

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

KATHLEEN MOLLER,

Plaintiff,

v.

**MARTIAN SALES, INC.; JOPEN,
LLC; JOHNSON FOODS, LLC; LP
IND., LLC; CAG HOLDINGS, LLC;
RMH HOLDINGS, INC.; ABC
INSURANCE COMPANY and John
Does 1-4,**

Defendants.

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CIVIL ACTION NO. 2:24-cv-228-WBV-DPC

THE HONORABLE WENDY B. VITTER

**MAGISTRATE DONNA PHILLIPS
CURRAULT**

**MEMORANDUM IN SUPPORT OF DEFENDANTS’ MOTION FOR SUMMARY
JUDGMENT**

Defendants LP Ind., LLC (“LP”); CAG Holdings, LLC (“CAG”); RMH Holdings, Inc. (“RMH”); Martian Sales, Inc. (“Martion Sales”); Johnson Foods, LLC (“Johnson Foods”); JOpen, LLC (“JOpen”); Nuza, LLC (“Nuza”); Calibre Manufacturing, LLC (“Calibre”); FMK Group, Inc. (“FMK”); PNW Holdings, LLC; CC US Holdings, LLC (“PNW”); Peyton Palaio; Mark Jennings; David Gabbay; and Mark Reilly (collectively “Defendants”) who respectfully submit this memorandum in support of their summary judgment.

I. INTRODUCTION

This matter concerns Plaintiff Kathleen Moller’s “products liability claims under Louisiana’s Products Liability Act, La. R.S. 9:2800.51, *et seq.*, asserting that the kratom product consumed by Harmony [her daughter] was unreasonably dangerous due to a failure to warn and a design defect.” Order and Reasons, ECF No. 184, at 2; *see also* Third Amended Complaint (“TAC”), ECF No. 100. O.P.M.S. Silver kratom is the sole product at issue in this lawsuit. The O.P.M.S. Silver allegedly consumed by Harmony Moller is a pure kratom leaf powder that was sold lawfully in Louisiana at the time she allegedly purchased it from unknown third-party

retailers. Defendants are not retailers and did not sell any product to Plaintiff. For each Defendant, summary judgment is warranted for multiple, independent reasons.

First, there is no evidence supporting a conclusion that any of Defendants LP, CAG, RMH, Johnson Foods, FMK, PNW, or CC US is a manufacturer of O.P.M.S. Silver, as required under the Louisiana's Products Liability Act ("LPLA") to support a products liability claim. These defendants have no involvement with or control over O.P.M.S. Silver kratom products, so a products liability claim necessarily fails.

In addition, Plaintiff has no evidence to support individual liability against Peyton Palaio, Mark Jennings, David Gabbay, or Mark Reilly (the "Individual Defendants"). These defendants had no involvement with the O.P.M.S. Silver product at issue outside of their formal managerial roles with the corporate defendants. Plaintiff's theory that the corporate defendants serve as these individuals' alter egos fails under the applicable legal standards.

Plaintiff's core theory of products liability—that O.P.M.S. Silver was simply too dangerous to be sold—likewise fails as a matter of law. Plaintiff's daughter Harmony is alleged to have consumed O.P.M.S. Silver in February 2023 when kratom was sold legally in Louisiana—just as it continues to be sold legally both federally and most other states. Plaintiff's argument that kratom should have been illegal in 2023 ignores the simple fact that kratom was legally sold in Louisiana when Harmony purchased it. It certainly does not give rise to a product liability design defect claim. Louisiana product liability law requires a plaintiff claiming a design defect—as a threshold matter—to provide specific, product-level evidence of the existence of alternative design for kratom that was capable of preventing the claimant's damage. Plaintiff offers none.

Plaintiff's case also fails due to an utter lack of proof of causation. All parties agree that a sudden cardiac event caused Harmony's death. It is undisputed that Ms. Moller had a coronary

anomaly described as an “abnormally high left coronary ostia takeoff.” The coroner performed a limited postmortem toxicology test that confirmed the presence of at least two prescription drugs (promethazine and diphenhydramine, neither of which prescribed to Harmony) that are scientifically proven to cause cardiac arrhythmias through QT prolongation. The postmortem level of mitragynine, an alkaloid in kratom, was at an exceedingly low level—one that scientific literature has shown is safe and well-tolerated. Plaintiff’s entire case rests on the speculative leap that this low level of mitragynine, and not the combination of a serious heart defect and other potent drugs, was the cause of her daughter’s death. This speculation is compounded by the fact there is no direct evidence Ms. Moller even consumed Defendants’ O.P.M.S. Silver product before her death. Plaintiff asks this Court to ignore these fatal evidentiary gaps and proceed to trial on conjecture alone.

Finally, Plaintiff’s failure to warn claim fails because a manufacturer cannot be required to warn of a risk that is scientifically unknown or unforeseeable. In February 2023, there was no scientific or medical data to suggest that a low, well-tolerated level of mitragynine could cause a fatal cardiac event. The claims also fail because any additional warning would have been futile. The O.P.M.S. Silver packaging contained a robust warning that explicitly instructed the user to consult a physician before use—a warning Harmony undisputedly ignored.

Plaintiff cannot prove causation, cannot satisfy the statutory elements of her LPLA claims, and has sued parties with no legal connection to her alleged harm, and no genuine issues of material fact remain for trial. Defendants are entitled to judgment as a matter of law.

II. SUMMARY OF STATEMENT OF MATERIAL FACTS

A. Harmony Moller.

Harmony died on February 6, 2023. ECF No. 100 at ¶ 30. Immediately prior to her death, Harmony was ill and told Plaintiff she thought she had food poisoning. Statement of Facts (“SOF”)¹ ¶ 4. The TAC alleges the following: “Harmony Moller, a 36-year-old female, died as the result of the ingestion of OPMS brand Kratom² . . . A postmortem examination of Harmony determined the cause of death was ‘Abnormally high left coronary ostia takeoff exacerbated by Mitragynine use’ secondary to the ingestion of Kratom.” ECF No. 100, at ¶¶ 30, 33.

