

EXHIBIT 1

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR COWLITZ COUNTY
3 RACHEL McKIBBAN, individually and
4 as Personal Representative of the
5 Estate of JORDAN McKIBBAN, deceased,
6 Plaintiff,

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v. CASE NUMBER
23-2-01183-08

JOPEN, LLC, 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; OLISTICA,
an unincorporated association; MIT
THERAPY INC., an Idaho corporation;
DURITY DISTRIBUTION, INC., an Idaho
corporation; HUSH WORLDWIDE LLC, a
Wyoming limited liability company; DRIP
DROP DISTRO LLC, an Idaho limited
liability company; BEDROCK MFG LLC, a
Wyoming limited liability company; CLOUD
HOUSE VAPORZ, INC., a Washington
corporation; AMERICAN KRATOM ASSOCIATION,
a Virginia non-profit corporation, and
JOHN & JANE DOES 1 THROUGH 10,
Defendants.

ORAL AND VIDEOTAPED CR 30(b)(6) DEPOSITION
(VIA ZOOM VIDEOCONFERENCING)

OF

JOPEN, LLC, A TEXAS LIMITED LIABILITY COMPANY
BY AND THROUGH
EYAL DAVID GABBAY
MARCH 14, 2025

Reported by:
TOMMI RUTLEDGE GRAY, CSR No. 1693
Job No: MDLG 7170831

1 ORAL AND VIDEOTAPED CR 30(b)(6) DEPOSITION
2 (VIA ZOOM VIDEOCONFERENCING) OF JOPEN, LLC, BY
3 AND THROUGH EYAL DAVID GABBAY, produced as a
4 witness at the instance of the Plaintiff, Rachel
5 McKibban, individually and as Personal
6 Representative of the Estate of Jordan McKibban,
7 deceased, and being remotely duly sworn, was
8 taken in the above-styled and -numbered cause on
9 the 14th day of March, 2025, from 9:52 a.m. to
10 6:11 p.m., before Tommi Rutledge Gray, CSR, RPR,
11 and CRR in and for the State of Texas, reported
12 remotely by machine shorthand, all parties
13 appearing remotely, the witness appearing
14 remotely from Dallas, Texas, in accordance with
15 Amended Notice of 30(b)(6) Deposition, and
16 pursuant to the Washington Civil Rules.

A P P E A R A N C E S

FOR THE PLAINTIFF, RACHEL MCKIBBAN, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
JORDAN MCKIBBAN, DECEASED:

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LIMITED LIABILITY COMPANY, CAG HOLDINGS, LLC, A
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THE VIDEOGRAPHER:

Ms. Karen Keebler (Via Zoom
videoconferencing)

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1 we've already covered.

2 You're familiar with them and their
3 relationship to OPMS?

4 A. Uh-huh; yes.

5 Q. Are you familiar with Shaman
6 Supplies, LLC?

7 A. I don't believe so.

8 Q. Are you familiar with KonoLabs?

9 A. Yes. That's Whole Herbs, a d/b/a --
10 or not a d/b/a, but like -- but yes, it --
11 it's -- it's associated with Whole Herbs.

12 Q. So is KonoLabs a d/b/a for Whole
13 Herbs Company?

14 A. It's -- it's for marketing purposes.

15 Q. So I want to make sure I understand
16 that.

17 So it's not formerly a d/b/a; it's
18 not legally filed as an assumed name?

19 A. No. It was -- it was put in place
20 for compliancy -- state compliancy.

21 Q. Compliance what?

22 A. Compliance; like, state compliance.

23 Q. With the State of Texas?

24 A. The State of Utah.

25 Q. Utah.

1 Why was it necessary to have
2 KonoLabs be created as a d/b/a for compliance in
3 the State of Utah?

4 A. And I believe it's Utah. This
5 stuff's a long time ago. Utah required that, in
6 general -- I guess it's not just kratom
7 products -- but in general, they require that
8 labels would have, you know, like, some sort of
9 company name, distributed by, a phone number,
10 and an email.

11 And if they didn't have it,
12 they -- they would start -- and they did
13 start -- they pulled products off the shelf and
14 just basically destroyed it.

15 So there was a -- like, a little mad
16 scramble to put stick -- stickers or something,
17 a name or something on -- on products.

18 Q. What was the reason for not using
19 Whole Herbs Company?

20 A. Marketing, originally.

21 Q. What's the marketing reason? I'm
22 just trying to understand.

23 A. It's a long time ago. I -- and it
24 was done in five minutes, so it was --

25 Q. Done in urgency --

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1 A. Yes.

2 Q. -- for -- like, is there some sort
3 of marketing benefit to having KonoLabs and
4 Whole Herbs as, like, two names? Does that in
5 any way drive the business?

6 A. No. Well, it -- originally for
7 marketing, I think it was, like, this, you know,
8 Whole Herbs brand, you know, nice, clean, white
9 label type of thing.

10 So KonoLabs makes Whole Herbs, and
11 you know, kratom products. It also made -- I
12 want to say back then it also made some kava
13 products and maybe some canna products and --
14 and so on.

15 So it wasn't going to be just a
16 specific -- just a, you know, like,
17 kratom-specified. It was supposed to be this --
18 you know, this -- I guess, demographic-wise,
19 female-oriented, demographic product, and that's
20 just what we had come up with as far as what
21 would look good, work, and so on.

22 So in a mad scramble of trying to
23 get stuff on the labels, that's what was chosen
24 in five minutes.

25 Q. And you refer to Utah's regulations

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1 of having to have an entity, address, phone
2 number identified in relation to the product.

