolate and dispose of factually unsupported claims or defenses[.]” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). If a party bears the burden of proof “to establish the existence of an element essential to that party’s case,” but fails to make a sufficient showing, “Rule 56(c) mandates the entry of summary judgment” against the party. *Id.* at 322.

B. Jurisdictional Contacts & Veil Piercing

It is well established that a Court may impute the minimum contacts of one company to another based on various veil piercing theories. *Bona Fide Demolition & Recovery, LLC v. Crosby Const. Co. of Louisiana*, 690 F. Supp. 2d 435, 445 (E.D. La. 2010); see also, *Patin v. Thoroughbred Power Boats, Inc.*, 294 F.3d 640, 653 (5 Cir.2002) (citing circuit cases and different veil piercing theories, including alter-ego theory and “reverse” veil piercing). “In Louisiana, courts may impute contacts between two entities under either an alter-ego or agency theory.” *Blackmon v. Bracken Constr. Co., Inc.*, No. CV 18-00142-BAJ-RLB, 2018 WL 4387633, at *3 (M.D. La. Sept. 14, 2018) (quoting, *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 753 F.3d 521, 546 (5th Cir. 2014)). If the Court has personal jurisdiction over an entity, it also has personal jurisdiction over that entity's alter-egos. *Jackson v. Tanfoglio Giuseppe, S.R.L.*, 615 F.3d 579, 586 (5th Cir. 2010).

The “jurisdictional contacts of one are the jurisdictional contacts of the other for the purposes of the International Shoe due process analysis.” *Patin v. Thoroughbred Power Boats, Inc.*, 294 F.3d 640, 653 (5 Cir.2002). The alter-ego test for personal jurisdiction “is less stringent than that for liability.” *Stuart v. Spademan*, 772 F.2d 1185, 1198 n.2 (5th Cir. 1985) (Citing, *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir.1981) (“Accordingly, for jurisdiction to exist, there need not be both the existence of a mere shell corporation and fraud. Rather, either factor, a shell corporation or fraud is sufficient by itself to justify jurisdiction.”))

The same is true in Wyoming. See generally, *Saenz v. Williams Companies, Inc.*, No. 20-CV-176-SWS, 2021 WL 7211123, at *4 (D. Wyo. Sept. 22, 2021)

C. Equitable Estoppel Regarding Choice of Law

Defendants have for the first time since the filing of this case on January 24, 2024, raised a choice of law question and now assert that Wyoming’s veil piercing law controls. See, Dkt. No. 122. Defendants should be estopped from making this argument and this Court should apply Louisiana law.⁶

D. Choice of Law – Louisiana or Wyoming Veil Piercing – Not in Conflict

If this Court does not estop Defendants from arguing Wyoming law applies to this matter, the Court must engage in a choice of law analysis. Pursuant to *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941), courts with diversity jurisdiction apply the choice of law rules of the forum in which the court sits.

Louisiana courts have not explicitly ruled on the appropriate choice of law for veil piercing theories. However, the Fifth Circuit has predicted that Louisiana courts would look to the law of the state in which the defendant corporation was incorporated. *Patin v. Thoroughbred*

⁶ Equitable estoppel is defined as the effect of the voluntary conduct of a party whereby he is precluded from asserting rights against another who has justifiably relied upon such conduct and changed his position so that he will suffer injury if the former is allowed to repudiate the conduct. Founded upon good faith the doctrine is designed to prevent injustice by barring a party, under special circumstances from taking a position contrary to his prior acts, admissions, representations, or silence. *Richard v. Khalif*, 2015-685 (La. App. 3 Cir. 2/3/16), 185 So. 3d 259, 262–63 (Citing *Calhoun v. Huffman*, 217 So.2d 733, 737 (La.App. 3 Cir.), writ denied, 253 La. 878, 220 So.2d 460 (La.1969)); see also, *Wilkinson v. Wilkinson*, 323 So.2d 120 (La.1975) (“Thus, there are three elements of estoppel: (1) a representation by conduct or word; (2) justifiable reliance; and (3) a change in position to one's detriment because of the reliance . . .”)

