

EXHIBIT H

From: Rightler, Hillary
Sent: Friday, January 23, 2026 7:50 PM
To: Michael Cowgill; Sarah Wagar Hickman; Chip Wagar III; Tamara J. Spires
Cc: Shalom Bonee; Chin, Kristina; Yoly Villada; Abigail Newman; Conger, Ava; Ambler, Hayley; Payton, Gwendolyn; Briand, Elisabeth; Angeleah Eckersen; Helene Gregorich; Whitehead, Maeghan; Jennifer Seiler Avallone
Subject: RE: Moller - Expert Depositions
Importance: High

Michael,

Please see our responses below.

Please let us know immediately if this proposal is acceptable to Plaintiff's counsel, as your request for expedited oral argument on a portion of this proposal is pending before the Court with a response brief due tomorrow, and we intend to seek expedited relief on the issues related to Dr. Thundiyl's research if we cannot reach agreement.

Plaintiff's failure to disclose required information related to Dr. Thundiyl's publication related to highly relevant research and findings he relies upon in his expert report

- Under FRCP 26, Dr. Thundiyl's poster presentations should have been disclosed as both a publication and as "facts or data considered by the witness" when forming his opinion. See Thundiyl Depo. 16: 11–14 (first mention of the study looking at deaths in Florida); 17:10–20:10 (more details on the study); 105–108 (the "100 cases of kratom-related deaths" include the research he conducted, and more details on the studies).
- Dr. Thundiyl's CV was only current as April 2025 and Plaintiff's expert disclosures were made in November 2025. Dr. Thundiyl acknowledged this should have been included on his CV. See Thundiyl Depo. 22:17–21 ("A I see that, right. So I'm sorry, that is not the most recent. This version may not have it, but we can check, because sometimes I update the CV and forget to update the date."); 24:1–2 ("Yeah, it does not look like it is on that draft of the CV."). The fact that the poster presentations now appear on his current CV constitute a further acknowledgement that they should have been included as a publication.
- The omitted news segments contain claims by Dr. Thundiyl that kratom is "compulsively addictive"; "interacts with different medications" and has "no proven medical benefits." Additionally, in September 2025, Dr. Thundiyl publicly describes his "research" and "findings" explaining that a "group of us physicians essentially reached out to 25 medical examiners in the state of Florida to try to answer the question are people dying from kratom" and we found some very interesting things" we "had medical examiners send us any reported deaths and found almost 40 deaths in state of FL over period of about 5 years." Dr. Thundiyl claims "these are deaths in the absence of opioids, we know the chemical structure resembles opioids and that is what gave us this concern that it could cause death and we are still left with not knowing exactly why some people die and some don't, but it still has some significant dangers with it." See Thundiyl, Central Florida Doctor Unveils Kratom Research Findings, Potential Dangers. WESH 2 News on CW18, September 15, 2025. <https://www.wesh.com/article/central-florida-doctor-unveils-kratom-research-findings-potential-dangers/66102687>

- Dr. Thundiyl is representing to the public his “research” and “findings” on kratom related deaths, has relied on his study in his report and is now including these materials in his current CV after acknowledging that Plaintiff’s counsel did not provide the most updated version of his CV. Plaintiff had an obligation to list the omitted presentations and news segments in Dr. Thundiyl’s qualifications. See *Shea v. Royal Enters.*, 2011 U.S. Dist. LEXIS 63763, at *21 (S.D.N.Y. June 16, 2011) (finding that the expert’s CV containing “select publications and presentations” was “not comprehensive with respect to his publications,” and ultimately excluded the expert).
- Providing the CV in the middle of the deposition and providing limited materials after his deposition has concluded does not cure the prejudice Defendants incurred as a result of Plaintiff’s failure to comply with FRCP 26. Defendants did not have the opportunity to seek documents related to his research and presentation, provide materials related to his research and presentation to Defendants’ medical experts or adequately prepare for the deposition of Dr. Thundiyl.