3 Are you aware of any other states
4 that have regulations like that?

5 A. You know, I -- I wouldn't be
6 surprised if even Utah had that prior; they just
7 was enforcing it.

8 So, you know, and I wouldn't be
9 surprised if that's the case everywhere, and I
10 wouldn't be surprised if there's federal
11 requirements.

12 It -- and I don't know that it
13 didn't have some part of that already on the
14 label; it just didn't have all of it on the
15 label at the time.

16 So the mad scramble was to fix
17 the -- having every part of it on the label.
18 And -- and if I have to, like, think back, maybe
19 it already said, like, "KonoLabs" as, like, a
20 marketing thing on it, and they just now needed
21 the, you know, email and phone number and some
22 other verbiage on there.

23 It -- it wasn't just about that
24 language there, but it was other language, as
25 well, that was required on the label; that Utah

1 required.

2 Q. Okay. You mentioned the feds a
3 second ago.

4 Do you know one way or another
5 whether the -- there's a federal regulation
6 that's similar that would require some sort of
7 identification and contact information for an
8 entity behind a certain product?

9 A. And so I'm going to take, like, one
10 step back for a second and just -- because I'm
11 talking a lot right now as -- not as A1, right?
12 So we've kind of, like, gone --

13 Q. You were speaking as Whole Herbs
14 Company?

15 A. Yes. You know, and I just want to
16 make sure, because we've kind of completely gone
17 in that direction. I just want to clarify that.

18 Q. Yeah, so let me ask you that
19 question in your capacity here as -- as JOpen.

20 Does JOpen know one way or another
21 whether there is federal regulation that, you
22 know, a product -- the entity that is, you know,
23 distributing a product, have its name on the
24 product and have any contact information on the
25 product?

1 Q. Are you familiar with Liv Group?

2 A. Yes.

3 Q. How so?

4 A. Also in the same capacity as
5 paying -- I believe we paid Liv Group invoices
6 for Martian.

7 Q. Liv Group invoices for Martian;
8 okay.

9 A. I believe.

10 Q. Okay. I want to just clarify
11 something, because I might have been confused.

12 Was it JOpen has paid invoices on
13 behalf of Skamandros; is that correct?

14 A. It has at one point, yes.

15 Q. Okay. But Skamandros has not paid
16 invoices on behalf of Martian?

17 A. No, it would not. There's no reason
18 to.

19 Q. Are you familiar with Choice
20 Organics?

21 A. I'm fam -- familiar with that --
22 that name, yes.

23 Q. How are you familiar with that name?

24 A. It was something that also in a
25 scramble was put on labels at the same timeframe

1 as KonoLabs was.

2 Q. What labels was Choice Organics put
3 on?

4 A. On OPMS products.

5 Q. Only OPMS?

6 A. Correct.

7 Q. And JOpen played a role in -- in
8 getting Choice Organics on those labels?

9 A. A1 did. I'm just trying to -- yes.

10 Q. Why did A1 or JOpen play a role in
11 updating OPMS labels?

12 A. We were distributing products of
13 OPMS, and product was getting pulled off the
14 shelf, which was directly impacting our bottom
15 end. So our distribution contract somewhat said
16 that we were the ones responsible for things
17 like this in distribution, we were responsible
18 to make sure that everything that was required
19 for distribution, if it was licensing or
20 compliancy as far as like the State goes for the
21 distribution part, was there.

22 So we -- I specifically contacted
23 Mark and said, "Hey, I need to do this. Can I
24 do this?"

25 And he said, "Do whatever you need

1 to do to make the label correct."

2 So I took care of it. As Manager of
3 A1, I took care of this.

4 Q. Just to unpack that a little. When
5 you refer to "Mark," you mean Mark Reilly; is
6 that right?

7 A. Correct.

8 Q. And how -- so I might be --

9 MR. COWGILL: Strike
10 that.

11 BY MR. COWGILL:

12 Q. I'm just trying to understand, like,
13 the -- how that happens, right?

14 So does JOpen have the OPMS labels
15 in its warehouse and it's able to change those
16 labels, or how does that actually function?

17 A. So specifically for that particular
18 act right there, we had to produce stickers that
19 had that information on it.

20 And I believe it also had to say,
21 like, "All Natural Product" or something of the
22 sort, like, they were required to have for the
23 Utah specifically.

24 What they had put out there, they
25 had said, like, -- I don't want to guess, right,

1 So Johnson Foods -- my question to
2 you is: Does JOpen have any relationship with
3 Johnson Foods?

4 A. Not -- not directly.

5 Q. Okay. But it sounds like you
6 personally know of Johnson Foods?

7 A. No.

8 Q. You know of them through litigation?

9 A. No. Like, through a different
10 company.

11 Q. Okay.

12 A. I think that was the company that
13 was deposed yesterday, so I just --

14 Q. Okay. So my next question for you,
15 which is probably going to get us there, does
16 JOpen have any relationship with Telescaph Inter
17 Texas, LLC?

18 A. There you go; yes.

19 Q. What is JOpen's relationship with
20 Telescaph?

21 A. It hired Telescaph to do some work.
22 It, in turn, hired Johnson Foods.

23 Q. What work did JOpen hire Telescaph
24 to do?

25 A. It wanted -- it wanted basically

1 blind reports into -- most importantly, into the
2 ability to distribute in -- in other markets
3 outside the U.S., so...

