

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

KATHLEEN MOLLER	*	CIVIL ACTION NO. 24-0228-WBV-DPC
	*	
VERSUS	*	JUDGE WENDY B. VITTER
	*	
MARTIAN SALES, INC; JOPEN, LLC,	*	MAGISTRATE DONNA PHILLIPS
a Texas limited liability company;	*	CURRAULT
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.	*	
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**PLAINTIFF’S STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT – DETERMINATION OF PIERCING THE VEIL,
SINGLE BUSINESS ENTERPRISE, AND ALTER EGO FOR JURISDICTIONAL
PURPOSES**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Plaintiff Kathleen Moller herein provides her statement of material facts in support of partial summary judgment for a determination that Defendants Martian Sales, Inc. (Martian Sales), JOpen, LLC (JOpen), Johnson Foods, LLC (Johnson Foods), NUZA, LLC (Nuza), Calibre Manufacturing, LLC (Calibre), LP IND., LLC (LP), CAG Holdings, LLC (CAG), RMH Holdings, LLC (RMH), FMK Group, Inc. (FMK), PNW Holdings, LLC (PNW), CC US Holdings, LLC (CC US), constitute a single business enterprise, joint adventure, or are otherwise subject to veil piercing, and that Peyton Palaio (Mr. Palaio), Mark Jennings (Mr. Jennings), Eyal David Gabbay (Mr. Gabbay) and Mark Daniel James Reilly (Mr. Reilly) are the alter egos of the aforementioned entities regarding the exercise of personal jurisdiction only.

I. STATEMENT OF MATERIAL FACTS

A) Harmony Moller's Death Was Caused by OPMS Kratom

- 1) This wrongful death action presents claims arising from the preventable death of Harmony Moller. Third Amended Complaint (“TAC”), Dkt. No. 100.
- 2) On February 6, 2023, Harmony Moller died suddenly and unexpectedly at the age of 36. *Id.* at ¶ 30.
- 3) A postmortem exam determined the cause of death was “Abnormally high left coronary ostia takeoff exacerbated by mitragynine use.” *Id.* at ¶ 33.
- 4) Mitragynine is the most abundant active alkaloid in the Southeast Asian plant *Mitragyna Speciosa*, commonly known as kratom.¹ *Id.* at ¶ 34.
- 5) The product leading to Harmony Moller's death was “OPMS kratom.” *Id.* at ¶ 30.²



B) Defendant's Addresses and Locations of Incorporation

- 6) Martian Sales is incorporated in Wyoming. Dkt. No. 49.

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

² The image above is one of the actual packages found with decedent, in her bedroom, where she passed.

- 7) Martian Sales lists its principal place of business in Wyoming. Dkt. No. 49.
- 8) JOpen is incorporated in Texas. Dkt. No. 49.
- 9) JOpen's principal place of business is in Texas. See e.g, EX. 1 (Excerpt of March 14, 2025, 30(b)(6) Deposition of David Gabbay, Corporate Representative of JOPEN, LLC) at 143:8-144:11.
- 10) Johnson Foods is incorporated in Wyoming. Dkt. No. 47.
- 11) Johnson Foods' principal place of business was initially listed as 2550 Sandy Plains Road Ste. 225 #319, an address shared with other OPMS related entities. See, EX. 2 (Johnson Foods Wyoming Secretary of State Articles of Organization).
 - a. Kelly Miano, CEO of Johnson Foods, claims that this initial listing was a mistake, however, she did not know the current principal place of business for Johnson Foods. See, EX. 3 (Excerpt of November 22, 2024, 30(b)(6) Deposition of Catherine Miano, Corporate Representative of Johnson Foods, LLC) at 69:17-70:7.
 - b. Notably, invoices produced in discovery list other addresses for Johnson Foods, including some shared by other OPMS related entities. See, EX.s 4-6 (Johnson Foods Invoices JF000057, JF 000076, & 77).
 - c. Not to mention the 2550 Sandy Plains Road address was used by CC US and Martian Sales. Mrs. Miano only claimed the address was a mistake based on her review in discovery, but she was not the CEO at the time the address was used. See, EX.s 7 (Excerpt of September 27, 2024, 30(b)(6) Deposition of Mark Jennings, Corporate Representative of Olistica, Vol. I) at 63:12-25; EX. 8 (Excerpt of January 22, 2025 30(b)(6) Deposition of Mark Jennings, Corporate Representative of LP IND., LLC) at 38:24-39:19; see also, EX. 3 at 69: 9-25; 73:13-25; & 80:2-25.

