

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KATHLEEN MOLLER	*	CIVIL ACTION NO. 24-0228-WBV-DPC
	*	ALL CASES
VERSUS	*	JUDGE WENDY B. VITTER
	*	
MARTIAN SALES, INC; JOPEN, LLC,	*	MAGISTRATE DONNA PHILLIPS
a Texas limited liability company;	*	CURRAULT
JOHNSON FOODS, LLC, a Wyoming	*	
limited liability company; NUZA, LLC, a	*	
Wyoming limited liability company;	*	
CALIBRE MANUFACTURING, 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; FMK GROUP, INC., a	*	
Wyoming corporation; PNW	*	
HOLDINGS, LLC, a Wyoming limited	*	
liability company; CC US HOLDINGS,	*	
LLC, a Wyoming limited liability	*	
company; PEYTON SHEA PALAIO;	*	
MARK JENNINGS; EYAL DAVID	*	
GABBAY; and MARK REILLY.	*	
*****	*	

PRETRIAL ORDER

Plaintiff Kathleen Moller (“Plaintiff”) and Defendants LP Ind., LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Martian Sales, Inc.; Johnson Foods, LLC; JOpen, LLC; Nuza, LLC; Calibre Manufacturing, LLC; FMK Group, Inc.; PNW Holdings, LLC; CC US Holdings, LLC ; Peyton Palaio; Mark Jennings; David Gabbay; and Mark Reilly (collectively “Defendants”)¹ respectfully submit this Pretrial Order.

1. A pretrial conference has been noticed via Rec. Doc. 158 to be held as follows:

¹ Defendants, other than JOpen, LLC, challenge personal jurisdiction in this matter and submit this Pretrial Order subject to and without waiving their personal jurisdiction challenge.

Date: March 18, 2026 at 10:00 a.m.

Location: United States District Court for the Eastern District of Louisiana
500 Poydras St., Room C368
New Orleans, LA 70130

Before Judge Wendy B. Vitter

2. The following counsel appeared:

a. For the Plaintiff:

Postal and Email

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3. A description of the parties. In cases of insurance carriers, their insured must be identified. The legal relationships of all parties with reference to the claims, counterclaims, third-party claims, cross claims, etc.

PLAINTIFF:

Kathleen Moller individually and on behalf of her deceased husband, Ivan Moller.

DEFENDANTS:

Plaintiff brings a wrongful death action against 11 distinct corporate entities and four individuals. Only one, JOpen, is subject to jurisdiction in this Court.

JOpen is a Texas-based distributor of a variety of products to the convenience store market. One of the many thousands of products it distributes is O.P.M.S. kratom.

Martian Sales is a Wyoming corporation founded in 2012 and fully-owned by Defendant Mark Reilly. Martian Sales owns the trademarks for O.P.M.S. kratom.

LP is a Wyoming company with operations in Colorado. While LP is a manufacturer of bulk kratom, it did not manufacture the product at issue in this case.

CAG is a Wyoming company that is no longer in operation, but formerly operated a manufacturing facility that processed industrial hemp, and had no involvement with kratom.

RMH is a Wyoming company that operates a manufacturing facility that processes industrial hemp, and has no involvement in kratom.

Johnson Foods is a Wyoming company that had no common ownership or control with any other Defendant at any relevant time. Johnson Foods has never marketed, distributed, or sold any kratom-containing products (or any other products).

Nuza is a Wyoming logistics company that assists in sourcing and transporting kratom from the manufacturer to the distributor.

Calibre is a Wyoming kratom manufacturer that puts kratom powder into capsules and liquids. Calibre then sends the bulk kratom product to JOpen in Texas for packaging and distribution.

FMK is a Wyoming holding company, and the sole member of Defendants CAG, LP, PNW, and CC US Holdings. It has never been involved in the distribution, sale, design, manufacture or marketing of kratom.

PNW is a Wyoming holding company. It has never been involved in the distribution, sale, design, manufacture or marketing of kratom.

CC US Holdings is a Wyoming company which provides management and accounting services for LP, CMG, RMH and a number of other companies. It has never been involved in the distribution, sale, design, manufacture or marketing of kratom.

Mr. Palaio was previously the manager of Defendants CAG, FMK, CC US Holdings, LP, and RMH.

Mr. Jennings is the Manager of Defendants LP, CAG, RMH, Nuza, Calibre, FMK, PNW, CC US Holdings, and Johnson Foods.

Mr. Reilly is the president and founder of Martian Sales.

Mr. Gabbay is the manager of JOpen.

Defendants object to any characterization that Ivan Moller was ever a plaintiff in this lawsuit. Kathleen Moller is the only plaintiff in this matter.

4. a. With respect to jurisdiction, a brief summary of the factual basis supporting each claim asserted, whether original claim, counterclaim, third-party claim, etc., and the legal and jurisdictional basis for each such claim, or if contested, the jurisdictional questions;

PLAINTIFF:

Plaintiff asserts with respect to all defendants that this court has diversity jurisdiction as all defendants are citizens of different states than the Plaintiff.