4 Q. And so Telescaph engaged Johnson
5 Foods to provide those reports?

6 A. Correct.

7 Q. And is JOpen distributing products
8 outside the United States?

9 A. It chose not to.

10 Q. So the reports did not provide a
11 favorable analysis of that?

12 A. Not at all.

13 Q. Do you have any understanding of
14 whether Johnson Foods has any clients other than
15 Telescaph?

16 A. Only through litigation.

17 Q. What's your understanding through
18 litigation other than any conversation you've
19 had with your attorneys?

20 A. Well, it's -- that's -- that's what
21 I mean, through counsel. That's what I mean
22 "through litigation," just through sitting down
23 with Gwendolyn.

24 Q. Was -- was A1 provided with the
25 reports produced by Johnson Foods?

1 A. The Manager of A1 was provided the
2 overall understanding of the reports.

3 Q. I want to make sure I understand.

4 So were there -- there were physical
5 reports in the sense of maybe hard-copy paper or
6 emailed PDF? Was there, like, an actual
7 document that was shared as a report?

8 A. Not to A1.

9 Q. But to Telescaph, "yes"?

10 A. Yes.

11 Q. And so Telescaph -- if I understand
12 what you're saying, Telescaph provided -- was it
13 verbal?

14 A. Yes.

15 Q. Well, what did Telescaph --

16 THE WITNESS: Can

17 I clari --

18 MS. PAYTON: Yeah, you
19 can clarify, if -- if you want.

20 A. I apologize. I -- I managed that
21 duty for Telescaph, so I -- as far as, like,
22 Manager of David for Telescaph telling Manager
23 David for A1, it didn't have to have any sort of
24 verbal communication to, you know, --

25 BY MR. COWGILL:

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1 Q. Yeah, so -- so it says -- and just
2 to simplify this, Johnson Foods provided the
3 documents to Telescaph.

4 You, David Gabbay, manage both JOpen
5 and Telescaph. You read the reports --

6 A. Yes.

7 Q. -- as being, you know, both a
8 Manager of Telescaph and a Manager of JOpen.
9 The information was retained, and
10 that's how JOpen knows it?

11 A. Yes.

12 Q. Okay. So if I understand correctly,
13 Telescaph is in possession of the reports; JOpen
14 is not?

15 A. Correct.

16 Q. But you -- as far as -- well, let's
17 take it -- let me ask it this way: Do you as
18 the Manager of JOpen have any specific
19 recollection of what was contained in those
20 reports?

21 A. Yeah; of course.

22 Q. What do you recall?

23 A. Just the complications in
24 distribution in other markets. I remember South
25 America, it was not even something you can --

1 Any relationship there?

2 A. None whatsoever.

3 Q. How about someone named Pudgi?

4 A. No.

5 Q. How about OPMKratom?

6 A. I believe that's the old websites.

7 Is that what you mean?

8 Q. Yes. We'll -- we'll talk more about
9 it later, but there -- there is an -- an older
10 website that was OPMKratom.com; is that your
11 understanding?

12 A. Correct.

13 Q. And there's now a website that
14 OPMSKratom.com, right?

15 A. Correct.

16 Q. And so if I understand you,
17 OPMKratom.com is just the old website for
18 OPMSKratom?

19 A. Correct.

20 Q. How was JOpen familiar with that
21 website?

22 A. I'll put it in the context of A1.
23 OPMKratom, I believe, was Mark Reilly's website,
24 I believe. But he had, I believe, lost his
25 credentials for controlling it, so it was, like,

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1 overlaid over OPMSKratom, and eventually
2 OPMKratom had died, meaning it ran out of time.

3 Q. So just to understand, when you say
4 "it" -- "it died" or "ran out of time," do you
5 mean the web hosting?

6 A. Right; yeah.

7 Q. Okay.

8 A. The purchase -- whatever he
9 purchased or whatever expired.

10 Q. Okay. And do I understand
11 correctly, your recollection is that Mark just
12 lost the ability to log in to it; his
13 credentials to log in and manage it were just
14 lost?

15 A. Correct.

16 Q. All right. Did JOpen play any role
17 in managing that website, OPMKratom?

18 A. We hired Onix to update the website
19 per, you know, agreement with Mark. And so we
20 had the ability to get in, but he didn't have
21 the ability -- which is two different things,
22 right, where the server was or whatever. But he
23 didn't have the ability to -- to log in and
24 continue paying for it.

25 Q. Okay. So there -- there was the

1 addicted to a substance, it -- you wouldn't
2 build a tolerance. Or if the -- you know? If
3 the item was not addictive, that you wouldn't
4 build a tolerance.

5 You know, we build tolerance to --
6 to pain, right? And that's not necessarily
7 addictive.

8 Q. All right. We'll revisit that.
9 Let's -- let me go back to asking you some
10 questions here about JOpen.

11 I know we covered Beeman, right?
12 What is the address for that warehouse that's
13 off Beeman? You said -- was it 4949?

14 A. That is correct.

15 Q. Are there any other physical
16 locations associated to JOpen?

17 A. Like, a mailbox for -- for receiving
18 billing.

19 Q. Where's that at?

20 A. 4848 Lemmon Avenue.

21 Q. And is that also in Dallas, Texas?

22 A. It is.

23 Q. Any other physical addresses?

24 A. No.

25 Q. Does 3200 Broadway ring a bell at

1 all?