12) Nuza is incorporated in Wyoming. Dkt. No. 124.

13) Nuza lists its principal place of business in Wyoming. Dkt. No. 124.

14) Calibre is incorporated in Wyoming. Dkt. No. 124.

15) Calibre lists its principal place of business in Wyoming. Dkt. No. 124.

16) LP is incorporated in Wyoming. Dkt. No. 49.

17) LP lists its principal place of business in Wyoming. Dkt. No. 49.

18) CAG is incorporated in Wyoming. Dkt. No. 49.

19) CAG lists its principal place of business in Wyoming. Dkt. No. 49.

20) RMH is incorporated in Wyoming. Dkt. No. 49.

21) RMH lists its principal place of business in Wyoming. Dkt. No. 49.

- a. LP, CAG, and RMH all operate out of a shared facility in Springfield Colorado that assists in manufacturing OPMS kratom. See, EX. 9 (Excerpt of October 2, 2024, 30(b)(6) Deposition of Mark Jennings, Corporate Representative of Olistica, Vol. II) at 354:13-355:6; 381:19-25; & 382:19-24.

22) FMK is incorporated in Wyoming. Dkt. No. 124.

23) FMK lists its principal place of business in Wyoming. Dkt. No. 124.

24) PNW is incorporated in Wyoming. Dkt. No. 124.

25) PNW lists its principal place of business in Wyoming. Dkt. No. 124.

26) CC US is incorporated in Wyoming. Dkt. No. 124.

27) CC US lists its principal place of business in Wyoming. Dkt. No. 124.

C) OPMS was Created and Trademarked by Martian Sales

- 28) “OPMS kratom powder” is a known trademark for Martian Sales. See, EX. 10 (Intellectual Property Agreement of Martian Sales); See also, EX.s 11-14 (USPTO documents for OPMS establishing Martian Sales as the party in possession of OPMS trademarks).
- 29) Martian created the OPMS brand and began selling OPMS kratom in approximately 2012. See, EX. 15 (Excerpt of October 28, 2024, 30(b)(6) Deposition of Mark Reilly, Corporate Representative of Martian Sales, Inc., Vol. I) at 176:1-18; see also, EX.s 16-17 (Wyoming incorporation documentation for Martian Sales).
- 30) Martian sales developed the specifications for the cold-water extraction process used to create OPMS extracts. See, EX. 15 at 275:12-276:6.
- 31) Martian then worked with others to ensure its products were distributed and sold nationally. *Id.*

D) Martian and JOpen Work Together on OPMS From the Start of the OPMS Brand

- 32) Martian began working with JOpen for distribution of OPMS kratom in 2012, after an introduction through Peyton Palaio. See, EX. 1 at 269:13-270:10.
- 33) JOpen has been the only distributor of OPMS kratom since that time. *Id.* at 287:6-288:2; see also, EX. 15 at 56:5-9.

E) Martian Enters into a Fraudulent Intellectual Property Agreement

- 34) Martian entered an “Intellectual Property Agreement” in 2014. See, EX. 10.
- 35) 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 (Declaration of Mark Reilly filed in the *Estate of Daniel Paul Matter*).

36) 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.

37) 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.

F) Martian Works with All Named Defendants for the Sourcing, Manufacture, and Distribution of OPMS Kratom

38) Martian has since sourced raw kratom for OPMS, processed OPMS kratom, encapsulated OPMS kratom, and ultimately shipped it across the country through entities managed by Mark Jennings, associated to Peyton Palaio, and named herein including Calibre and Nuza. See, EX. 15 at 100:7-10 & 100:21-101:14.

39) Prior to working with Calibre and Nuza, other Mark Jennings and Peyton Palaio managed entities assisted with sourcing, encapsulating, processing, and logistics, including Advanced Nutrition, LP Ind., and LIV Group, LLC. See, EX. 19 (Agreement with Advanced Nutrition); see also, EX. 15 at 101:22-102:10; 104:8-19; 266:3-267:22; & 275:12-277:3.

40) OPMS Kratom is ultimately packaged, labeled, and distributed by JOpen through third party contracts. See, EX.s 20-21 (Distribution Agreements between Martian and JOpen).