Other issues

- As Dr. Huestis testified, some of the references she relied on in her report are publications based on the Nutrasource study. You have access to those publications. Johnson Foods will not produce the Nutrasource clinical study. This issue has been fully briefed before the Court, and the Court has declined to compel production of any documents related to the NDIN, which includes the Nutrasource study. See Dkt. 192.
- With regards to Defendants’ supplemental production, such production was timely as it was produced well in advance of the fact discovery deadline.
- However, the same cannot be said of Plaintiff’s recent production of Kathi Moller’s text messages, and the lack of any production from Jason Moller. Defendants’ RFPs beginning in November of 2024 have sought documents, including text messages, relating to Harmony Moller’s death and this lawsuit. Ms. Moller testified on December 14 that she never searched her phone for responsive messages, then one month later Plaintiff produced responsive text messages and improperly points to an off-the-record oral discussion between Plaintiff’s counsel and Maeghan Whitehead as an attempt to re-characterize Plaintiff’s deposition testimony. Moreover, the Subpoena issued to Jason Moller on November 17, 2025 included document requests for, *inter alia*, “All documents including but not limited to email, text messages, messages through any electronic, SMS, chats, or social media messaging platform, and other communications relating to Harmony Moller’s death on February 6, 2023 that relate to her cause of death or the events immediately preceding her death.” In response to this Subpoena, and in Jason’s deposition on December 17, 2025, he responded that he had no responsive documents. This is plainly false, as on January 16, 2025, Plaintiff produced a responsive text message between Jason and Kathi Moller which was not produced by Jason. Additionally, Plaintiff has produced one message in isolation without providing any reply or response so Plaintiff’s production is not complete. We propose that Plaintiff’s counsel and Defendants’ counsel continue to work through the discovery issues related to the parties through representations that can be made through counsel. There is no need to reopen party depositions based on documents that were produced within the fact discovery period.

Additionally, as we move towards trial, we propose the parties work together to prioritize the issues that we must seek Court intervention on.

Proposal related to experts

Based on the above, we propose the following:

Plaintiff agrees to produce all research and case-related documents related to the underlying the presentations on THUNDIYIL_000001 and THUNDIYIL_000002, including but not limited to

1. The full case studies and autopsy reports;
2. The manual of operations and any IRB submittals related to the study; and
3. Documents sufficient to understand the identity, training and background of the individuals that conducted the case studies (including the named authors Christian Luteri, Ryan Sawyers, Connor Byrne, and Max Trojano). The September 15, 2025 news segment indicated that potentially over 24 individuals were involved in the study and Dr. Thundiyl described the research as run by a “group of physicians.”

If Plaintiff agrees to produce, and produces, the above documents within **7 business days**, Defendant will agree to allow plaintiff to take the remaining depositions of our expert witnesses, and at this time we would not seek to reopen Dr. Thundiyl’s deposition, but we reserve the right to do so pending our review of the above documents.

Thank you,
Hillary

Hillary Rightler
She | Her | Hers
HRightler@ktslaw.com
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street NE | Suite 2800 | Atlanta, GA 30309-4528
T 404 815 6584 | M 404 731 9298 | F 404 541 3320
[My Profile](#) | [vCard](#)

From: Michael Cowgill <mcowgill@mctlaw.com>

Sent: Wednesday, January 21, 2026 2:03 PM

To: Rightler, Hillary <HRightler@ktslaw.com>; Sarah Wagar Hickman <Shickman@wagarhickman.com>; Chip Wagar III <CWagar@wagarhickman.com>; Tamara J. Spires <twilliams@mctlaw.com>

Cc: Shalom Bonee <SBonee@wagarhickman.com>; Chin, Kristina <KChin@ktslaw.com>; Yoly Villada <yvillada@mctlaw.com>; Abigail Newman <anewman@mctlaw.com>; Conger, Ava <AConger@ktslaw.com>; Ambler, Hayley <hambler@ktslaw.com>; Payton, Gwendolyn <GPayton@ktslaw.com>; Briand, Elisabeth <EBriand@ktslaw.com>; Angeleah Eckersen <aeckersen@mctlaw.com>; Helene Gregorich <HGregorich@wagarhickman.com>; Whitehead, Maeghan <MEWhitehead@ktslaw.com>; Jennifer Seiler Avallone <javallone@wagarhickman.com>

Subject: Re: Moller - Expert Depositions

****CAUTION: External Email****

Hi Hillary,

Attached please find copies of the poster presentations cited on Dr. Thundiyl's updated CV and discussed during last week's deposition.

Plaintiff disagrees that the disclosure on Nov. 18, 2025, failed to comply with FRCP 26(a)(2)(B) as no publications were excluded. What is cited in your email are news appearances related to public safety and poster presentations at conferences which were already thoroughly asked about and discussed during last week's deposition. Dr. Thundiyl testified that the manuscripts related to the attached posters have not been published, are undergoing peer review, and are not yet final.