2 A. That's just an office space.

3 Q. That's an office space --

4 A. Yes.

5 Q. -- that JOpen operates out of?

6 A. A1 does, yes.

7 Q. A1.

8 And that's -- that's also in Dallas?

9 A. It is. Or Garland/Dallas area.

10 Q. Garland; okay. Metroplex area?

11 A. Yes.

12 Q. What was the business reason for
13 shifting to Skamandros, LLC from whatever the
14 predecessor entity was?

15 A. Advice by counsel.

16 Q. Do you know who the owner of
17 Skamandros is?

18 A. I would have to look it up. I had
19 it. I just --

20 Q. Go ahead; I'm sorry.

21 A. -- don't remember right now. Give
22 me a couple of -- a few minutes, I may remember
23 it.

24 Q. All right. Just chime in if you do.
25 I know you gave us an email earlier,

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1 just -- anything can be clearer, right?

2 BY MR. COWGILL:

3 Q. Do you know whether drug
4 interactions between kratom and prescription
5 drugs, whether those have been fully fleshed out
6 through research and scientific literature?

7 MS. PAYTON: Object to
8 the form of the question.

9 A. I do not.

10 BY MR. COWGILL:

11 Q. I want to direct your attention to
12 this part of the package. There's a glare on
13 it, but I'm going to read it. If you can't make
14 it out, let me know.

15 But it says "Distributed by: Choice
16 Organics," gives a phone number, "(213)
17 221-8049," an address of "3680 Wilshire
18 Boulevard, Suite P04 1084" in L.A., California.
19 I can't read that ZIP, but that's the ZIP. And
20 it says "info@OPMSKratom.com" as the email.

21 Do you see all that?

22 A. I do.

23 Q. And I think you explained earlier
24 that this was what initially was a sticker, then
25 incorporated in a label in response to a -- the

1 situation in Utah?

2 A. Correct.

3 Q. And so Choice Organics, that's --
4 that's not an actual entity anywhere?

5 A. It is not.

6 Q. So what -- what does Choice Organics
7 refer to?

8 A. I don't know. It changed over the
9 years. But originally it was there -- it's like
10 a marketing thing, like a Choice Organics. You
11 know, OPMS by Choice Organics as a marketing
12 thing.

13 It's -- when the label was put on,
14 it was also a way to distinguish, you know,
15 which brand was associated with the
16 distribution. And obviously once all that
17 information was there, you know, then you had
18 people contact and say, "Hey, I want to sell
19 this" or whatever.

20 Q. So is there someone that answers
21 this phone number here, this 23 -- 213 phone
22 number?

23 A. It -- it actually goes into -- I
24 forget what it's called. Lie, where it's -- it
25 takes it -- whatever message you leave, it

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1 trans -- not trans. It's whatever it's called.

2 Trans --

3 Q. "Scribes"?

4 A. Huh?

5 Q. "Transcribes"? "Transcribes"?

6 A. Transcribes, yes. It transcribes
7 the message and sends it into the email.

8 Q. Which email does it send it to?

9 A. The one below that.

10 Q. The info@OPMSKratom.com email?

11 A. Yes.

12 Q. Then who -- who's in charge of that
13 email?

14 A. It is currently done by a third-
15 party -- third-party company. I don't know the
16 name off the bat.

17 Q. When was that -- so that
18 transcription service for the calls, was that
19 set up, you know, when you set this up in
20 response to the Utah thing, I think in 2015, or
21 was that done later?

22 A. Somewhere around that timeframe.

23 Q. And same for the email? That's
24 always been monitored by a third party?

25 A. Not always by a third party. I

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1 originally monitored it.

2 Q. When did it shift to third-party
3 monitoring?

4 A. Maybe a year-plus ago, a year ago.

5 Q. And up until then, it was always
6 you?

7 A. It was.

8 Q. Do you still have access to that
9 email account?

10 A. I do not.

11 Q. Do you still have those emails
12 stored somewhere?

13 A. They were given to counsel.

14 Q. Have you ever received customer
15 complaints at that email?

16 A. Of course.

17 Q. What sort of complaints have you
18 received?

19 A. It's -- it's like "Oh, it was not
20 the right color," or, "It wasn't what I
21 expected," or, you know, stuff like that.

22 Q. Did you respond to those?

23 A. Not always.

24 Q. What determined whether or not you
25 would respond to a complaint?

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1 A. I -- I mean, I guess I realized that
2 the -- the majority of contacts were from
3 customers trying to get free product, so after a
4 while, it becomes a little bit, you know,
5 difficult to deal with.

6 Q. Do you recall ever receiving a copy
7 of a lawsuit at that email?

8 A. I do not. This may have happened --
9 if it happened, it may have happened after.

10 Q. Okay. And were -- were you ever
11 made aware by anyone that that phone number
12 doesn't seem to be functioning at any point in
13 time?

14 MS. PAYTON: Object to
15 the form.

16 A. I believe it is functioning. I know
17 the number has changed over time.

18 BY MR. COWGILL:

19 Q. And that's why I'm asking.

20 Just over the time that you've had a
21 phone number on the package, did you ever
22 receive any -- any complaints or any statement
23 that, "Hey, this number's not working"?

24 A. I -- I don't remember
25 specifically -- specifically to that number,

1 Q. And you notice that this label
2 doesn't have the same warning language that we
3 saw on the package earlier, the Silver package?

4 A. I do.

5 Q. Do you know why that is?

6 A. Why it doesn't have the same --

7 Q. Why it doesn't have the same
8 language, yeah.

9 A. I mean, for one, it's not the same
10 product.

11 Q. Any other reason?

12 A. I -- I don't know if it's the same
13 timeframe or not.

14 Q. Do you know what would go here in
15 this black box, (indicating)?

16 A. Lot number, serial number.

17 Q. Choice Organics, was there any
18 reason that y'all picked the 213 phone number
19 and an L.A., California address?