Plaintiff asserted the single business enterprise, veil piercing, and alter ego theories in the initially filed complaint (Dkt. No.s 1 & 7), opposition to motions to dismiss (Dkt. No. 48), and in discovery motions (Dkt. No.s 70, 77, 82, 91, 97, 102). Defendants did not raise a choice of law challenge until after approximately one and a half years of litigation. They do so in a transparent attempt to avoid the application of Louisiana’s single business enterprise law. At best, Defendants have been lying in wait to assert this choice of law argument, or at worst, have just discovered it and after a year of litigation are attempting to change the playing field. They should not be allowed to do so. See *Brandon v. Interfirst Corp.*, 858 F.2d 266, 268 (5th Cir.1988) (stating “a party who has assumed one position in his pleadings may be estopped from assuming an inconsistent position”).

Power Boats, Inc., 294 F.3d 640, 647 (5th Cir.2002); see also, *Harch Hyperbarics, Inc. v. Martinucci*, No. CIV.A. 09-7467, 2011 WL 2119077, at *4 (E.D. La. May 26, 2011) (“the Fifth Circuit made an *Erie* guess and held that under Louisiana law, the law of the state of incorporation governs the determination [of whether] to pierce a corporate veil. (internal citation and quotation omitted)); see, *Energy Coal v. CITGO Petroleum Corporation*, 836 F.3d 457, 462 (5th Cir. 2016) (reaffirming *Patin* and stating that, “Louisiana courts look to the state of incorporation not just when deciding *issues involving piercing, which as noted above is a close relative of the single business enterprise theory*, but also when deciding more general questions of corporate structure.” (citations omitted and emphasis added)).

However, the Court need not choose between Louisiana and Wyoming regarding veil piercing and alter ego because both states have a substantially similar standard that would result in the same conclusion. “[I]f the laws of both states relevant to the set of facts are the same, or would produce the same decision in the lawsuit, there is no real conflict between them.” *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 753 F.3d 521, 529 (5th Cir. 2014) (Citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 839 n. 20 (1985)).⁷ Overall, standards for single business enterprise, alter ego, and veil piercing are all substantially similar under Louisiana law, and as shown below are substantially similar to Wyoming law. See, *Green v. Champion Ins. Co.*, 577 So.2d 249, 257–58 (La.Ct.App.1991) (Under Louisiana law, the factors to be considered to determine whether one entity is an alter ego of another or whether two entities are a “single business enterprise” are similar.)

E. Veil Piercing & Alter Ego Under Louisiana Law

⁷ This Court has an interest in applying Louisiana law as the decedent was a Louisiana resident who purchased and consumed OPMS kratom in Louisiana and passed away in Louisiana. Plaintiff is also a Louisiana resident who is pursuing this matter in Louisiana. See, La. Civ. Code Ann. art. 3515.

An LLC is an entity to which the law attributes personality and is, therefore, a juridical person. See La. R.S. 12:1301. Therefore, as a general proposition, the law considers an LLC and the member(s) comprising the LLC as being wholly separate persons. See, La. C.C. art. 24.; see also, *Ogea v. Merritt*, 2013-1085 (La. 12/10/13), 130 So. 3d 888, 894-95.

However, in narrowly defined circumstances, when individual member(s) of a juridical entity such as an LLC mismanage the entity or otherwise thwart the public policies justifying treating the entity as a separate juridical person, the individual member(s) are subject to personal liability for obligations for which the LLC would otherwise be solely liable. When individual member(s) are held liable under such circumstances, it is said that the court is "piercing the corporate veil." See, e.g., *Charming Charlie, Inc. v. Perkins Rowe Associates, L.L.C.*, 11-2254, (La. App. 1 Cir. 7/10/12), 97 So. 3d 595, 59; *Ogea v. Merritt*, 2013-1085 (La. 12/10/13), 130 So. 3d 888, 895.

There are two ways in which the courts have examined piercing the corporate veil. In *Ogea v. Merritt*, 2013-1085 (La. 12/10/13), 130 So. 3d 888, the Supreme Court recognized that La. R.S. 12:1320(D) provides a statutory basis for finding a limited liability company's members personally liable. That statute reads as follows:

Nothing in this Chapter shall be construed as being in derogation of any rights which any person may by law have against a member, manager, employee, or agent of a limited liability company because of any fraud practiced upon him, because of any breach of professional duty or other negligent or wrongful act by such person, or in derogation of any right which the limited liability company may have against any such person because of any fraud practiced upon it by him.