Harmony’s autopsy disclosed that she suffered from a coronary anomaly. SOF ¶ 7. Specifically, her “left coronary artery arises 5 mm above the sinotubular ridge with an acute angle of origin[]” and “an inferior aortic wall flap[.]” SOF ¶ 7. All medical experts in this matter agree that Harmony died of a ventricular arrhythmia. SOF ¶ 8. NMS Labs performed limited postmortem toxicology testing.³ SOF ¶ 9. Mitragynine was detected at a concentration of 150 ng/mL. SOF ¶ 12. Other positive findings included diphenhydramine (64 ng/mL), promethazine (18 ng/mL), caffeine, and marijuana (delta-9 THC and delta-9 Carboxy THC). SOF ¶ 13. Diphenhydramine and promethazine have been scientifically proven to cause QT prolongation that can lead to ventricular arrhythmia. SOF ¶ 14. Harmony did not have a prescription for either drug. SOF ¶ 15.

There is no evidence Harmony even consumed Defendants’ products prior to her death. SOF ¶ 16 . Defendants’ unopened kratom products were found in the hallway of her house, along

¹ Pursuant to LR 56.1, Defendants’ Statement of Undisputed Material Facts in Support of Motion for Summary Judgment (“SOF”), was filed on March 2, 2026. Defendants’ supporting exhibits are attached thereto.

² Plaintiff alleges that Harmony consumed O.P.M.S. Silver kratom loose ground leaf or powder in a capsule. Both products have identical warnings and labels. SOF ¶¶ 3, 5.

³ The St. Tammany Parish Coroner’s Office did not conduct a comprehensive postmortem toxicology panel. SOF ¶ 9. For example, no screening was done that to quantify the amount of caffeine and they failed to test for numerous other substances which were either in her possession or her mother testified Harmony consumed. SOF ¶ 10. Despite Harmony’s suspicion she had food poisoning, there was no toxicology testing done to screen for food poisoning. SOF ¶¶ 4, 11.

with multiple other items including several marijuana products,⁴ vaping devices, drug paraphernalia (a grinder and glass pipe), prescription medications (most belonging to other individuals), over-the-counter drugs, alcohol bottles, caffeine and weight-loss pills, dietary and herbal supplements and unidentified or unlabeled ground substances located in or around Harmony's bedroom. SOF, ¶ 17. Plaintiff destroyed all of these items the day of Harmony's death, except she claims she saved only the kratom and one other herbal supplement. SOF ¶ 18.

B. Defendants.

JOpen is a Texas-based distributor of a variety of products to the convenience store market. SOF ¶ 20. JOpen distributes O.P.M.S. kratom pursuant a contract with Defendant Martian Sales, which owns the O.P.M.S. trademarks. SOF ¶ 21. JOpen is the only defendant that does not contest jurisdiction in this Court. **David Gabbay** is the manager of JOpen. *Id.* at ¶ 55.

Martian Sales, owns the trademarks for O.P.M.S. products and was founded and fully-owned by Defendant **Mark Reilly**, who serves as its manager and is the sole employee. SOF ¶¶ 25, 54. Martian Sales contracts with manufacturers located outside of Louisiana to manufacture kratom products and contracts with JOpen, also located outside of Louisiana, to distribute the products to wholesalers and retailers. SOF ¶ 26. Martian Sales is paid a flat fee by JOpen for use of the trademark. SOF ¶ 27.

LP is a manufacturer of bulk kratom. SOF ¶ 30. LP did not and never has manufactured the O.P.M.S. kratom allegedly consumed by decedent. SOF ¶ 31.

CAG is a Wyoming company formed in 2019. SOF ¶ 32. CAG formerly operated a manufacturing facility that processed industrial hemp, and had no involvement with kratom. SOF

⁴ This includes a cannabis product with a warning that the product "may not be transported outside the State of Illinois" and that "[p]ossession or use of this product may carry significant legal penalties in some jurisdictions and under federal law[.]" SOF, ¶ 19.

¶ 33. **RMH** formerly operated a manufacturing facility that processes industrial hemp, and has no involvement in kratom. SOF ¶ 36. Neither RMH nor CAG has ever marketed, distributed, or sold any kratom-containing products (or any other products) to consumers. SOF ¶¶ 34, 37.

CC US Holdings is a Wyoming company which provides management and accounting services for LP, CMG, RMH and a number of other companies. SOF ¶ 38. **PNW** is a Wyoming holding company. SOF ¶ 40. **FMK** is a Wyoming holding company, and the sole member of Defendants LP, CAG, CC US Holdings, and PNW. SOF ¶ 42. **Peyton Palaio** was formerly the manager of Defendants LP, CAG, RMH, CC US Holdings, and FMK. SOF ¶ 52. None of CC US Holdings, PNW, or FMK has ever been involved in the distribution, sale, design, manufacture or marketing of kratom. SOF ¶ 41, 43, 46.

Johnson Foods is a Wyoming company formed in 2021. SOF ¶ 44. Johnson Foods has never marketed, distributed, or sold any kratom-containing products (or any other products). SOF ¶ 46.

Nuza is a Wyoming logistics company that assists in sourcing and transporting kratom from the manufacturer to the distributor. SOF ¶ 47. Nuza does not distribute, sell, design, manufacture, or market kratom products. SOF ¶ 48. **Calibre** is a Wyoming kratom manufacturer that puts kratom powder into capsules and liquids. SOF ¶ 49. Calibre then sends the bulk kratom product to JOpen in Texas for packaging and distribution. SOF ¶ 50. The raw kratom for the OPMS products at issue would have been sourced by Nuza and then sent to Calibre to be manufactured and encapsulated and then distributed by Defendant JOpen. SOF ¶ 56. **Mark Jennings** is the Manager of Defendants LP, CAG, RMH, Nuza, Calibre, FMK, PNW, CC US Holdings, and Johnson Foods. SOF ¶ 53.