20 A. At the time, for marketing purposes,
21 you know, OPMS was a fairly small company, so
22 this was a way to just market a more glamorous
23 type of address versus Dallas, Texas type of
24 thing.

25 Q. Is there some sort of marketing

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1 advantage to an L.A. or -- or New York, maybe,
2 type of address?

3 A. I mean, L.A. is known for all the
4 big distributors, all the big wholesalers.

5 Q. Okay. I asked this earlier about
6 the Silver package. I can ask it generally, but
7 I'll ask specifically about this Gold two-pack.

8 Are you able to have sort of like a
9 timeline showing the different labels as they
10 evolved over time? Is that something that
11 JOpen's able to provide?

12 A. I'm sure the brand can. Not --
13 again, it's not necessarily A1, but I -- we can
14 get it.

15 Q. Is it fair to say that would be true
16 of just OPMS labels in general?

17 A. Yeah. I mean, we would have to
18 reach out, but we can.

19 Q. It would be Martian that you'd need
20 to work with, and -- and Onix, I -- I guess?

21 A. Yes, yes.

22 (Exhibit 11 marked for identification.)

23 BY MR. COWGILL:

24 Q. Okay. Now I want to switch gears a
25 little bit to Whole Herbs.

1 right?

2 A. Yes. I guess we should define
3 "manage" maybe if we're going to get into
4 details on the website.

5 Q. Well, let me ask you this: Who --
6 who creates the content for OPMSKratom.com?

7 A. The content was originally created
8 by Martian, and over time, with the help of
9 Martian, and with work with Martian, it was
10 modified, and with, of course, attorneys over
11 time.

12 Q. And does JOpen view its online
13 marketing as B2B marketing, not as something
14 that a consumer would find online when
15 researching the product?

16 A. Would -- okay. The OPMS website is
17 not JOpen's website.

18 Q. How does JOpen view the marketing on
19 the website, then?

20 A. On OPMS's website?

21 Q. Right.

22 A. OPMS's website doesn't belong to
23 JOpen.

24 Q. Who does it belong to?

25 A. It belongs to Martian Sales.

1 Q. Have you ever been made aware that
2 Martian Sales has said that you own the website,
3 JOpen?

4 A. I don't know what he says. It's his
5 website. We -- even the content that was there
6 originally came from Martian Sales, and our
7 contract specifically only gives us the right to
8 work with him and get approval from him on
9 anything we do on our website.

10 Q. All right. Now let's -- let's talk
11 more about Martian.

12 And so I -- I think you said --
13 well, I'll just ask it: How did your
14 relationship -- how did JOpen's relationship
15 with Martian Sales first start?

16 A. I was introduced to Mark Reilly
17 through Peyton, and he gave me a pitch on OPMS
18 products, and eventually I started buying
19 products from him and selling.

20 Q. Was that -- that meeting and pitch,
21 was that at the trade show that you described
22 earlier today?

23 A. It is.

24 Q. And so when that relationship first
25 started, was that roughly 2012, you said, or --

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1 A. Somewhere around that timeframe.

2 Q. Okay. So going back to that
3 timeframe, let's say, from roughly 2012, was --
4 was it -- so if I -- if I understand, or if I
5 understood your earlier testimony, I'm trying to
6 work up from earlier today and understand how
7 it's evolved, initially you were just buying the
8 product -- the OPMS product directly from
9 Martian, and then distributing it?

10 A. Correct.

11 Q. Okay. Now I understand that that's
12 changed.

13 Can you give me a sense of how
14 that's changed and along -- well, let's do how
15 it's changed, first.

16 A. So originally this was strictly a
17 purchase the product and sell the product from
18 Martian, and then after a while it was, like,
19 the ability to distribute product was a little
20 bit more, but it was obviously still selling the
21 product; it was his product.

22 And then there was a timeframe where
23 he needed help with packaging the product, and
24 so he -- he came to me and said, "Hey, I
25 can't -- I can't package product fast enough.

1 I'm not capable of doing this. Can you package
2 product? Can you find" -- well, he knew I had
3 somebody, so he asked me to find somebody for
4 him.

5 And over time, he couldn't afford to
6 pay the bills on stuff because it takes a while
7 to get the money back from selling the product,
8 so then he was like, "Can you pay this bill?
9 Instead of giving me money later, can you pay
10 that bill?" And it just developed over time.

11 Q. And so those changes where it's just
12 starting off as distribution, then assisting
13 with packaging, then with billing, do you have a
14 sense of roughly when those changes occurred?

15 Like, when did the packaging come
16 into the picture?

17 A. Maybe 2013-ish?

18 Q. Okay.

19 A. I'm trying to remember. I don't
20 remember the exact dates. But it was, I want to
21 say, like, a year later or two years later after
22 we started -- after I started selling his
23 products.

24 Q. And then how about the -- the shift
25 to paying some of the bills?

1 A. That didn't take very long, because
2 once we had to start packaging, then the
3 costs -- his costs went up to where he couldn't
4 afford to do. So it was just a short while
5 after that.

6 Q. And then how about the -- the sort
7 of collaboration between, you know, Martian, A1,
8 and Onix or any other entity in terms of
9 labeling or website work? When did that begin?

10 A. I mean, I think at one point -- I
11 can't remember. It was '14? '13? I can't
12 remember what timeframe.

13 It just -- at that point, there was
14 a comfort level between us to where he was just,
15 like, "Hey, can you just do this for me? Do
16 this for me?"

17 And I'm a distributor who -- whose
18 sales are going up, and, you know, we
19 struggled -- struggled a little bit less as the
20 sales are going up, and here's a customer that's
21 basically asking me for favors, and you say,
22 "Yes, sir."