The *Ogea* Court recognized that, under the statute, a person may pierce the corporate veil of an LLC when fraud has been practiced upon him. In this case, plaintiff alleges, and will prove, that fraud was practiced upon them by the OPMS Defendants.

Furthermore, there are jurisprudential ways to pierce the corporate veil of an LLC that do not rely on the above cited statute. Indeed, courts have ruled that merely because La. R.S. 12:1320(D) provides a statutory basis for finding a limited liability company's members personally liable, it does not dictate that the jurisprudential doctrine of piercing the company veil is inapposite. *Mathes Brierre Architects v. Karlton/ISG Enters., LLC*, 2019-0357 (La. App. 4 Cir. 12/3/20), 311 So. 3d 532, 541, writ denied sub nom. *Mathes Brierre Architects v. Karlton/ISG Enters., LLC, Int'l*, 2021-00029 (La. 3/16/21), 312 So. 3d 1090.

Jurisprudentially, the court may pierce the corporate veil under two circumstances. The first is where the shareholders, acting through the corporation, commit fraud or deceit on a third party such that justice demands the corporate veil be pierced to allow the third party to recover from the shareholders personally. *Hill Int'l, Inc. v. JTS Realty Corp.*, 2021-0157 (La. App. 1 Cir. 10/20/22), 370 So. 3d 16, 29. In the second instance, the shareholders disregard the corporate formalities to such an extent that the shareholders and the corporation become indistinguishable, i.e., the corporation was operated as the "alter ego" of the shareholder. *Id.* Both fraud and the "alter ego" theory are applicable bases for piercing the veil of the OPMS Defendants.

i. Single Business Enterprise Factors

Additionally, to the extent this Court applies Louisiana law, it should apply the single business enterprise analysis to the facts asserted herein. Louisiana courts have recognized the single business enterprise theory as a vehicle for holding a group of affiliated entities responsible for the obligations of one of the entities. *Sarpy v. ESAD, Inc.*, 2007-0347 (La. App. 4 Cir. 9/19/07), 968 So. 2d 736, 738, writ denied, 2007-2056 (La. 1/11/08), 972 So. 2d 1170; *In re New Orleans Train Car Leakage Fire Litigation*, 96-1677 (La. App. 4 Cir. 3/5/97), 690 So.2d 255; see also, *Green v. Champion Insurance Company*, 577 So.2d 249, 257 (La. App. 1st Cir.), writ

denied, 580 So.2d 668 (La.1991) (In addition to the traditional “piercing the veil” theory to disregard a corporate identity, the court in *Green* utilized the “single business enterprise” or “instrumentality” theory to extend liability beyond a separate entity.).

As instructed in *Green*, in determining whether a group of entities constitutes a single business enterprise, certain factors like the factors used in “piercing the corporate veil” cases should be utilized.⁸ *Grayson v. R.B. Ammon & Assocs., Inc.*, 1999-2597 (La. App. 1 Cir. 11/3/00), 778 So. 2d 1, 14, *writ denied*, 2000-3270 (La. 1/26/01), 782 So. 2d 1026, and *writ denied*, 2000-3311 (La. 1/26/01), 782 So. 2d 1027. Whether an affiliated group of entities constitutes a “single business enterprise” is a question of fact to be decided by the trial court. *Lee v. Clinical Research Center of Florida*, 04-0428, p. 7 (La. App. 4 Cir. 11/17/04), 889 So.2d 317;

⁸ Louisiana Courts apply the following 18 factors to a single business enterprise analysis, with no one factor being determinative, and Courts must still consider the totality of the circumstances:

- (1) Corporations with identity or substantial identity of ownership, that is, ownership of sufficient stock to give actual working control.
- (2) Common directors or officers.
- (3) Unified administrative control of corporations whose business functions are similar or supplementary.
- (4) Directors and officers of one corporation act independently in the interest of that corporation.
- (5) Corporation financing another corporation.
- (6) Inadequate capitalization (thin incorporation.)
- (7) Corporation causing the incorporation of another affiliated corporation.
- (8) Corporation paying the salaries and other expenses or losses of another corporation.
- (9) Receiving no business other than that given to it by its affiliated corporations.
- (10) Corporation using the property of another corporation as its own.
- (11) Noncompliance with corporate formalities.
- (12) Common employees.
- (13) Services rendered by the employees of one corporation on behalf of another corporation.
- (14) Common offices.
- (15) Centralized accounting.
- (16) Undocumented transfers of funds between corporations.
- (17) Unclear allocation of profits and losses between corporations; and
- (18) Excessive fragmentation of a single enterprise into separate corporations.