41) JOpen works with Martian to manage its website. *Id.*

G) JOpen is the Sole Source of Income for Martian and Pays Martian’s Bills

42) Martian and its President, Mark Reilly, are wholly compensated by JOpen. See, EX. 15 at 123:17-124:24; see also, EX. 22 (Excerpt of October 28, 2024, 30(b)(6) Deposition of Mark Reilly, Corporate Rep of Martian Sales, Inc. Vol. II) at 41:14-16.

43) The basis for this compensation is unknown to Martian. See, EX. 15 at 123:17-124:24.

44) But Martian's basis for compensation is known to JOpen. See, EX. 1 at 297:11-298:5; & 298:20-299:25.

45) There was no formal compensation structure between Martian and JOpen until 2020. See, EX. 20 (2020 Distribution Agreement between JOpen and Martian); see also, EX. 1 at 273:2-275:8.

46) Yet they operated together since at least 2012 after an introduction through Peyton Palaio. See, EX. 1 at 269:14-19 & 269:24-270:10.

47) JOpen quickly began packaging OPMS kratom and paying Martian's bills associated to the production of OPMS kratom. See, EX. 1 at 270:11-272:24.

48) 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.

49) JOpen takes a 29% share of revenue associated to OPMS, while the remainder wholly pays for the costs of producing OPMS. See, EX. 1 at 281:15-284:25.

50) JOpen paid donations to the American Kratom Association, a kratom industry trade association and lobbying non-profit, on behalf of Martian. See, EX. 1 at 285:18-286:9.

51) Incredibly, Martian does not pay for anything related to OPMS kratom, does not know how those within the stream of commerce are paid for their services, and it's not sure who JOpen pays or for what. See, EX. 22 at 8:11-25; 9:6-10:20; 11:2-11:20; & 39:12-24.

H) JOpen Pays for Martian's Raw Kratom, Manufacture, Processing, Logistics, and Manages OPMS Packaging, Labeling, Web Presence, and Post Mark Surveillance

52) JOpen is the hub of the OPMS network insofar as it pays for raw kratom sourced by Nuza, pays manufacturing costs for Martian, and then manages packaging, distribution, and post market surveillance. See, EX. 1 at 295:22-296:9 & 281:15-284:25.

53) 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.

54) Incredibly, Martian has no knowledge of what happens to contact through the website's contact form. See, EX. 15 at 194:15-195:3.

55) Further, Martian claimed OPMKratom.com was not its website. See, EX. 22 at 59:17-20 & 63:1-64:22.

56) 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; see also, EX. 23 (Exhibit 32 to Deposition of Martian Sales, Vol. II).

I) JOpen Wholly Funds Johnson Foods and Thereby Assists Palaio and Jennings' Pursuit of a Federally Acknowledged Kratom Product

57) JOpen and Mr. Gabbay have wholly funded Johnson Foods through Telescaph Inter Texas, LLC, which is Johnson Foods', only client. See, EX. 3 at 43:1-17.

58) Mr. Gabbay formed Telescaph to allegedly obtain "blind" reports on marketing kratom abroad, but the facts indicate that Johnson Foods worked with Mr. Jennings with regards to Telescaph and primarily for submission of an NDIN and regulation/advocacy work related to kratom. See *Id.* at 44:10-45:12; see also, EX. 1 at 91:14-92:6 & 92:24-94:5.

- 59)** Johnson Foods worked with Mark Jennings and Peyton Palaio in their roles with NP Pharma Holdings and NP Biotech. See, EX. 3 at 134:8-14; see also, EX. 24 (Exhibit 22 to Johnson Foods 30(b)(6) deposition); EX. 25 (Data License Agreement, Exhibit 26 to Johnson Foods 30(b)(6) deposition); & EX. 26 (Johnson Foods Stipulation).
- 60)** Though the work was paid for by Telescap, Mark Jennings is the only point person that Johnson Foods communicates with regarding work done for Telescap, though Mr. Jennings has no official role with Telescap. See, EX. 3 at 44:22-45:12 & 286:2-13.
- 61)** Notably, Mark Jennings claimed ignorance regarding Johnson Foods, and its connection to other parties, but documents show he was a manager within Johnson Foods to whom invoices, and administrative emails were regularly directed to, not to mention he was copied on correspondence as a member of Olistica Group. See, EX. 9 at 302:7-13; 318:8-16; & 351:17-352:11; see also, EX.s 27-31 (JF 000049, 54, 64, 70, & 148).
- 62)** Johnson Foods' work has been for submission of an NDIN that may result in the only FDA acknowledged kratom product which stands to benefit the Johnson foods, and the individually named defendants through their related entities. See generally, EX. 26.
- 63)** JOpen was billed for work the American Kratom Association performed on behalf of Mr. Palaio and Mr. Jennings in association to Johnson Foods and other interrelated OPMS entities including NP Biotech and NP Pharma. See, EX. 42. (Decl. of Kathy Leodler).
- 64)** Johnson Foods financial records only create further questions.
- 65)** Johnson Foods' 2022 tax return, its initial year tax return, lists gross receipt or sales of \$798,000 and returns and allowances of \$200,000 on Form 1120 S. Returns and allowances are usually associated to product sales, but testimony indicates that Johnson Foods only source of revenue was marketing research for Telescap Inter Texas, LLC, not product