23 You just -- that's what you do. You
24 make whatever the customer wants, happen.
25 That's part of doing business. And -- and just

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1 go from there.

2 Q. And so those arrangements, as these
3 changes were made, were those being memorialized
4 in writing?

5 A. They were not. Not -- back then, it
6 wasn't.

7 Q. When was the first agreement that
8 memorialized those changes in writing?

9 A. Circa 2022, maybe? I don't
10 remember. Later on.

11 Q. Okay. And I'm going to pull up
12 the -- the Agreements with Martian here in a
13 second, so...

14 All right. So before that
15 Agreement, it's just sort of a handshake deal;
16 verbal agreement?

17 A. It was just more tasks given to us
18 as time went by.

19 Q. And so as you're paying these bills
20 for -- on behalf of Martian, is there any
21 arrangement with, like, a loan structure between
22 you and Martian, or how -- how does that
23 function?

24 A. It just --

25 MS. PAYTON: Object to

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1 the form.

2 A. There -- there's no -- it's -- I'm
3 distributing a product, and if I don't pay that
4 bill, then there's no product to distribute.

5 So there is -- you know, you just
6 do, right? I mean, you're -- you're basically
7 just saying, "Okay. I'll pay this, and we'll
8 square up later," and -- and that's just how it
9 starts.

10 BY MR. COWGILL:

11 Q. Did y'all square up?

12 A. We did. We came to an agreement.

13 Q. That 2020 Agreement?

14 A. That eventually is the Agreement on
15 paper, yes.

16 Q. And so during this timeframe, you
17 know, pre-2020, Martian is -- is, as I
18 understand it, technically providing the OPMS
19 product to you.

20 Are you paying any sort of money to
21 Martian for its provision of that product?

22 A. In the beginning, we were, yes.

23 Q. So is there any -- any document that
24 sort of lays out -- we'll call it "the square-up
25 agreement," you know, using "squaring up" as

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1 we're using it here -- where it would lay out
2 pay -- "Between 2012 to 2020, JOpen paid out all
3 these bills on your behalf; you know, this is
4 what you owe us"?

5 Is that documented somewhere?

6 MS. PAYTON: Object to
7 the form of the question.

8 A. No, there isn't.

9 (Exhibit 6 marked for identification.)

10 BY MR. COWGILL:

11 Q. So how -- how was the 2020 -- and
12 let me just pull it up.

13 So this is Exhibit 6. I -- I
14 understand this to be the 2020 Distribution
15 Agreement.

16 Do you see that here, "January 23rd,
17 2020"? It's pretty hard --

18 A. Yes.

19 Q. Is this the Distribution Agreement
20 you're referring to?

21 A. It is.

22 Q. Okay. So can you tell me how this
23 Agreement is -- is you and Martian squaring up
24 on those -- those past payments.

25 A. It is not.

1 Q. So I'm not sure I understood your --
2 your prior testimony.

3 How did you and Martian square up,
4 then?

5 A. I mean, at first we would, like,
6 square up, meaning I'd pay him, but there would
7 become a negative as the business grew. It
8 always was negative, negative, negative as more
9 money was spent than money was coming in.

10 And at one point he had said he had
11 worked something out with the supplier where he
12 would get something in return, and he just said,
13 "Keep on going."

14 And that went on for a while, and
15 then in 2020 -- or circa 2020 he was like, "I
16 need to rework something out with you."

17 Q. What -- what do you mean he worked
18 something out with the supplier to just keep on
19 going? What does that mean?

20 A. I mean, I didn't get the details,
21 but I'm assuming that he was getting something
22 as -- as a commission or something from the
23 supplier, and I didn't get into it. I just was
24 doing my thing.

25 Q. Do you know who the supplier was

1 MR. COWGILL: Sorry.
2 Did somebody say something there?
3 No? Okay.

4 MS. PAYTON: No.
5 When -- to the court reporter,
6 when we take the next break,
7 we're going to want the time on
8 the record.

9 THE VIDEOGRAPHER:
10 You've been on 5 hours and 22
11 minutes so far.

12 MS. PAYTON: Thank
13 you.

14 BY MR. COWGILL:

15 Q. All right. So I think I've got
16 Exhibit 7 back up.

17 Are you able to see that, Mr.
18 Gabbay?

19 Can you see it, Mr. Gabbay?

20 A. I can; yes.

21 Q. So this is the 2023 Distribution
22 Agreement between Martian Sales and A1
23 Wholesale.

24 I'm going to ask you some questions
25 about it, and to the extent that you know it's

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1 different from 2020, this Agreement, can you
2 just let me know?

3 A. Of course.

4 Q. Thank you; all right.

5 So these "Recitals," just know that
6 the "Supplier is a supplier of OPMS Products,"
7 meaning Martian Sales is supplying OPMS to
8 JOpen, right?

9 A. Correct.

10 Q. Okay. And it refers to the prior
11 Agreement; the January 23rd, 2020 Agreement.

12 Do you see that?

13 A. I see it.

14 Q. And it expresses a mutual desire to
15 terminate that Agreement and enter a new
16 Agreement, being this 2023 Agreement.

17 Do you understand that?

18 A. I do.

19 Q. Okay. There's reference here to a
20 "Distribution Fee," meaning the "fee charged by
21 the Distributor for the services performed by or
22 at the direction of Distributor on Supplier's
23 behalf, less all costs, including but not
24 limited to administrative, financial,
25 managerial, logistics, accounting, invoicing,

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1 payment processing, research and development,
2 testing and analysis, customer services, and
3 expense management services for Supplier."