C. Kratom.

Kratom (*Mitragyna speciosa*) is a tropical tree native to Southeast Asia. SOF ¶ 57. Two alkaloids in kratom are mitragynine and 7-hydroxymitragynine, which interact with receptors in the brain. SOF ¶ 57. Kratom has been consumed for thousands of years in southeast Asia. SOF ¶ 58. Kratom is typically consumed as crushed leaves, powder, extracts, capsules, liquids, or brewed into tea. SOF ¶ 58. In the U.S. and elsewhere, kratom is used to help with chronic pain, anxiety or depression, and opioid withdrawal or substitution. SOF ¶ 59. Unlike opioids, Kratom does not produce respiratory depressant effects, nor carry opioid-like risks of death. SOF ¶ 60. The product at issue here consists solely of ground leaves from the tree – there is no other ingredient. SOF ¶ 61.

Kratom is a legally marketed and sold product in 43 states. SOF ¶ 65. The FDA does not require a New Dietary Ingredient Notification (NDIN) for kratom. SOF ¶¶ 80–85. An NDIN is the premarket notification that must be submitted to FDA at least 75 days before a dietary supplement that contains a new dietary ingredient is marketed (one not marketed in the U.S. before Oct. 15, 1994). *See* 21 U.S.C. § 350b. FDA is aware that there is no NDIN for O.P.M.S. Silver, and the product is legally sold because it is sold as a food and not as a dietary supplement. *See* SOF ¶¶ 81–85. Kratom was legally sold in Louisiana until August 1, 2025. SOF ¶ 86.

D. The allegations against Defendants.

Plaintiff alleges “Kratom is unreasonably dangerous as a matter of law, as defined by Louisiana’s Products Liability Act, La. R.S. 9:2800.51 *et seq.*” due to a failure to warn. ECF No. 100, ¶ 61. Plaintiff also alleges kratom is “unreasonably dangerous and defective in design as defined by and in violation of La. R.S. 2800.56.” *Id.*, at ¶ 63. Plaintiff alleges that Defendants are “strictly liable to Plaintiff in damages for her parents’ grief, loss of companionship and consortium, love, affection, and support due to her wrongful death pursuant to La. C.C. art. 2315.2.”

Plaintiff alleges that her daughter, Harmony, consumed O.P.M.S. Silver kratom before her

death. SOF ¶ 87. At the time of Harmony's death in February 2023, published studies had evaluated kratom users for cardiovascular toxicity, including measurement of serum mitragynine levels. SOF ¶ 94. Leong Bin Abdullah and Singh (2021) reported that in a population of regular kratom users, serum mitragynine ranged from 2,500 ng/mL to 22,400 ng/mL, with the only cardiac effect observed being a slight prolongation of the QT interval, and only in subjects at the higher ranges of mitragynine levels. SOF ¶ 94. Harmony's postmortem level of 150 ng/mL was less than a tenth of the *lowest* level found in that study. SOF ¶ 94.

III. ARGUMENT

A. Summary judgment standard.

Summary judgment is appropriate where there is no genuine disputed issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S. Ct. 2505, 2509-10, 91 L. Ed. 2d 202 (1986). A party moving for summary judgment must inform the Court of the basis for the motion and identify those portions of the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, that show that there is no such genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 322. If the moving party carries its burden of proof under Rule 56, the opposing party must direct the Court's attention to specific evidence in the record which demonstrates that the non-moving party can satisfy a reasonable jury that it is entitled to a verdict in its favor. *Anderson*, 477 U.S. at 248. This burden is not satisfied by some metaphysical doubt as to alleged material facts, by unsworn and unsubstantiated assertions, by conclusory allegations, or by a mere scintilla of evidence. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). Rather, Rule 56 mandates that summary judgment be entered against a party who fails to make a

showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex Corp.*, 477 U.S. at 323.

B. Plaintiffs' claims against numerous defendants fail as a threshold matter.

1. Numerous corporate Defendants are not manufacturers of O.P.M.S. Silver as a matter of law.

Plaintiff brings each of her claims against Defendants under the LPLA. ECF No. 100 at ¶¶ 61–64. The first element of a claim under the LPLA is that “the defendant is a manufacturer of the product.” *Jefferson v. Lead Indus. Ass’n, Inc.*, 106 F.3d 1245, 1251 (5th Cir. 1997). “Plaintiff’s obligation to identify the manufacturer of the allegedly defective product is inherent in the LPLA’s requirement that plaintiff prove proximate causation.” *Id.* at 1252. Plaintiff alleges that her daughter, Harmony Moller, consumed O.P.M.S. Silver kratom and that this product contributed to her death. ECF No. 100 ¶¶ 30, 33. Plaintiff, however, cannot raise a genuine issue of material fact that any of Defendants LP, CAG, RMH, Johnson Foods, FMK, PNW, or CC US is a manufacturer of O.P.M.S. Silver kratom. Plaintiff thus cannot meet her burden to prove any of those Defendant proximately caused her injury.

La. R.S. 9:2800.53(1) defines “Manufacturer” to mean “a person or entity who is in the business of manufacturing a product for placement into trade or commerce” wherein “‘Manufacturing a product’ means producing, making, fabricating, constructing, designing, remanufacturing, reconditioning or refurbishing a product.” The statute provides that “Manufacturer” also means “[a] person or entity who labels a product as his own or who otherwise holds himself out to be the manufacturer of the product.” La. R.S. 9:2800.54(B)(1)(a).

It is undisputed that Defendant Calibre is a kratom manufacturer that puts kratom powder into capsules and sends bulk kratom product to Defendant JOpen in Texas. SOF ¶¶ 49, 50. It is undisputed that Defendant JOpen then oversees packaging and distributes products, including the

O.P.M.S. Silver product at issue, using O.P.M.S. trademarks owned by Defendant Martian Sales. SOF ¶ 21. In contrast, Defendants LP, CAG, RMH, CC US, PNW, FMK, or Johnson Foods are not involved with the producing, making, fabricating, constructing, designing, remanufacturing, reconditioning or refurbishing of O.P.M.S. Silver products. SOF ¶¶ 31, 34, 37, 39, 41, 43, 46. There is therefore no triable issue of fact as to whether any of Defendants LP, CAG, RMH, Johnson Foods, FMK, PNW, or CC US qualify as a Manufacturer under the LPLA. The Court should therefore grant summary judgment in favor of those Defendants as to all claims brought against them.