sales. See, EX.s 32 (Johnson Foods 2022 Tax Return); see also, EX. 3 at 43:1-17. The Costs of Goods Sold listed at JF00528 only raises further questions, such as what legal services were provided in relation the reports contracted by Telescaph. See, EX. 32.

66) Johnson Foods' 2023 profit and loss statement further indicates involvement with product sales to the extent it notes \$26,198 of "Raw Materials" under Costs of Good Sold. Notably that entry contradicts the 2023 Form 1120S which shows no purchases during the years and lists only \$715,591 in "Consulting Costs." The balance sheet further indicates no inventory at the beginning and end of the tax year. See, EX.s 33 & 34 (Johnson Foods 2023 Tax Return & 2023 Profit & Loss).

67) Finally, the "Consulting Costs," which must be associated to Johnson Foods work for its only client, Telescaph Inter Texas, LLC, includes costs for "Advocacy," advertising and marketing, consulting costs, raw material purchases, and legal and professional services, which do not logically or clearly connect to work done for Telescaph. See, EX.s 33 & 34.

J) OPMS is an Uninsured Enterprise

68) No defendant, who has responded to discovery, has insurance for the claims asserted in Plaintiff's complaints. See, EX.s 35-39 (Defendant discovery responses); see also, EX. 15 at 158:6-8.

K) OPMS is Manufactured by Entities With Overlapping Management, Accounting, and Administrative Structures. JOPEN Pays these Entities on Martian's Behalf.

69) 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.

70) 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 (September 27, 2024,

30(b)(6) Deposition of Mark Jennings as Corporate Representative of Olistica, Vol. 1) at 10:6-14, 71:13-23, & 101:5-15.

71) Mark Jennings reports to Peyton Palaio. See, EX 9 at 359:13-19.

72) In short, through CC US and the entities it manages, OPMS kratom is sourced, processed, manufactured, and shipped to JOpen for ultimate distribution.

L) OPMS Labels are Fraudulent. All Entities Within the Stream of Commerce for OPMS are Intentionally Structured to Avoid Detection and Liability for the Harms Caused by OPMS.

73) OPMS labels falsely identify the entity behind OPMS products. See, EX. 1 at 66:8-70:1, 79:19-81:7, 212:11-216:9, & 219:17-220:4.

74) The labels direct consumers, regulators, and the public to a non-exist entity named Choice Organics and provides a Los Angeles address that is a mailbox store P.O. box. See, EX. 42 (Decl. of Leodler) at ¶ 22; see also, EX. D-2 attached to EX. 42 (Decl. of Leodler).

75) The phone number provided did not function and has only recently come into alleged use for post market surveillance. *Id.*

76) Defendants have intentionally incorporated themselves in WY, doing so at the behest of their attorneys. See, EX. 15 at 72:11-16.

77) The intent of WY incorporation is to hide the identity of their owners and members. See, EX. 40 (International Consortium of Investigative Journalists, *The ‘Cowboy Cocktail’: How Wyoming became one of the world’s top tax havens*, Dec. 20, 2021).

78) This intentionally opaque corporate structure and fraudulent labeling scheme has resulted in at least one lawsuit associated to JOpen’s Whole Herbs kratom brand being dismissed for failure to serve a party. See, EX. 41 (*Aidan Vidrine v. Kono Labs and Whole Herbs*, Dismissal Order).

79) 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:

- a. *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);
- b. *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.);
- c. *Estate of Daniel Scott 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);
- d. *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
- e. *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).

80) 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. Thus, the named Defendants have no adverse interests or conflicts among or between them or that each of them has consented and waived the conflict.

Dated: June 30, 2025.

Respectfully submitted,

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