

EXHIBIT 10

**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**

*** JUDGE WENDY B. VITTER**

*** MAGISTRATE DONNA PHILLIPS
* CURRAULT**

**JOPEN, LLC'S RESPONSES AND OBJECTIONS
TO PLAINTIFF'S REQUESTS FOR ADMISSION**

TO: Plaintiff, Kathleen Moller, by and through her attorneys of record, Nelson W. Wagar, III, Sarah Wagar Hickman, Wagar Hickman, LLP, 1401 West Causeway Approach, Mandeville, Louisiana and Michael Cowgill, Tamara J. Williams, mctlaw, 1605 Main Street, Suite 710, Sarasota, Florida 34236.

Defendant JOpen, LLC, pursuant to the Federal Rules of Civil Procedure, responds to Plaintiff Kathleen Moller's Requests for Admission as follows:

GENERAL OBJECTIONS

1. JOpen objects to the Requests to the extent that they are vague, ambiguous, overbroad, unduly burdensome, oppressive, not relevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

2. JOpen objects to the Requests to the extent that they are contradicted by, inconsistent with, or impose on JOpen any obligations in excess of the requirements of the Federal Rules of Civil Procedure.

3. JOpen objects to the Requests to the extent they seek information and materials protected by the attorney-client privilege, attorney-work product doctrine, and any other applicable legal privilege.

4. JOpen objects to the Requests to the extent that they seek information or documents that are not in its possession, custody, or control and are equally or more easily accessible by Plaintiff.

5. JOpen objects to the Requests to the extent they seek information or documents outside the scope of the time, place, subject matter, and circumstances of the occurrences mentioned or complained of in the Second Amended Complaint, dated February 6, 2024 (the “Complaint”). Paragraphs 14 and 17 of the Complaint allege that injuries were suffered on February 6, 2023, allegedly after consumption of an unspecified O.P.M.S. brand kratom product. Accordingly, actions or activities by JOpen after February 6, 2023—as well as issues, documents, or communications in connection with activities other than the production and/or distribution of O.P.M.S. kratom products—do not give rise to Plaintiff’s cause of action.

6. Subject to the foregoing objections and all applicable Specific Objections, JOpen responds to these Requests according to the following period: January 1, 2020, through February 6, 2023.

7. JOpen does not concede that any of the responses are or will be admissible evidence at trial. Further, JOpen does not waive any objection, whether or not asserted herein, to use any such answer at trial.

8. These Responses and Objections have been prepared pursuant to a reasonably and duly diligent investigation and search for the necessary information.

SPECIFIC OBJECTIONS TO DEFINITIONS

1. JOpen objects to the definition of the “DESIGNATED TIME PERIOD.” JOpen responds to these Requests according to the following period: January 1, 2020, through February 6, 2023.

**SPECIFIC RESPONSES TO
SECOND SET OF REQUESTS FOR ADMISSIONS**

REQUEST FOR ADMISSION NO. 1:

Admit that there is a potential risk of serious injury (including death) to persons who consume kratom.

RESPONSE:

JOpen objects to this Request on the grounds that it is argumentative to the extent the Request assumes kratom carries a “potential risk of serious injury (including death).” Subject to this objections, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 2:

Admit that before marketing kratom, JOPEN did not document whether there was a reasonable expectation of safety for those who would be consuming its kratom products.

RESPONSE:

JOpen objects to this Request on the grounds that it is argumentative to the extent the Request assumes that JOpen had an obligation to document unidentified expectations regarding general kratom products. Subject to this objection, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 3:

Admit that before selling kratom, JOPEN did not evaluate the potential risk of serious injury (including death) to persons who consume kratom.

RESPONSE:

JOpen objects to this Request on the ground that it is argumentative to the extent the Request assumes kratom carries a “potential risk of serious injury (including death).” Subject to this objection, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 4:

Admit that JOPEN did not consult with experts in the supplement industry before selling kratom for human consumption.

RESPONSE:

JOpen objects to this Request on the ground that it is argumentative to the extent the Request assumes any kratom product that JOpen distributes is a “supplement.” JOpen further objects to the phrase “supplement industry” as vague and ambiguous—specifically, it is not clear to what industry the Request refers. Subject to these objections, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 5:

Admit that before February 6, 2023, JOPEN did not attempt to identify the industry standards followed for the safe sale of supplements for human consumption.