2. Plaintiff cannot seek liability against the Individual Defendants.

Plaintiff brings each of her claims against Defendant Peyton Palaio as a member of Defendants Nuza, Calibre, LP, RMH, PNW, and CC US. ECF No. 100, ¶¶ 7, 9, 11, 13, 15, 18, 20, 21. Plaintiff brings each of her claims against Defendant Mark Jennings as “an individual who is closely associated and involved with” business operations of O.P.M.S. branded kratom products. *Id.*, ¶ 22. Similarly, Plaintiff brings her claims against each of Eyal David Gabbay and Mark Reilly as “an individual who is closely associated and directly involved with the kratom business operations of the O.P.M.S. brand.” *Id.*, ¶¶ 23–24.

A bedrock principle of corporate law is that an individual who incorporates a business is shielded from personal liability for the corporation’s obligations. *See Riggins v. Dixie Shoring Co., Inc.*, 590 So. 2d 1164, 1167–68 (La. 1991). To hold an individual liable for the actions of a corporate entity, a plaintiff must pierce the corporate veil, a remedy reserved for “exceptional circumstances.” *Id.* at 1168. Plaintiff’s theory for holding the Individual Defendants liable rests entirely on her conclusory allegation that they are the “alter egos” of the corporate entities. ECF No. 100, ¶ 25. After full discovery, Plaintiff has failed to produce any evidence that would justify such a drastic remedy. Nothing in the record shows that Messrs. Palaio, Jennings, Gabbay, or

Reilly acted outside their capacities as managers, members, or officers of their respective companies. Plaintiff has not identified a single act taken by any of these individuals in their personal capacity that could give rise to personal liability. Plaintiff's failure to oppose this very argument in Defendants' Motion to Dismiss is telling. *See* ECF No. 148 at 6–7. Having been given the opportunity to defend her alter ego allegations against the Individual Defendants, Plaintiff remained silent, tacitly conceding her claims of individual liability lack factual support.

On June 30, 2025, Plaintiff filed a motion for partial summary judgment to resolve, for jurisdictional purposes, whether the Defendants were “acting as a single business enterprise, are subject to veil piercing, or, in the case of certain named individuals, whether the corporate defendants were in fact just the alter ego of these individuals.” ECF No. 132-1, at 6. In that motion, Plaintiff argued that “[t]he standard for veil piercing for jurisdictional purposes is lower.” ECF No. 132-1 at 19. However, Plaintiff's statement of facts in support of that motion failed to provide the Court with any evidence that could possibly justify piercing the corporate veil with respect to any of the Individual Defendants for jurisdictional purposes—let alone for liability. *See generally* ECF No. 132-2; *see also* ECF No. 143 at 16–17.

To the extent the Court either (i) grants Defendants' motion to dismiss (ECF No. 122), or (ii) in response to Plaintiff's motion for partial summary judgment (ECF No. 132), finds that Plaintiff has not shown that the corporate veil can be pierced for jurisdictional purposes, then, the Court lacks personal jurisdiction over the Individual Defendants, and the issue of veil-piercing for liability is moot. However, should the Court find it has personal jurisdiction over any of the Individual Defendants, the Court should then grant summary judgment dismissing the claims against them because Plaintiff cannot meet her burden to show the corporate veil of any of the corporate Defendants should be pierced for purposes of liability.

a. Plaintiff cannot show JOpen’s corporate veil should be pierced.

“Louisiana courts have not explicitly ruled on the appropriate choice of law for veil piercing theories. However, the Fifth Circuit has predicted that Louisiana courts would look to the law of the state in which the defendant corporation was incorporated.” *Louisiana Newpack Shrimp, Inc. v. Ocean Feast of China, Ltd.*, 19-129948-WBV-KWR, 2021 WL 516631, at *7 (E.D. La. Feb. 11, 2021).

It is undisputed that JOpen is a Texas company. ECF No. 132-2, ¶¶ 8–9. Under Texas law, “to pierce the corporate veil and impose liability under an alter-ego theory, the plaintiff must demonstrate (1) that the entity on which it seeks to impose liability is the alter ego of the debtor, and (2) that the corporate fiction was used for an illegitimate purpose, that is, to perpetrate an actual fraud on the plaintiff for the defendant’s direct personal benefit.” *U.S. KingKing v. Precision Energy Servs.*, 555 S.W.3d 200, 212 (Tex. App.—Houston [1st Dist.] 2018, no pet.); *see also Metroplex Mailing Servs v. RR Donnelley & Sons Co.*, 410 S.W.3d 889, 896-97 (Tex. App.—Dallas 2013, no pet.) (“Evidence that a company was used as an alter ego does not, by itself create an issue regarding whether it was used to commit an actual fraud on the plaintiff for the defendant’s personal benefit.”). Plaintiff has failed to provide any facts supporting a claim that any of the Individual Defendants is the alter ego of JOpen, nor has Plaintiff alleged that any of the Individual Defendants used “the corporate fiction . . . to perpetrate an actual fraud on the plaintiff for the defendant’s direct personal benefit” as required under Texas law. Accordingly, there is no basis for piercing JOpen’s corporate veil to find any Individual Defendant personally liable for the acts of JOpen.

b. Plaintiff cannot show any of the Wyoming Defendants’ corporate veils should be pierced.

It is undisputed that Defendants LP, CAG, RMH, Martian Sales, Johnson Foods, Nuza,

Calibre, FMK, PNW, and CC US are all Wyoming companies. *See* ECF No. 132-2 at ¶¶ 6–7, 10–27. Wyoming veil-piercing law thus applies to determine whether any of the Individual Defendants can be held personally liable for any of their actions. *Louisiana Newpack Shrimp*, 2021 WL 516631, *7

Under Wyoming law, “[b]efore a corporation’s acts and obligations can be legally recognized as those of a particular person, and vice versa, it must be made to appear that the corporation is not only influenced and governed by that person, but that there is such a unity of interest and ownership that the individuality, or separateness, of such person and corporation has ceased, and that the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice.” *Ridgerunner, LLC v. Meisinger*, 2013 WY 31, ¶ 14, 297 P.3d 110, 115 (Wyo. 2013).