Green, 577 So. 2d at 257-58; see also, *Hill International, Inc. v. JTS Realty Corporation*, 370 So. 3d 16, 32 (La. App. 2022).

Boes Iron Works, Inc. v. Gee Cee Grp., Inc., 2016-0207 (La. App. 4 Cir. 11/16/16), 206 So. 3d 938, 948, *writ denied*, No. 2017-C-0040, 2017 WL 744658 (La. Feb. 10, 2017).

ii. Veil Piercing Factors

The determination of whether to allow piercing of the corporate veil is made by considering the totality of the circumstances. *Riggins v. Dixie Shoring Co., Inc.*, 590 So.2d 1164, 1169, (La. 1991). Some of the circumstances that may point to a disregard of the corporate identity are: (1) commingling of corporate and shareholder funds; (2) failure to follow statutory formalities for incorporating and transacting corporate activities; (3) under-capitalization; (4) failure to provide separate bank accounts and bookkeeping records; and (5) failure to hold regular shareholder and director meetings. *Riggins*, 590 So. 2d at 1168; *Fausse Riviere, L.L.C. v. Snyder*, 2016-0633 (La. App. 1 Cir. 2/15/17), 211 So. 3d 1188, 1193.

F. Veil Piercing & Alter Ego Under Wyoming Law

Like Louisiana, in Wyoming, “limited liability is the rule, and piercing is the rare exception to be applied only in cases involving exceptional circumstances.” *GreenHunter Energy, Inc. v. Western Ecosystems Technology, Inc.*, 337 P.3d 454, 465 (Wy. 2014). Like in Louisiana, “[t]he facts of each case involving the disregard of a corporate entity must lead us to the conclusion that adherence to the separate existence of the corporation would sanction a fraud or promote injustice.” *Kloefkorn-Ballard Constr. & Development, Inc. v. North Big Horn Hosp. Dist.*, 683 P.2d 656, 661 (Wy. 1984).

The veil of a limited liability company may be pierced under when: (1) the limited liability company is not only owned, influenced and governed by its members, but the required separateness has ceased to exist due to misuse of the limited liability company; and (2) the facts are such that an adherence to the fiction of its separate existence would, under the particular

circumstances, lead to injustice, fundamental unfairness, or inequity. *GreenHunter Energy, Inc. v. W. Ecosystems Tech., Inc.*, 2014 Wyoming 144, ¶ 27, 337 P.3d 454, 462–63 (Wyo. 2014). The inquiry is an equitable one, appropriate for curing fraud, unfairness, or injustice. *Id.*

Wyoming courts, similar to Louisiana Courts, consider a variety of factors regarding veil piercing and alter ego claims, including:

commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses; the treatment by an individual of the assets of the corporation as his own; the failure to obtain authority to issue or subscribe to stock; the holding out by an individual that he is personally liable for the debts of the corporation; the failure to maintain minutes or adequate corporate records and the confusion of the records of the separate entities; the identical equitable ownership in the two entities; the identification of the equitable owners thereof with the domination and control of the two entities; identification of the directors and officers of the two entities in the responsible supervision and management; the failure to adequately capitalize a corporation; the absence of corporate assets, and undercapitalization; the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation; the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest or concealment of personal business activities; the disregard of legal formalities and the failure to maintain arm's length relationships among related entities; the use of the corporate entity to procure labor, services or merchandise for another person or entity; the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another; the contracting with another with intent to avoid performance by use of a corporation as a subterfuge of illegal transactions; and the formation and use of a corporation to transfer to it the existing liability of another person or entity.

Kaycee Land & Livestock v. Flahive, 46 P.3d 323, 325 (Wyo. 2002) (internal citation omitted).