Dr. Thundiyl provided his updated CV during the deposition. Numerous questions were asked related to the CV. Dr. Thundiyl could not locate the final posters during the deposition and stated as much. They are provided here. Nonetheless counsel for defendants engaged in extensive questioning about the

poster presentations, news appearances, and the unpublished manuscripts. All questions were answered. Plaintiff disagrees with your claim of prejudice. In fact, defense counsel closed the deposition without any objection or statement on the record of an intent to keep the deposition open given the posters had not been provided.

Plaintiff will not agree to re-open the deposition of Dr. Thunidyil.

It is notable that just yesterday defense expert, Dr. Huestis, referenced and relied on data related to the Nutrasource clinical study, which data has never been produced in discovery. Please have Johnson Foods produce all documents related to the Nutrasource study.

Additionally, Defendants served supplemental productions over the holiday season including additional testing documents and spec sheets that were not available during the depositions of defendants such as Martian Sales, Calibre, Nuza and JOPEN. Why these documents were not produced prior to the deposition of defendants is unknown. In fact, during those same depositions defendants produced additional testing documents and stated such production was complete. That now appears to have been false.

If Defendants agree to produce all documents associated to the Nutrasource study being relied on by your experts, and agree with reopening the deposition of Martian Sales for one hour to address the newly produced discovery, Plaintiff may consider reopening Dr. Thundiyl's deposition for one hour as well.

Please let me know your position.

Thank You,

Michael

Michael Cowgill, Partner
mcowgill@mctlaw.com

mctlaw
1515 Ringling Blvd, Suite 700
Sarasota, FL 34236
Office: 888.952.5242



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From: Rightler, Hillary <HRightler@ktslaw.com>

Sent: Sunday, January 18, 2026 10:08 AM

To: Sarah Wagar Hickman <Shickman@wagarhickman.com>; Michael Cowgill <mcowgill@mctlaw.com>; Chip Wagar III

<CWagar@wagarhickman.com>; Tamara J. Spires <twilliams@mctlaw.com>

Cc: Shalom Bonee <SBonee@wagarhickman.com>; Chin, Kristina <KChin@ktslaw.com>; Yoly Villada <yvillada@mctlaw.com>; Abigail Newman <anewman@mctlaw.com>; Conger, Ava <AConger@ktslaw.com>; Ambler, Hayley <hambler@ktslaw.com>; Payton, Gwendolyn <GPayton@ktslaw.com>; Briand, Elisabeth <EBriand@ktslaw.com>; Angeleah Eckersen <aeckersen@mctlaw.com>; Helene Gregorich <HGregorich@wagarhickman.com>; Whitehead, Maeghan <MEWhitehead@ktslaw.com>

Subject: RE: Moller - Expert Depositions

Sarah,

Understood and we will respond to any motion accordingly.

There is another issue that arose out of Friday's deposition of Dr. Thundiyl that we need to resolve or understand whether we need to seek Court intervention so that these issues can be handled at the same time.

Plaintiff's expert disclosure on Nov. 18, 2025 for Dr. Thundiyl failed to comply with FRCP 26(a)(2)(B) as it did not include a "list of all publications authored in the previous 10 years." Dr. Thundiyl's CV was only current through 4/14/2025. His CV provided to Plaintiff on Friday during his deposition included multiple publications and presentations that are highly relevant to the issues in this case as they relate to studies involving mitragynine and causes of death (see below excerpts from Dr. Thundiyl's updated CV). These publications all occurred before the Nov. 18 disclosure date.

These studies came up during Dr. Thundiyl's deposition. Defendants' counsel repeatedly requested the materials and Dr. Thundiyl did not provide them.

If these highly relevant materials had been disclosed, Defendant would have requested them in advance of Dr. Thundiyl's deposition and been able to thoroughly question him on these topics. Defendant has been severely prejudiced by Plaintiff's failure to comply with FRCP 26(a)(2)(B). As a result, Defendant requests that Plaintiff immediately provide all documents related to the below materials and that Plaintiff confirm that Dr. Thundiyl can be re-deposed on these topics.

Please let us know if you agree or whether we need to raise this with the Court.