RESPONSE:

JOpen objects to this Request on the ground that it is argumentative to the extent the Request assumes any kratom product that JOpen distributes is a “supplement.” JOpen further objects to the phrase “industry standards” as vague and ambiguous—specifically, it is not clear to what industry the Request refers. Subject to these objections, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 6:

Admit that in the United States’ supplement industry, it is an industry standard that a company must first document that its supplement product (including a botanical or dietary ingredient) is reasonably safe for human consumption before that company begins selling that product for human consumption.

RESPONSE:

JOpen objects to this Request on the ground that it is argumentative to the extent the Request assumes any kratom product that JOpen distributes is a “supplement.” JOpen further objects to the phrases “United States’ supplement industry” and “industry standard” as vague and ambiguous; it is unclear to what “supplement industry” and “industry standard” this Request refers. Subject to these objections, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 7:

Admit that JOPEN customers have a right to expect that the company has conducted an evaluation into the safety of its kratom products before products are placed in interstate commerce.

RESPONSE:

JOpen objects to this Request on the ground that it is argumentative. JOpen further objects to the phrase “company” as vague and ambiguous. Subject to these objections, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 8:

Admit that before February 6, 2023, JOPEN never consulted with any experts on the extent to which the Federal Food Drug and Cosmetics Act (FDCA) applies to the sale of supplements (including botanicals) for human consumption.

RESPONSE:

JOpen objects to this Request on the grounds that it is argumentative to the extent the Request assumes any kratom product that JOpen distributes is a “supplement” and assumes that JOpen had a duty to consult with experts regarding the FDCA. Subject to these objections, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 9:

Admit that JOPEN marketed and sold kratom products for human consumption.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 10:

Admit that under the FDCA, kratom is classified as a new dietary ingredient.

RESPONSE:

JOpen objects to this Request on the grounds that it calls for a legal conclusion.

REQUEST FOR ADMISSION NO. 11:

Admit that before the death of Harmony Moller, JOPEN had not supplied its purchasers of kratom products with guidance on the maximum dosing considered safe for those using its kratom products.

RESPONSE:

JOpen objects to this Request on the grounds that it is argumentative to the extent the Request assumes that JOpen had a duty to supply guidance on dosing. JOpen objects that it has no personal knowledge as to the timing of the death of Harmony Moller. Subject to these objections, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 12:

Admit that JOPEN has never warned anyone purchasing its kratom products that certain doses of kratom may be lethal.

RESPONSE:

JOpen objects to this Request on the grounds that it is argumentative to the extent the Request assumes that kratom products may be lethal. Subject to this objection, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 13:

Admit that JOPEN has never attempted to determine what dose of its kratom may present a serious risk of an adverse event for its customers.

RESPONSE:

JOpen objects to this Request on the grounds that it is argumentative to the extent the Request assumes that kratom may present a serious risk of an adverse event for its customers. Subject to this objection, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 14:

Admit that the ordinary consumer of JOPEN kratom products expects that it is lawfully selling its kratom products.

RESPONSE:

JOpen objects to this Request as argumentative; it is not reasonable for JOpen to opine on the expectations of unidentified “ordinary consumers.” JOpen further objects to the phrases “ordinary consumer” and “it” as vague and ambiguous. Subject to these objections, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 15:

Admit that JOPEN has not taken any steps to inform customers that its kratom is not lawfully sold for human consumption in the United States.

RESPONSE:

JOpen objects to this Request as argumentative to the extent the Request assumes that “kratom is not lawfully sold for human consumption in the United States.” Subject to this objection, JOpen denies this Request.

REQUEST FOR ADMISSION NO. 16:

Admit that for the time period covering the Incident, you have liability insurance coverage to defend you for the claims asserted in Plaintiffs’ complaint.

RESPONSE:

Denied.

DATED: December 13, 2024

Respectfully submitted,

By /s/ Gwendolyn C. Payton

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CERTIFICATE OF SERVICE

This is to certify that on December 13, 2024, a copy of the foregoing document was served on all counsel of record by electronic mail.

/s/ Gwendolyn C. Payton
Gwendolyn C. Payton