Like the single business enterprise, Wyoming Courts also look for evidence of a joint adventure. “A joint adventure is defined generically as an ‘association of persons to carry out a *single business enterprise* for profit, for which purpose they combine their property, money, effects, skill, and knowledge.’ *Black's Law Dictionary* (5th ed. 1979).” *Hill v. Zimmerer*, 839 P.2d 977, 981–82 (Wyo. 1992) (emphasis added). A Wyoming court will find a joint adventure “when there exists (1) an agreement, express or implied, (2) to carry out a common business

purpose, (3) for pecuniary gain, (4) in which each party has an equal voice in control and direction of the undertaking.” *Id.* at 982 (citing *Popejoy v. Steinle*, 820 P.2d 545, 549 (Wyo.1991)). As to third persons, however, the law will impose joint adventurer status upon individuals or entities conducting their affairs as though they are joint adventurers, regardless of their actual intent. *Id.* Whether or not a joint adventurer relationship exists may be inferred from the circumstances and is a question for the finder of fact. *Id.*

In short regardless of Wyoming or Louisiana law controlling, the Defendants veil is pierced, and they are subject to this Court’s jurisdiction.

VI. ARGUMENT

Applying Louisiana and Wyoming law to the facts of this matter to and in particular, considering those same facts in the context of perpetuation of fraud and the totality of the circumstances, an imputation of jurisdictional contacts pursuant to veil piercing, alter ego, or single business enterprise or joint adventure is merited. The standard for veil piercing for jurisdictional purposes is lower. *Stuart v. Spademan*, 772 F.2d 1185, 1198 n.2 (5th Cir. 1985) (The alter-ego test for personal jurisdiction “is less stringent than that for liability.”).⁹

A. Defendants have commingled corporate and shareholder funds and have failed to follow statutory formalities for incorporating and transacting corporate activities.

First and foremost, there is clear of commingling of funds. Most notably, JOpen and Martian Sales operated for almost ten years without a single written agreement, while JOpen effectively funded Martian Sales’ entire operation.

⁹ A company’s financial documents are important evidence to consider when evaluating veil piercing, alter ego, and single business enterprise/joint adventure claims. Plaintiff has already requested the audited financial records of Defendants, including tax returns, and the issue is pending before this Court. See Dkt. No. 102. Production of these highly relevant and probative documents will only assist the Court in deciding the issue presented herein.

More specifically, Martian and JOpen began working together since at least 2012, after an introduction through Mark Jennings. See, EX. 1 at 269:13-270:10. In 2012, after briefly buying and distributing OPMS kratom, JOpen quickly shifted to packaging OPMS kratom and paying Martian's bills for production of OPMS Kratom. See, EX. 1 at 270:11-272:24. Between 2012 and 2020 JOPEN regularly paid Martian's costs of doing business but never had formal loan arrangements or was repaid by Martian for payments made on its behalf. See, EX. 1 at 275:13-276:24.

Martian and JOpen reduced their relationship to writing in 2020, not long after litigation involving kratom products began. However, JOpen has acknowledged that even after reducing their relationship to writing, there was no reimbursement for loans or any form of "squaring up" for expenses paid by JOpen on Martian's behalf for a period of almost ten years. EX. 1 at 273:2-275:8 & 275:13-276:24. Thus, JOPEN effectively paid for Martian's entire operations since 2012, without a reduction to writing until 2020, and has continued to pay for Martian's operations since 2020.

In fact, Martian is wholly compensated by JOpen. See, EX. 15 at 123:17-124:24; see also, EX. 22 at 41:14-16. Bafflingly, the basis for this compensation is unknown to Martian. See, EX. 15 at 123:17-124:24. It is difficult to discern how Martian is paid, because according to JOpen, 29% of the revenue of OPMS sales goes to JOpen, while the remaining 71% is used to pay for the costs of goods for OPMS, in other words, to pay Martian's bills. See, EX. 1 at 281:15-284:25.

JOpen is truly the hub of the OPMS network insofar as it pays for raw kratom sourced by Nuza, pays manufacturing costs for Martian, such as those incurred with Calibre, and then manages packaging, distribution, and post market surveillance. See, EX. 1 at 295:22-296:9 &

281:15-284:25. JOpen has even paid donations to the American Kratom Association (“AKA”) on behalf of Martian. See, EX. 1 at 285:18-286-9. It is not clear which entity properly accounts for these donations on its tax returns. Not to mention, JOpen was billed for work AKA did on behalf of Mr. Palaio and Mr. Jennings in association with Johnson Foods and other interrelated OPMS entities. See Ex. 42 at ¶ 74. Thus, JOpen is not only paying for Martian’s bills, but is directed to pay whatever operational costs arise throughout the entire stream of commerce for OPMS kratom and for non-OPMS production work, such as lobbying by the AKA.