“The veil of a limited liability company may be pierced under exceptional circumstances when: (1) the limited liability company is not only owned, influenced and governed by its members, but the required separateness has ceased to exist due to misuse of the limited liability company; and (2) the facts are such that an adherence to the fiction of its separate existence would, under the particular circumstances, lead to injustice, fundamental unfairness, or inequity.” *Greenhunter Energy v. Western Ecosystems*, 337 P. 3d 454, 461 (Wyo. 2014). “In determining whether both prongs of this test have been met, courts can usually apply several factors. . . The first is whether there has been fraud. . . . Second, inadequate capitalization, if there is evidence of it, may be considered. . . . however . . . undercapitalization alone will not suffice to pierce the veil. . . . A third factor to consider is the degree to which the business and finances of the company and the member are intermingled.” *Id.*, at 463–64. As to the fraud factor, “[t]he elements of a claim for relief for fraud are a false representation made by the defendant which is relied upon by the

plaintiff to his damage, the asserted false representation must be made to induce action, and the plaintiff must reasonably believe the representation to be true. A plaintiff who alleges fraud must do so clearly and distinctly, and fraud will not be imputed to any party when the facts and circumstances out of which it is alleged to arise are consistent with honesty and purity of intention. Fraud must be established by clear, unequivocal and convincing evidence, and will never be presumed.” *Id.* at 470.

Plaintiff has failed to produce any evidence that could establish that any of the veil-piercing factors are met as to any of the Wyoming LLCs or corporations. The requirement of a “false representation made by the defendant which is relied upon by the plaintiff to his damage” is alone dispositive. Plaintiff has no evidence of such a false representation, or any reliance on one, so none of the Wyoming LLCs’ or corporation’s veil’s may be pierced to impose personal liability on any of the Individual Defendants.

Accordingly, the Court should summarily dismiss the claims against the Individual Defendants because Plaintiff cannot carry her burden to show any genuine issue of material fact that could permit corporate veil-piercing.

3. Courts reject efforts to impute manufacturer status to related parties absent extraordinary circumstances.

Finally, Plaintiffs invoke alter ego not to remedy fraud in a creditor setting, but to convert individuals and affiliated entities into statutory “manufacturers.” The LPLA is explicit: only a “manufacturer” may be held liable for product defects. La. R.S. § 9:2800.52. The statute carefully limits liability to the entities that actually design, manufacture, assemble, or otherwise place the product into the stream of commerce. Plaintiff attempts to use veil-piercing as an end-run around the LPLA’s manufacturer limitation. Courts do not permit that.

Alter ego is an extraordinary equitable remedy, and particularly disfavored when used to

expand statutory strict products liability rather than to prevent asset shielding after judgment. The Fifth Circuit has warned against expanding manufacturer liability through alter ego. In *Rodriguez v. Riddell Sports, Inc.*, 242 F.3d 567, 573 (5th Cir. 2001), the Fifth Circuit reversed a jury verdict that had treated multiple related entities and individuals as manufacturers in a products liability case under an alter ego theory. Although *Rodriguez* applied Texas law, its reasoning is directly applicable here because both Texas and Louisiana treat veil piercing as a “radical” and “extraordinary” remedy. *Id.* at 374 (“Generally, a court will not disregard the corporate fiction and hold a corporation liable for the obligations of its subsidiary except where it appears the corporate entity of the subsidiary is being used as a sham to perpetrate a fraud, to avoid liability, to avoid the effect of a statute, or in other exceptional circumstances.”). Louisiana law is the same: “[p]iercing the corporate veil is considered a radical remedy,” and “the principle that the corporation is a separate entity should be disregarded only in exceptional circumstances.” *Patz v. Sureway Supermarket*, No. CV 17-3465, 2018 WL 6788088, at *9 (E.D. La. Dec. 26, 2018) (quoting *New Orleans Jazz & Heritage Found., v. Kirksey*, 40 So. 3d 394, 407 (La. App. 4 Cir. 2010); *Sea Tang Fisheries, Inc. v. You’ll See Sea Foods*, 569 So. 2d 992, 995 (La. Ct. App. 1990)). Courts may disregard corporate separateness only when “fraud or deceit has been practiced by the shareholder acting through the corporation” or when shareholders disregard corporate formalities “to the extent that the corporation ceases to be distinguishable from its shareholders.” *Riggins v. Dixie Shoring Co.*, 590 So. 2d 1164, 1168 (La. 1991).

In *Rodriguez*, the Fifth Circuit emphasized that alter ego is not a mechanism for imposing strict products liability merely because entities share financial interests or ownership structure. 242 F.3d. at 577-78 (“There must be something more than mere unity of financial interest, ownership and control for a court to treat the subsidiary as the alter ego of the parent and make the

parent liable for the subsidiary's tort."). Rather, veil piercing is reserved for rare circumstances involving misuse of the corporate form to perpetrate fraud or injustice. *Id.* The court cautioned that alter ego is "an extraordinary remedy" and explained that corporate separateness is not disregarded simply because companies share common ownership, overlapping management, or financial interdependence. *Id.* Critically, the Fifth Circuit held that it was error even to charge the jury in a way that would have permitted them to treat affiliated defendants as manufacturers absent legally sufficient proof of veil-piercing factors and entered judgment for the defendant. *Id.*

Thus, Plaintiff's claims fail as matter of law because she improperly seeks to use conclusory alter ego allegations as a substitute for the required statutory element of manufacturing, yet offers no evidence of the fraud, injustice, or other exceptional circumstances necessary to pierce the corporate veil and impose liability upon either the non-manufacturing entities or the individuals.

C. Plaintiff's design defect claim fails as a matter of law.

Plaintiff's LPLA claims are fatally flawed. Plaintiff's design defect theory, which posits that kratom is inherently too dangerous to be sold is fundamentally incompatible with the LPLA, which requires proof of a feasible alternative design. *See* La. R.S. § 9:2800.56(1). Furthermore, Plaintiff cannot establish the essential element of causation, a prerequisite for all LPLA claims.