4 Did I read that correctly?

5 A. You did.

6 Q. What is the Distribution Fee? Does
7 that change from month to month?

8 A. The dollar amount does, yes.

9 Q. And how -- how is that calculated?

10 A. It's a percentage of sales.

11 Q. What percentage?

12 A. 29 percent.

13 Q. Has that always been the percentage,
14 or it's changed year-over-year?

15 A. It's been generally that number.

16 Q. And so given that it's a percentage
17 of sales, does that just mean JOpen retains that
18 percentage of sales, or is there actually money
19 coming from Martian to JOpen for payment of a
20 distributor fee?

21 A. It retained that percentage.

22 Q. And then the remaining -- the
23 remaining percentage, is that -- is that then
24 passed to Martian after deductions for costs?

25 A. No. There's a -- there's an amount

1 he receives.

2 Q. Does any percent of those sales go
3 to manufacturers?

4 A. Of the 29 percent?

5 Q. No. Of the remaining -- I guess,
6 was that 71?

7 A. It's whatever their bills are.

8 Q. So what happens to the remaining 71
9 percent?

10 A. It pays for -- it pays for
11 everything else, like the manufacturer,
12 packager. I'm trying to remember the exact --
13 the sourcing company, and there's donations made
14 on its behalf of -- of a -- on OPMS's behalf.

15 Q. So that 71 percent, if that's not
16 actually all used up for the purposes you're --
17 you're expressing, so if that doesn't zero out,
18 where does the balance go?

19 A. It usually goes into "We'll talk
20 about it," and then maybe do promos or lower
21 pricing so that way a better -- better ability
22 to get into the market, especially if the prices
23 have gone down in the market, which they do,
24 like any business, year to year. So we'll do
25 promotions and so on.

1 Q. So just so I understand, you're
2 saying of that 71 percent, if anything's left
3 over after paying the bills, --

4 A. Correct.

5 Q. -- you and Martian talk and decide,
6 "Hey, we're going to spend that in this way to
7 further more sales"?

8 A. Correct.

9 Q. Okay. And so before that money is
10 actually spent for those purposes, is that just
11 sitting in one of JOpen's business accounts?

12 A. I mean, we're -- technically
13 speaking, it's always a -- almost like a
14 negative, right, because there's always expenses
15 out, and money coming in later.

16 Q. And you brought up donations. I
17 just want to revisit that real quick.

18 When JOpen has made donations to the
19 AKA, have those been charitable donations that
20 would then be reported on JOpen's taxes?

21 A. Correct.

22 Q. And so now when you're talking about
23 paying Martian's -- or -- or making donations on
24 behalf of Martian, are those donations there
25 then being associated to Martian for its taxes?

1 A. I don't believe so.

2 Q. Those are still going on JOpen's
3 taxes?

4 A. I -- I believe so, because it's
5 coming out of money still held up by -- it's
6 basically done on behalf of.

7 Q. But it's money coming out of JOpen's
8 account?

9 A. Yes.

10 Q. Okay; all right.

11 So I want to look at this Article
12 II.

13 Or, I'm sorry, let me ask: Do -- do
14 you remember -- where was it? The Distribution
15 Fee. Was this provision any different than in
16 2020?

17 A. Other than maybe the attorneys
18 making it per year, no.

19 Q. Okay. "Article II: Distribution
20 Grant and Responsibilities." It says "Supplier
21 hereby appoints Distributor, and Distributor
22 accepts from Supplier the non-exclusive right to
23 distribute the Products subject to all terms and
24 conditions set forth in this Agreement.

25 "Distributor acknowledges and agrees

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1 that nothing in this Agreement shall restrict
2 Supplier from selling the Products to any other
3 Person. For the avoidance of doubt, this
4 Agreement and the distribution rights contained
5 herein are non-exclusive."

6 Do you know whether any other
7 distributors distribute OPMS products?

8 A. Currently? Not that I know of.

9 Q. Do you know if there has been in
10 2021 or '22 -- sorry -- 2022?

11 A. I may have misunderstood that
12 question. You know, I mean, obviously there's a
13 lot of distributors selling OPMS products,
14 right, besides A1.

15 But this relationship specifically
16 is -- as -- as I know it, it's exclusive -- not
17 exclusive, but it's only done with us current --
18 currently.

19 Q. Gotcha. So I think what you're
20 referring to is A1 provides OPMS to a number of
21 other distributors, and of course they're
22 selling OPMS, right?

23 A. Correct, correct.

24 Q. But as far as the direct
25 relationship between Martian and a distributor,

1 that's only you and Martian?

2 A. Currently, yes.

3 Q. And was there ever a time when that
4 was not the case?

5 A. Obviously in the beginning of our
6 relationship, it was not the case.

7 Q. Meaning back in 2012?

8 A. '12, '13, '14, in that timeframe,
9 yes. Maybe -- maybe a little bit further, but
10 around that timeframe, yes.

11 Q. And then when would you say that it
12 became, you know, just you and Martian?

13 A. I -- I didn't really have a hundred
14 percent control of that, so I don't know.

15 Q. Okay. Are you familiar with the
16 website OPMSWholesale.com?

17 A. I'm familiar with a website called
18 OPMSWholesale.com.

19 Q. Does JOpen have any involvement in
20 that website?

21 A. It does not.

22 Q. Do you know who owns that, by any
23 chance?

24 A. It's third party. It has nothing to
25 do with anyone. Like, it doesn't have anything

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1 A. It's automated based on demand.