But it is not just Martian Sales that JOpen and Mr. Gabbay have wholly funded, the same can be said for Johnson Foods.¹⁰ Johnson Foods is wholly funded through Telescaph Inter Texas, LLC, which is Johnson Foods’ only client. See, EX. 3 at 43:1-17. Mr. Gabbay allegedly formed Telescaph to obtain “blind” reports on marketing kratom internationally. The facts indicate that Johnson Foods worked with Mr. Jennings with regards to Telescaph. See *Id.* at 44:10-45:12; see also, EX. 1 at 91:14-92:6 & 92:24-94:5. Moreover, Johnson Foods’ work has focused on submission of a New Dietary Ingredient Notification (NDIN) and advocacy work related to kratom. *Id.* That NDIN is allegedly for Johnson Foods’ own kratom brand, Mitravida. See generally, EX. 26.

Of note, the NDIN was created through direct collaboration with Mr. Jennings and Mr. Palaio and other OPMS related entities such as NP Biotech and NP Pharma Holdings. Mr. Jennings, a former manager of Johnson Foods, and Mr. Palaio were instrumental in coordinating a clinical study for the NDIN in Canada. See, EX. 3 at 134:8-14; see also, EX.s 24-26. In sum,

¹⁰ Johnson Foods is the only entity who has produced any financial records in this matter. Plaintiff’s motion for reconsideration regarding a motion to compel financial records remains pending. As describe in Plaintiff’s Statement of Material Facts, Johnson Foods’ financial documents only raise further questions and concerns that weigh in favor of a finding of veil piercing. This only amplifies the need for this Court to order production of the requested financial records from all other named defendants.

Johnson Foods has apparently done anything but the work its sole client, Telescaph Inter Texas, contracted it to do. There is no reasonable business explanation for why Telescaph would fund Johnson Foods to engage in the business it has done. The only logical inference is that Mr. Gabbay wanted a “blind” funder of Johnson Foods to assist it in submission of an NDIN and advocacy work that would benefit JOpen and the broader OPMS enterprise.

Finally, a managerial hub for OPMS production is CC US. CC US manages all accounting for LP, CAG, RMH, Calibre, NUZA, PWH, and NP Pharma Holdings. LLC. See, EX. 9 at 346:12-347:2 & 348:24-349:5. Therefore, CC US is effectively a management entity for the OPMS supply and manufacturing chain, covering accounting, administration, and management. Mark Jennings is paid by CC US though he manages or has managed various named entities including CAG, RMH, NUZA, Calibre, and LP. See, EX. 7 at 10:6-14, 71:13-23, & 101:5-15.

In short, OPMS is produced through a stream of commerce in which all entities are inextricably intertwined. For those entities not directly involved in production of OPMS, they still share revenue, officers, and offices with other entities who are.

B. Defendants’ corporate entities are intentionally undercapitalized.

In addition to the clear commingling and dubious financial practices, no defendant has insurance for the claims asserted in Plaintiff’s complaints. See, EX.s 35-39; see also, EX. 15 at 158:6-8. This lack of insurance is a fundamental form of undercapitalization and breach of fiduciary duty. The duties of LLC members are laid out in La. R.S. 12:1314, which states that the members and managers "shall be deemed to stand in a fiduciary relationship to the limited liability company and its members and shall discharge his duties in good faith, with the

diligence, care, judgment, and skill which an ordinary prudent person in a like position would exercise under similar circumstances."

C. Defendants have structured themselves in an opaque and deceptive manner intended to perpetuate fraud and avoid liability for their OPMS kratom products.

Defendants know what they are doing. They have constructed an ever growing and evolving web of entities intended to avoid liability for the harms caused by OPMS kratom. In other words, they are engaged in ongoing corporate fraud. Fraud is a misrepresentation, or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. La. C.C. art.1953.