1. Plaintiff's claim fails for lack of a safer, feasible alternative design.

a. Plaintiff alleges no alternative design is possible.

Under the LPLA, a product is unreasonably dangerous in design only if, at the time it left the manufacturer's control, "[t]here existed an alternative design for the product that was capable of preventing the claimant's damage." La. R.S. § 9:2800.56(1). Plaintiff has failed to produce any evidence identifying a specific, feasible alternative design for O.P.M.S. Silver that would have prevented Harmony's death. Instead, Plaintiff's own allegations concede that no such alternative

exists. By claiming it is “not scientifically possible” to make kratom safe, Plaintiff has judicially admitted her inability to satisfy a core element of her own claim. If no safe design is possible, then no *alternative* safer design is possible. This mandates summary judgment in Defendants’ favor. *See Williams v. UPS, Inc.*, 2018 WL 1189687, at *3 (M.D. La. Mar. 7, 2018) (dismissing a design defect claim for failure to allege an alternative design); *Sisk v. Sears*, 959 F. Supp. 337, 339 (E.D. La. 1996) (dismissing design defect claim for lack of evidence that alternative design existed at time of accident).

b. The lack of an alternative design triggers a cascade of legal failures.

Even if Plaintiff could show the existence of an alternative design “capable of preventing the claimant’s damage” at the time the product left the manufacturer’s control, Plaintiff must also prove “[t]he likelihood that the product’s design would cause the claimant’s damage and the gravity of that damage outweighed the burden on the manufacturer of adopting such alternative design and the adverse effect, if any, of such alternative design on the utility of the product.” La. R.S. § 9:2800.56(2). Because Plaintiff has not and cannot identify any alternative design, Plaintiff necessarily cannot meet her burden to show either the “burden on the manufacturer of adopting any alternative design,” or “the adverse effect, if any, of such alternative design on the utility of the product.” These additional failures also mandate summary judgment.

D. Plaintiff cannot establish causation, a necessary element of all LPLA claims.

Plaintiff’s entire case collapses under the weight of a fundamental failure: the inability to prove causation. The LPLA requires a plaintiff to prove that a characteristic of the product proximately caused the claimant’s damage. La. R.S. § 9:2800.54(A). Plaintiff’s attempt to link O.P.M.S. Silver to her daughter’s death fails at every critical step of the causal analysis—from the

foundational question of whether she even consumed the product, to the broader scientific questions of general and specific causation.

1. Plaintiff cannot show that OPMS Silver kratom was the cause of the harm.

Before any analysis of toxicology or foreseeability, a plaintiff must first establish a basic factual link: that the decedent consumed the defendants' product. Here, Plaintiff's case begins with a speculative leap unsupported by evidence. There is no direct evidence Plaintiff consumed O.P.M.S. Silver prior to her death. The mere presence of an *unopened* package of the product in another area of her house at the time she died is insufficient as a matter of law.⁵ Plaintiff admitted that she was unaware that her daughter had ever consumed kratom before her death, let alone O.P.M.S. Silver. SOF ¶ 16. And critically, Plaintiff spoliated the evidence. On the day of Harmony's death, the only items Plaintiff claims she did not immediately discard were Defendants' Kratom products and one other supplement. SOF ¶ 18.

Plaintiff would ask the jury to infer that the source of the mitragynine in Harmony's blood must be the one product that she chose not to destroy. Such an inference is not only pure speculation, but profoundly inequitable. "Testimony based on conjecture or speculation is insufficient to raise an issue of fact to defeat a summary judgment motion." *Ruiz v. Whirlpool, Inc.*, 12 F.3d 510, 513 (5th Cir. 1994) (plaintiffs could not meet their burden to show defendant was the supplier of the allegedly harmful product based solely on speculation). Having destroyed all other potential sources, Plaintiff cannot now ask the Court to *presume* Defendants' product is the culprit. And without such a presumption, Plaintiff cannot make any showing sufficient to meet her burden at trial, so summary judgment is warranted. *Celotex Corp.*, 477 U.S. at 323.

⁵ In contrast, marijuana, vaping devices, drug paraphernalia, prescription medications (some belonging to others), over-the-counter drugs, alcohol, caffeine, dietary and herbal supplements and unidentified ground substances that look like kratom were found in the same room as her body.

2. Plaintiff fails to establish general causation.

Even if Plaintiff could prove consumption, her claim would fail at the next step. A plaintiff must prove both general and specific causation. *Knight v. Kirby Inland Marine, Inc.*, 482 F.3d 347, 351 (5th Cir. 2007). “To establish general causation, a causation expert must identify ‘the harmful level of exposure to a chemical’ at which physical symptoms manifest.” *Kaoui v. BP Exploration & Production, Inc.*, No. 17-3313, 2023 WL 330510, at *6 (E.D. La., Jan. 12, 2023) (Vitter CJ) (holding general causation, at minimum requires “[s]cientific knowledge of the harmful level of exposure to a chemical.”)). Summary judgment is warranted because Plaintiff is unable to provide expert testimony that could meet her burden to show general causation. *See e.g., Kaoui*, 2023 WL 330510, at *6–10. Plaintiff is unable to provide any expert testimony establishing the harmful level of mitragynine capable of causing a fatal cardiac event—like Harmony’s—in the general population. SOF ¶¶ 98–100, 103. It is undisputed that data and research into kratom is still developing. However, as this Court made clear, the fact that the “scientists working in this area” lack “data sufficient to meet the *Daubert* standards for reliability does not mean that those requirements disappear.” *Kaoui*, 2023 WL 330510, at *8. Because Plaintiff’s experts cannot offer reliable scientific evidence to establish the level of mitragynine capable of causing a fatal cardiac event in the general population, her LPLA claims necessarily fail. *See Whalen v. Monsanto Company*, 2024 WL 4524170 (5th Cir. 2024) (affirming dismissal of LPLA claims on summary judgment for lack of expert testimony showing general causation).