Page 17:

Iuteri C, Sawyers R, Byrne C, Trojano M, Nagel B, **Thundiyil J.** Case Control Study of Mitragynine Induced Fatalities vs All Cause Deaths with Mitragynine Found on Autopsy. Poster presentation at SAEM Southeastern Regional Meeting. Orlando, FL. July 12, 2025

Iuteri C, Sawyers R, Byrne C, Trojano M, Nagel B, **Thundiyil J.** Risk Factors Associated with Kratom Deaths in a Single State. Poster presentation at SAEM Southeastern Regional Meeting. Orlando, FL. July 12, 2025

Iuteri C, **Thundiyil J.** Case Control Study of Mitragynine Deaths vs All Cause Deaths With Mitragynine Found on Autopsy. Poster presentation at North American Congress of Clinical Toxicology (NACCT). Chicago, IL. September 19 – 21, 2025

Iuteri C, **Thundiyil J.** Risk Factors Associated With Kratom Deaths In A Single State. Poster presentation at North American Congress of Clinical Toxicology (NACCT). Chicago, IL. September 19 – 21, 2025

Page 31:

Thundiyil J. Kratom / 7-OH. Good Day Orlando WOFL (FOX). August 29, 2025

Thundiyil J. Central Florida Doctor Unveils Kratom Research Findings, Potential Dangers. WESH 2 News on CW18. September 15, 2025

Thundiyil J. FDA, Florida Crack Down on 7-OH Products. Spectrum News 13. October 14, 2025

T 404 815 6584 | M 404 731 9298 | F 404 541 3320
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From: Sarah Wagar Hickman <Shickman@wagarhickman.com>
Sent: Saturday, January 17, 2026 10:02 AM
To: Rightler, Hillary <HRightler@ktslaw.com>; Michael Cowgill <mcowgill@mctlaw.com>; Chip Wagar III <CWagar@wagarhickman.com>; Tamara J. Spires <twilliams@mctlaw.com>
Cc: Shalom Bonee <SBonee@wagarhickman.com>; Chin, Kristina <KChin@ktslaw.com>; Yoly Villada <yvillada@mctlaw.com>; Abigail Newman <anewman@mctlaw.com>; Conger, Ava <AConger@ktslaw.com>; Ambler, Hayley <hambler@ktslaw.com>; Payton, Gwendolyn <GPayton@ktslaw.com>; Briand, Elisabeth <EBriand@ktslaw.com>; Angeleah Eckersen <aeckersen@mctlaw.com>; Helene Gregorich <HGregorich@wagarhickman.com>; Whitehead, Maeghan <MEWhitehead@ktslaw.com>
Subject: Re: Moller - Expert Depositions

Hillary,

Thanks but no thanks. We will be filing a Motion. I'm stunned that we need to do that to take the remaining expert depositions in this obviously complex medical case but, here we are.

As to Defatta, we wouldn't dream of objecting to your taking his deposition just to obstruct your preparation. Please notice it and don't worry, no motion from you will be needed.

SWH

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From: Rightler, Hillary <HRightler@ktslaw.com>
Sent: Friday, January 16, 2026 4:10:28 PM
To: Sarah Wagar Hickman <Shickman@wagarhickman.com>; Michael Cowgill <mcowgill@mctlaw.com>; Chip Wagar III <CWagar@wagarhickman.com>; Tamara J. Spires <twilliams@mctlaw.com>
Cc: Shalom Bonee <SBonee@wagarhickman.com>; Chin, Kristina <KChin@ktslaw.com>; Yoly Villada <yvillada@mctlaw.com>; Abigail Newman <anewman@mctlaw.com>; Conger, Ava <AConger@ktslaw.com>; Ambler, Hayley <hambler@ktslaw.com>; Payton, Gwendolyn <GPayton@ktslaw.com>; Briand, Elisabeth <EBriand@ktslaw.com>;

Angeleah Eckersen <aeckersen@mctlaw.com>; Helene Gregorich <HGregorich@wagarhickman.com>; Whitehead, Maeghan <MEWhitehead@ktslaw.com>

Subject: RE: Moller - Expert Depositions

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Sarah,

We have been working with you to confirm dates our experts were available as you still have depositions within the limit. We disagree with your contention that experts have been paid. The only expert that received payment is Dr. Wang whose deposition occurred yesterday.

Plaintiff is requesting to take 6 depositions beyond the limit provided for in the FRCP without agreement of the parties or Court order.

In an effort to resolve this issue without Court intervention, we will agree to allow you to take 3 depositions over the limit set by FRCP. We will also be noticing the deposition of Dr. Michael DeFatta who you identified in your expert disclosures as a non-retained, may call expert witness. In exchange for this proposal, you agree not to object to our deposition of Dr. DeFatta.