Defendants have engaged in corporate fraud to avoid liability. For instance, OPMS labels falsely identify the distributor behind OPMS products. See, EX. 1 at 66:8-70:1, 79:19-81:7, 212:11-216:9, & 219:17-220:4. The labels direct consumers, regulators, and the public to a non-existent entity named Choice Organics and provides a Los Angeles address that is a mailbox store P.O. box. See EX. 42 at ¶¶ 22, & 51-52. Further, the phone number provided did not function and has only recently come into alleged use for post market surveillance. *Id.* Defendants have also intentionally incorporated themselves in Wyoming. Testimony indicates they so at the behest of their attorneys. See, EX. 15 at 72:11-16. However, it is easy to infer that the intent was to hide the identity of their owners and members. See generally, EX. 40. Sadly, this intentionally opaque corporate structure and fraudulent labeling scheme has resulted in at least one Louisiana lawsuit being dismissed for failure to serve a party. See EX. 42 at ¶ 47.

In fact, the secretive and evasive tactics and abuse of corporate forms has been the subject of numerous investigations and reports as well as multiple public filings in multiple lawsuits by those harmed. Those lawsuits include but are not limited to:

- *Rachel McKibban, as Personal Representative of the Estate of Jordan McKibban, Deceased v. JOpen, LLC, et. al.*, Case No. 23-2-01183-08 (Superior Court of the State of Washington In and For Cowlitz County) (naming in part, JOpen, LLC, Johnson Foods, LLC, LP IND., LLC, CAG Holding, LLC, RMH Holdings, LLC, and Olistica);
- *Dusti Young, as Anticipated Representative of the Estate of Dustin Hernandez, Deceased, and Brenda Sandoval v. "OPMS Wholesale;" JOpen, LLC, et al.*, Cause No. CC-23-01707-C (County Court of Dallas, Texas) (naming in part, "OPMS Wholesale," JOpen, LLC, and Martian Sales, Inc.);
- *Estate of Daniel Scott Paul by and through Kathryn Ann Paul as Personal Representative v. OPMS, et al.*, Case No. 21CV33403 (Circuit Court of the State of Oregon for Multnomah County) (naming in part, OPMS and JOpen, LLC);
- *Dana Pope individually as surviving parent of Ethan Pope, and as the Administrator of the Estate of Ethan Pope, deceased, and John Pope as surviving parent of Ethan Pope v. OPMS a/k/a Optimized Plant Mediated Solution, et al.*, Civil Action No.: 22—A-1536 (State Court of Cobb County, GA) (naming, in part, LP IND., LLC and Olistica Life Science Group as defendants); and
- *Susan Weber v. OPMS a/k/a Optimized Plant Mediated Solution, et al.*, Civil Action No.: 23EV000485 (State Court of Fulton County, GA) (naming in part, LP IND., LLC and Olistica Life Science Group as defendants).

It should also be noted by the Court that all the named Defendants in this case are represented by a single law firm. This is not necessarily improper, and no suggestion is made that it is, but it is only proper if there are no conflicts of interest.¹¹

It is therefore not unreasonable to assume either that all the named Defendants have no adverse interests or conflicts among or between them or that each of them has consented and waived the conflict. In either case, the representation supports the existence of a single business enterprise, joint adventure, and/or alter ego theory.

¹¹ A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. A lawyer may nonetheless represent multiple clients if each affected client gives informed consent, confirmed in writing. See, Rule 1.7, Louisiana Rules of Professional Conduct.

D. Martian has made fraudulent representations in litigation.

Martian entered an “Intellectual Property Agreement” in 2014. See Ex. 10. Martian’s “Intellectual Property Agreement” has been used in prior litigation to support the false claim that it is not involved in the manufacture and distribution of OPMS kratom. See, EX. 15 at 246:23-249:2; see also, EX. 18.

Martian has since admitted that the “Intellectual Property Agreement” is in fact a “fluffed up supply agreement.” See, EX. 15 at 244:23-246:22. However, the agreement makes no reference to supplying raw kratom to Martian. See generally, EX. 10.

Martian’s supply of raw kratom through the false intellectual property agreement ceased to function in approximately 2020 as the supply of raw kratom was no longer being provided. See, EX. 15 at 136:1-138:11. This coincides with a renewed effort to reduce agreements to writing and to secure a new source of kratom through Cleanview in 2020. EX. 42 at ¶¶ 34-44.