3. Plaintiff cannot show specific causation.

Even if it were assumed that Harmony consumed O.P.M.S. Silver kratom and ignored the general causation requirement, Plaintiff also cannot show specific causation (*i.e.*, that kratom caused Harmony’s death). *See e.g., Knight*, 482 F.3d at 351 (“Evidence concerning specific causation in toxic tort cases is admissible only as a follow-up to admissible general-causation

evidence.”). Toxicological analysis reveals that Harmony had a negligible amount of mitragynine in her system at the time of her death (150 ng/mL)—far below concentrations deemed safe in clinical studies published both before and after the incident. SOF ¶¶ 92–97, 105–107.

By February 2023, the time of Harmony’s death, a 2021 study had assessed kratom users for evidence of cardiovascular toxicity through the performance of electrocardiograms and echocardiograms. SOF ¶ 94. The subject’s serum levels of mitragynine ranged from a low of 2,500 ng/mL to a high of 22,400 ng/mL (in contrast to Harmony’s 150 ng/mL). SOF ¶ 94. The only cardiac effect discovered was a slight prolongation of the QT interval on the electrocardiogram that only appeared at the higher mitragynine levels. SOF ¶ 94. Harmony’s postmortem level of 150 ng/mL was less than a tenth of the lowest level found in this study. SOF ¶ 94.

By the time of Harmony’s death, the published literature also established that mitragynine blood concentrations up to 191 ng/mL were well tolerated and caused no adverse effects. SOF ¶ 95. A March 2023 publication by NMS Laboratories described the state of the art at the time of Harmony’s death; NMS reported that where “mitragynine toxicity” had been “listed as the cause of death,” the “blood concentrations ranged from 730 to 5900 ng/mL with a median concentration of 2000 ng/mL.” SOF ¶ 96. The article reported “[c]oncentrations of >1000 ng/mL are well above documented concentrations from the pharmacokinetic studies after drinking kratom tea.” SOF ¶ 96. A later 2024 study confirmed doses up to 753 ng/mL were “well tolerated” with “no serious adverse events.” SOF ¶ 106. Additional studies by the FDA in 2025 and Heustis in 2026 further confirmed the safety of mitragynine levels like the one at issue in this litigation. SOF ¶ 107.

Plaintiff has not offered and cannot offer any evidence to create a triable issue of fact that a 150 ng/mL mitragynine level could have caused Ms. Moller’s fatal cardiac event thus providing yet another reason for summary judgment.

4. Plaintiff also cannot show it was foreseeable by February 2023 that Mitragynine could cause Harmony’s death.

Finally, even if there were general and specific causation, Plaintiff’s claim fails on the element of proximate cause, which requires a showing of foreseeability. *See Ford v. Pennzoil*, 974 F. Supp. 559, 566 (E.D. La. 1997) (finding no proximate causation under LPLA where “the injuries suffered by the plaintiffs’ were not foreseeable”); *Giddings v. Commercial Union Ins. Co.*, 539 So. 2d 66, 70 (La. App. 2nd Cir. 1988) (finding defective tree “was not a legal cause of the accident because it was not reasonable for the owner of the tree to anticipate the falling of the limb would result in this kind of accident”).

The central question is whether it was foreseeable to a manufacturer in February 2023 that a 150 ng/mL concentration of mitragynine could exacerbate a rare coronary anomaly and result in death. The undisputed evidence shows it was not. The scientific literature available in February 2023 did not identify a risk of death from such a low concentration of mitragynine. All available data pointed to safety at levels far exceeding Harmony’s. Plaintiff’s experts attempt to create a factual dispute by citing irrelevant or misinterpreted studies: Dr. Wharton relies on a 2023 review by Krantz, but this paper was not published until June 13, 2023—months after Ms. Moller’s death. SOF ¶¶ 98–100. Moreover, the study itself cautions that “causal determinations cannot be made” from it, and that “a convincing mechanistic link between mitragynine and ventricular arrhythmia is lacking.” SOF ¶ 100. Dr. Cadman, points to a Xiaotong Li study, also published after Harmony’s death, which only offers “valuable hypotheses for future studies” and fails to provide *any* analysis of mitragynine blood concentration levels whatsoever. SOF ¶ 102.

There was simply no scientific basis in February 2023 for a kratom manufacturer to foresee that its product could cause this specific harm at this low dose. That unforeseeability is fatal to Plaintiff’s ability to prove proximate cause for her design defect claim and, as discussed next,

provides a complete defense to her failure-to-warn claim.

E. Plaintiff cannot show any failure to warn.

1. Defendants had no duty to warn of an unknown and unforeseeable risk.

“To successfully maintain a failure-to-warn claim under the LPLA, a plaintiff must demonstrate that the product in question has a potentially damage-causing characteristic and that the manufacturer failed to use reasonable care to provide an adequate warning about this characteristic.” *Stahl v. Novartis Pharmaceuticals Corp.*, 283 F. 3d 254, 264 (5th Cir. 2002). To meet the first prong of this test, a plaintiff must provide evidence about the “cause, frequency, severity, or consequences” of the dangerous characteristic in question or face summary dismissal. *Grenier v. Medical Engineering Corp.*, 243 F. 3d 200, 205 (5th Cir. 2001) (dismissing plaintiff’s failure to warn claim for lack of evidence as to the “cause, frequency, severity, or consequences” of the alleged damage-causing characteristic left “the scope of [any] duty to warn unclear.”)

Under the LPLA, a manufacturer has a duty to warn, but only if the manufacturer knew or should have known of the risk. The LPLA provides a complete defense where “at the time the product left his control, [the manufacturer] did not know and, in light of then-existing reasonably available scientific and technological knowledge, could not have known of the characteristic that caused the damage or the danger of such characteristic.” La. R.S. § 9:2800.59(B).

This “state-of-the-art” defense is dispositive here. The specific risk that a low dose (or any dose) of mitragynine could fatally exacerbate death in someone with a rare coronary anomaly was not known or reasonably knowable to the scientific community in February 2023. The scientific literature did not identify such a danger. SOF ¶¶ 92, 95–103, 106. Defendants cannot be held liable for failing to warn of a risk that science had not identified (and still has not identified).