Please let us know as soon as possible which depositions you will proceed with.

Best,

Hillary

Hillary Rightler

She | Her | Hers

HRightler@ktslaw.com

Kilpatrick Townsend & Stockton LLP

1100 Peachtree Street NE | Suite 2800 | Atlanta, GA 30309-4528

T 404 815 6584 | M 404 731 9298 | F 404 541 3320

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From: Sarah Wagar Hickman <Shickman@wagarhickman.com>

Sent: Friday, January 16, 2026 11:51 AM

To: Rightler, Hillary <HRightler@ktslaw.com>; Michael Cowgill <mcowgill@mctlaw.com>; Chip Wagar III <CWagar@wagarhickman.com>; Tamara J. Spires <twilliams@mctlaw.com>

Cc: Shalom Bonee <SBonee@wagarhickman.com>; Chin, Kristina <KChin@ktslaw.com>; Yoly Villada <yvillada@mctlaw.com>; Abigail Newman <anewman@mctlaw.com>; Conger, Ava <AConger@ktslaw.com>; Ambler, Hayley <hambler@ktslaw.com>; Payton, Gwendolyn <GPayton@ktslaw.com>; Briand, Elisabeth <EBriand@ktslaw.com>; Angeleah Eckersen <aeckersen@mctlaw.com>; Helene Gregorich <HGregorich@wagarhickman.com>; Whitehead, Maeghan <MEWhitehead@ktslaw.com>

Subject: RE: Moller - Expert Depositions

Hillary,

Are you saying we need to get a Court order to take these depositions? Also, we have been working together for months on setting these up... Care to tell me why you are raising this now when experts have been set, taken time out of their schedules and have been paid?

Look, if we need to get a Court order, we will file today for one.

This seems like something we should be able to resolve outside of Court. These are your expert witnesses... Given the complexity of the case and the jurisdictional discovery we had to do, which was separate and apart from discovery on the merits, we believe getting a Court order to take your (already arranged) expert depositions will be proforma. Just want to make sure you are going to stand rigidly against our taking the depositions of your experts before we file anything.

Let me know.

With Gratitude,

Sarah W. Hickman

Partner

shickman@wagarhickman.com

direct: (985) 888-0134

main: (985) 888-8740

cell (985) 807-5907

From: Rightler, Hillary <HRightler@ktslaw.com>

Sent: Friday, January 16, 2026 10:39 AM

To: Michael Cowgill <mcowgill@mctlaw.com>; Chip Wagar III <CWagar@wagarhickman.com>; Sarah Wagar Hickman <Shickman@wagarhickman.com>; Tamara J. Spires <twilliams@mctlaw.com>

Cc: Shalom Bonee <SBonee@wagarhickman.com>; Chin, Kristina <KChin@ktslaw.com>; Yoly Villada <yvillada@mctlaw.com>; Abigail Newman <anewman@mctlaw.com>; Conger, Ava <AConger@ktslaw.com>; Ambler, Hayley <hambler@ktslaw.com>; Payton, Gwendolyn <GPayton@ktslaw.com>; Briand, Elisabeth <EBriand@ktslaw.com>; Angeleah Eckersen <aeckersen@mctlaw.com>; Helene Gregorich <HGregorich@wagarhickman.com>; Whitehead, Maeghan <MEWhitehead@ktslaw.com>

Subject: Moller - Expert Depositions

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Counsel –

With the deposition yesterday of Dr. Wang, Plaintiff's counsel has now taken 9 depositions. This does not even include the additional 9 depositions you took during jurisdictional discovery.

Plaintiff's counsel has requested dates for and noticed an additional 7 of Defendants' experts (listed below for clarity). Pursuant to FRCP 30, Plaintiff is only entitled to 1 more deposition. Please let us know which deposition you intend to proceed with as soon as possible so we can plan accordingly.

1. Dr. Henningfield
2. Dr. Huestis
3. Dr. McCurdy
4. Dr. Boyer
5. Dr. Dollar
6. Dr. Gandy
7. Dr. Paustenbach



Hillary Rightler

She | Her | Hers

HRightler@ktslaw.com

Kilpatrick Townsend & Stockton LLP

1100 Peachtree Street NE | Suite 2800 | Atlanta, GA 30309-4528

T 404 815 6584 | M 404 731 9298 | F 404 541 3320

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