2 Q. Okay. So the system can tell --
3 there's some sort of technology in place that
4 can tell, "All right. X number of orders have
5 gone out through JOpen, so we need to restock"?

6 A. Exactly.

7 Q. Okay. Is that the same Odoo pick-
8 and-pull system, or is there some other --

9 A. I -- I think it's some sort of patch
10 to that or a patch that pulls the information
11 off of that. That's a little bit above my pay
12 grade to understand exactly how the software
13 works, but it basically understands what is
14 needed, and it informs -- it informs Flo-Tech.

15 Q. Okay. And so you see here on No.
16 2, "Distributor will work" -- will work "with
17 various parties involved in the supply chain to
18 secure an adequate supply of the Products at
19 Supplier's expense"?

20 Did I read that right?

21 A. You did.

22 Q. Okay. So who -- who are "the
23 various parties involved in the supply chain"
24 this refers to?

25 A. We'll work with Flo-Tech to get

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1 packaging; we'll work with Calibre to get
2 product; and -- and then supply them -- you
3 know, like, Flo-Tech, for example, what we were
4 just talking about a second ago, supplying the
5 actual needs, we'll work with Nuza to pay them.

6 Q. You work with Nuza for the -- the
7 sourcing of the raw kratom; is that correct?

8 A. We pay -- we pay Nuza is more like
9 what we do.

10 Q. Okay. And so let me -- let me
11 clarify.

12 So talking about Jordan McKibban
13 passing in April of '22, in early '22 -- so
14 let's say January to April -- would that have
15 been the same entities, Flo-Tech, Calibre, and
16 Nuza, or would it have been any different set of
17 entities at that time?

18 A. I think it's the same. I'm not a
19 hundred percent sure.

20 Q. Do you have any way of documenting
21 that or confirming that?

22 A. What dates do you need?

23 Q. Between January 1st of '22 to April
24 5th of '22?

25 A. Yes; I'll find out.

1 Q. What would you do to find out?

2 A. I would have to look it up.

3 Q. Is it possible at that time it was
4 Advanced Nutrition and Liv Group, as opposed to
5 Calibre and Nuza?

6 A. It is very possible.

7 Q. As we sit here today, you don't know
8 either way, though?

9 A. I -- I'm sure there's a way to look
10 up the dates.

11 Q. Do you see No. 5 here, "Supplier
12 Compensation"?

13 A. I do.

14 Q. How is this determined?

15 A. It's negotiated.

16 Q. So this amount is negotiated prior
17 to the signature of the Distribution Agreement?

18 A. Correct.

19 Q. And what's the basis in that
20 negotiation for determining the agreeable, you
21 know, fair compensation here?

22 A. What is the basis? I mean, David at
23 A1 Wholesale should have the best deal possible
24 for A1. Mark, you know, should do the best
25 thing he can do for Martian.

1 But, I mean, I believe at the end of
2 the day, Mark is satisfied with what he got, and
3 was happy with the business continuing, or if
4 there was donations made in his name, he was
5 happy with the way it was going.

6 Q. So from your -- your end of things
7 as -- as JOpen, what role exactly is -- is
8 Martian playing?

9 What -- what is their -- their role
10 in the supply chain here to get OPMS Kratom
11 created and ultimately sold?

12 MS. PAYTON: Object to
13 the form of the question.

14 A. I think that was maybe more than one
15 question, so maybe I -- I don't know if you can
16 split it up, if you don't mind?

17 BY MR. COWGILL:

18 Q. Yeah, no, that -- that's -- that's
19 totally fair.

20 So from JOpen's perspective, what
21 role does Martian play in the supply chain for
22 OPMS Kratom?

23 MS. PAYTON: Object to
24 the form.

25 A. I don't know about the supply chain.

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1 And I guess it depends when you say "supply
2 chain."

3 They -- I believe they did contract
4 with Nuza and with Calibre, so they at least get
5 product to us as OPMS product.

6 They did negotiate a contract with
7 us to distribute and to get it packaged and to
8 get some marketing done. So they've done that.

9 They've also -- you know, it's --
10 it's their organization; it's their product.
11 They originally designed the product, they've
12 made the product, they've worked specifically
13 with me on trying to get the -- the label, at --
14 at one point, obviously, the label warnings
15 updated with counsel, and -- and later on
16 they've asked us to modify the label to -- to
17 try to deal with counterfeiting.

18 And the label right now, it's --
19 it's -- another factor is it's just way more
20 expensive than it was in the past, so that also
21 eats into profits.

22 And they've lowered prices over
23 time, so they've had control over what prices
24 stuff -- what prices their products were sold
25 for in the market.

1 Q. Is that, like, just relying on the
2 AKA emails, or is there something specific that
3 you have set up with the AKA for that service?

4 A. No. We just go onto AKA's websites,
5 and then of course through our counsel.

6 Q. Okay. Let me pull up some other
7 exhibits here. I'm just making sure before we
8 dive in here -- okay.

9 OPMSWholesale.com, that's not a
10 website that JOpen has played any role in?

11 MS. PAYTON: Object to
12 the form; asked and answered.

13 A. Correct.

14 BY MR. COWGILL:

15 Q. But OPMSKratom.com, that is a
16 website that JOpen has been involved with in
17 collaboration with Martian and Onix?

18 A. It -- it's something we work with
19 Martian on.

20 Q. And Onix, as well, or --

21 A. I mean, Onix does the physical work,
22 but if you look at the website, there's not a
23 whole lot on that website that's changed over
24 the years. It's informational.

25 (Exhibit 12 marked for identification.)

VERITEXT LEGAL SOLUTIONS

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