2. Plaintiff cannot show that any alleged failure to warn caused injury.

Under the LPLA, “a manufacturer is liable for inadequate warning only if such defect was a proximate cause of the plaintiff’s injury.” *Scott v. Ariens Company*, 2025 WL 786035, at *6 (E.D. La. Mar. 12, 2025). “In addition to proving cause-in-fact, a plaintiff must also demonstrate that the inadequate warning was the most probable cause of his injury.” *Scott*, 2025 WL 786035, at *6 (citing *Wheat v. Pfizer, Inc.*, 31 F.3d 340, 342 (5th Cir. 1994)). Plaintiff has not provided any evidence from which a reasonable jury could conclude an inadequate warning was the most probable cause of her injury, so summary judgment is warranted.

a. The O.P.M.S. Silver product included an adequate warning that Plaintiff admits was effective.

Under the LPLA, “[a] manufacturer is required to provide an adequate warning of any danger inherent in the normal use of its product which is not within the knowledge of or obvious to the ordinary user.” *Hinson v. Techtronic Industries Outlets*, 126 F. Supp. 3d 747, 758 (W.D. La. 2015). *Stahl* establishes a clear, two-part test for adequacy:

the warning must both lead the ordinary user or handler to **contemplate the danger** in using the product ... and to **either use it safely ... or decline to use it**.

Stahl v. Novartis Pharmaceuticals Corp., 283 F.3d 254, 271 (5th Cir. 2002) (emphasis added).

The O.P.M.S. Silver label at issue here meets this standard precisely. It contained clear warnings that “[i]ngesting Mitragyna Speciosa can be dangerous,” and directed the user multiple times to seek professional medical advice before use.⁶ SOF ¶¶ 88, 89. Critically, Plaintiff’s own testimony concedes that the warning accomplished exactly what the law requires. First, Plaintiff’s confirmed she understood the danger of ingesting the product: “[The label] says it is unapproved for dietary ingredients . . . **so you shouldn’t consume it.**” SOF ¶ 89. This admission directly

⁶ The label instructs to “[c]onsult your healthcare professional to determine if this product is right for you, and if so, how to use it safely,” to “[c]onsult your physician about potential interactions, other possible complications, and precautionary measures before considering this product” and “[i]nform your physician of the alkaloid content, labeled on the package.” SOF ¶ 89.

satisfies the first prong of *Stahl*. See *Stahl*, 283 F.3d at 271 (requiring a warning that leads the ordinary user to “contemplate the danger in using the product”). The label led her to the exact conclusion that there was a danger associated with consumption—so much so that she concluded one “shouldn’t consume it.”

Second, Plaintiff’s testimony confirms she understood the label guides users to make the choice to either use the product safely or not at all. When complaining that the label instructs users to consult a physician, Plaintiff conceded that this advice would lead to a clear, binary choice: “The only thing they’re going to tell you is **don’t take or do take.**” SOF ¶ 89 (emphasis added). This fatal admission satisfies the *Stahl*’s second prong. The very outcome Plaintiff describes—prompting a user to decide whether to “don’t take or do take” the product—is the exact legal function of an adequate warning. See *Stahl*, 283 F.3d at 271 (requiring a warning that leads a user “to either use it safely . . . or decline to use it”). Plaintiff’s admissions confirm that the O.P.M.S. Silver label accomplished both of its required legal functions: it warned her of danger, and it instructed her on how to make a safe choice. The warning was legally adequate as a matter of law, and her LPLA claim fails.

b. Any further warning would have been futile.

Even if a more specific warning were required (and it is not), proximate cause also cannot be shown because any further warning would have been futile. “Once a plaintiff proves that the lack of an adequate warning or instruction rendered the product unreasonably dangerous, his cause in fact burden is assisted by a presumption: when a manufacturer fails to give adequate warnings or instructions, a presumption arises that the user would have read and heeded such admonitions.” *Bloxom v. Bloxom*, 512 So. 2d 839, 850 (La. 1987). However, this presumption is rebutted by evidence that “an adequate warning or instruction would have been futile under the

circumstances.” *Id.* (ruling as a matter of law that an adequate warning in the owner’s manual would be futile where plaintiff admitted “he had not read any part of his owner’s manual”).

In *Hinson*, the court concluded that the presumption the plaintiff would have heeded a warning that a pressure washer could break was rebutted when “the defendants have presented evidence showing the plaintiff ignored other instructions and warnings contained within the Operator’s Manual that accompanied the pressure washer.” *Hinson*, 126 F. Supp. 3d at 758. Based on the evidence that the plaintiff ignored other instructions and warnings, the Court found “no reasonable basis to believe that even if the defendants had included a warning that the handle of the pressure washer might break, the plaintiff would have altered his actions” and so “defendants are entitled to summary dismissal of the plaintiff’s failure to warn claim.” *Id.*

The same outcome is warranted here. The presumption that Harmony would have heeded an additional warning is rebutted by the undisputed fact that Harmony did *not* heed the existing warning. The label explicitly instructed the user to consult a physician before use. There is no evidence Harmony did. SOF ¶ 90. In fact, Plaintiff has repeatedly represented Harmony had not seen a physician since 2021. SOF ¶ 90. By disregarding the clear directive to seek medical advice, she broke the causal chain. Any additional or more specific warning on the label would have been futile, as the provided warning—which directed her to the exact source of such specific advice—was ignored. An additional warning would not have changed the outcome, so this claim fails.⁷

IV. CONCLUSION

Defendants respectfully request the Court enter summary judgment dismissing all claims.

⁷ The presumption is further rebutted as Harmony possessed a marijuana product in Louisiana that included warnings that it “may not be transported outside the State of Illinois” and that “[p]ossession or use of this product may carry significant legal penalties in some jurisdictions and under federal law[.]” SOF ¶ 19.

Dated this 2nd day of March, 2026.

Respectfully Submitted

By: /s/ Gwendolyn C. Payton

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CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of March, 2026, a copy of the foregoing document was filed with the Clerk of Court and served on all counsel of record via the Court's ECF System.

/s/ Gwendolyn C. Payton

Gwendolyn C. Payton