In short, Martian has not hesitated to perpetuate fraud on a court and on a harmed plaintiff. It has now admitted that prior representations in litigation were false. Martian is not credible, and it is clear its action is part of a broader fraudulent effort to avoid liability.

E. Defendants share common officers and common offices.

Other than JOpen, all entities are incorporated in Wyoming. See Statement of Material Facts at § B. However, multiple entities have shared addresses in GA, such as 1880 West Oak Parkway or 2550 Sandy Plains Rd. See EX. 42 at ¶¶ 13, 15, 17 57-58, 61-62, & 66; see also, EX. 7 at 63:12-25, EX. 8 at 38:24-39:19, & EX. 3 at 69: 9-25; 73:13-25; & 80:2-25. Further, CAG, LP, and RMH are operated out of the same facility in Springfield Colorado. EX. 42 at ¶ 16 & 68; see also, EX. 9 at 354:13-355:6; 381:19-25; and 382:19-24. Other than Martian and JOpen all

entities are or have been managed by Mark Jennings. This overlap in office space and officers is another factor within the totality of the circumstances regarding a finding of veil piercing.

As stated earlier, CC US is a centralized management entity for LP, CAG, RMH, Calibre, Nuza, NP Pharma Holdings, LLC, and PWH, LLC, providing accounting, administration, and management services for those entities. See, EX. 9 at 346:12-347:2 & 348:24-349:5. Mark Jennings is paid by CC US, though he manages or has managed various named entities including CAG, RMH, NUZA, Calibre, and LP. Ultimately, Mark Jennings reports to Peyton Palaio. *Id.* at 359:13-19. In short, through CC US and the entities it manages, Jennings and Palaio ensure that OPMS kratom is sourced, processed, manufactured, and shipped to JOpen for ultimate distribution.

F. Shared Online Presence.

Martian owns OPMSkratom.com, however, the website is managed by JOpen and Martian has no access to it. See, EX. 1 at 98:5-99:6, 268:24-269:11, & 302:15-19, see also, EX. 15 at 197:8-21. Martian has no knowledge of what happens to contact through the website's contact form. See, EX. 15 at 194:15-195:3. JOpen manages online contact inquiries and any post market surveillance. See, EX. 1 at 295:22-296:9 & 281:15-284:25; see also, EX.s 20-21. Defendants may want this arrangement to appear innocent, but taken within the broader whole, it is clear that JOpen and Martian are effectively one and the same, as Martian truly does nothing of substance in furtherance of the production and sale of OPMS kratom.

In yet another strike against its credibility, Martian claimed OPMKratom.com was not its website. See, EX. 22 at 59:17-20 & 63:1-64:22. To the contrary, JOpen testified OPMKratom.com was in fact Martian's website, and JOpen assisted with its management prior to Martian losing access to the website. See, EX. 1 at 98:5-99:24. In fact, Martian's own

attorney's cited to the website in litigation pleadings, representing the website as Martian's own.

EX. 32. There is no doubt, Defendants play fast and loose with the facts as they see fit for purposes of litigation and avoiding liability.

Overall, whether applying Wyoming or Louisiana law the facts, taken as a whole, evidence fraud and describe an enterprise that is so intertwined that this Court should find the veil is pierced for jurisdictional purposes. Therefore, the contacts of one party are the contacts for all, and all defendants are thus subject to jurisdiction before this Court.

VII. CONCLUSION

There is no genuine issue of material fact that Martian Sales, JOpen, Johnson Foods, Nuza, Calibre, LP, CAG, RMH, FMK, PNW, and CC US have all engaged in the conduct and practices described, *supra*. The evidence primarily comes from their own testimony and documents of their own making. They cannot reasonably be disputed now. The undisputed facts stated above, without more, are sufficient to conclude that, for jurisdictional purposes, these entities constitute a single business enterprise, joint adventure, or are otherwise subject to veil piercing, and that Palaio, Jennings, Gabbay, and Reilly are the alter egos of the aforementioned entities.

Plaintiff is therefore entitled to findings that as a matter of law, defendants are a single business enterprise or joint adventure, their corporate veils have been pierced, and the individuals are alter egos of the named entities such that the jurisdictional contacts of any defendant may be imputed to any other and all defendants are therefore subject to this court's jurisdiction.

Dated: June 30, 2025.

Respectfully submitted,

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