Further, as to all defendants, Plaintiff asserts that they are a single business enterprise and have collectively placed the kratom product that is the subject of this litigation into the stream of commerce rendering them subject to the personal jurisdiction of this court. *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368 (2021), 592 U.S. 351; 141 S. Ct 1017; see also Dkt. Nos. 130 & 132. Plaintiff asserts that her claims in the wrongful death of her daughter, Harmony Moller, individually and on behalf of her late husband, Ivan Moller, plainly exceed the jurisdictional minimum of \$75,000.00.

DEFENDANTS:

Defendants, other than JOpen, challenge personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2) in this matter. Defendants' Motion to Dismiss [Doc. 122] is pending.

5. A list and description of any motions pending or contemplated and any special issues appropriate for determination in advance of trial on the merits. If the Court at any prior hearing has indicated that it would decide certain matters at the time of the Pretrial Conference, a brief summary of those matters and the position of each party with respect thereto should be included in the proposed Pretrial Order.

PLAINTIFF:

- a. The Court has previously indicated that it would decide the matter of Single Business Enterprise/alter ego/veil piercing for jurisdictional purposes and personal jurisdiction of the various defendants prior to or at the time of the pretrial conference;

- b. Defendants’ Motion to Dismiss by LP IND., LLC, CAG Holdings, LLC, RMH Holdings, Inc., Martian Sales, Inc., and JOpen, LLC (R. Docs. 29, 32);
- c. Defendant Johnson Foods, LLC’s Motion to Dismiss (R. Doc. 45);
- d. Defendants LP IND., LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Martian Sales, Inc.; Johnson Foods, LLC; Jopen, LLC; Nuza, LLC; Calibre Manufacturing, LLC; FMK Group, Inc.; PNW Holdings, LLC; CC US Holdings, LLC; Peyton Palaio; Mark Jennings; David Gabbay; and Mark Reilly (collectively “Defendants”) Motion to Dismiss (R. Doc 122);
- e. Plaintiffs’ Motion for Partial Summary Judgment Determination of Piercing the Veil, Single Business Enterprise, and Alter Ego for Jurisdictional Purposes (R. Doc. 132);
- f. JOpen’s Motion to Bifurcate Trial (R. Doc. 235);
- g. Plaintiffs’ Daubert Motions to Exclude:
 - 1. Edward W. Boyer, Ph.D. (R. Doc. 249)
 - 2. Dennis Paustenbach, Ph.D. (R. Doc. 246)
 - 3. Jack Hennigfield, Ph.D. (R. Doc. 249)
- h. Plaintiffs’ Motions in Limine
 - 1. Motion for Judicial Notice (R. Doc. 244);
 - 2. Exclusion of Sheriff’s Incident Report, Photographs, Body Camera Videos (R. Doc. 255);
 - 3. Exclusion of Cumulative Expert Testimony (R. Doc. 251);
- i. Plaintiffs’ Motion for Partial Summary Regarding Unreasonable Dangerousness (currently filed as R. Doc. 260);

DEFENDANTS:

Defendants filed the following motions, which are pending:

Defendants’ Motion to Dismiss [Doc. 122]²;

Defendant JOpen, LLC’s Motion to Bifurcate Trial [Doc. 235];

² Defendants filed motions to dismiss prior to jurisdictional discovery and prior to Plaintiff amending the complaint. *See* Doc. 29, 32, 45. Defendants’ Motion to Dismiss [Doc. 122] is pending and addresses Plaintiff’s most recent amended complaint.

Defendant JOpen, LLC's Motion to Exclude Plaintiff's Expert Christopher Williams Under Fed. Rule of Evid. 702 [Doc. 237];

Defendant JOpen, LLC's Motion to Exclude Plaintiff's Expert Sarah D. Kowitt Under Fed. Rule of Evid. 702 [Doc. 239];

Defendant JOpen, LLC's Motion to Exclude Plaintiff's Expert Evelyn Cadman Under Fed. Rule of Evid. 702 [Doc. 241];

Defendant JOpen, LLC's Motion to Exclude Plaintiff's Expert Ryan Clark Under Fed. Rule of Evid. 702 [Doc. 257];

Defendant JOpen, LLC's Motion to Consider Whether Another Party's Material Should Be Sealed [Doc. 259];

Defendant JOpen, LLC's Motion to Exclude Plaintiff's Expert Ronald H. Wharton, MD Under Fed. Rule of Evid. 702 [Doc. 262];

Defendants' Motion to Exclude Plaintiff's Expert Dr. Josef G. Thundiyil Under Fed. Rule of Evid. 702 [Doc. 265];

Defendants' Motion for Summary Judgment [Doc. 267];

Defendant JOpen, LLC's Motion for Spoliation of Evidence [Doc. 269];

Defendant's Motion to Seal [Doc. 275];

Defendant JOpen, LLC's Motion to Consider Whether Another Party's Material Should Be Sealed [Doc. 278]; and

Defendant JOpen, LLC's Consolidated Motions in Limine [Doc. 282].

Defendants believe that resolution of their motions would streamline the trial.

6. A brief summary of the material facts claimed by:

PLAINTFF:

This is a products liability action arising pursuant to the Louisiana Product Liability Act (LPLA). Plaintiff claims that her daughter, Harmony Moller, died of sudden cardiac arrest due to the ingestion of OPMS kratom on February 6, 2023.

Plaintiff asserts that the OPMS product was manufactured by Defendants collectively as a single business enterprise engaged in the nationwide illegal importation and transportation of mitragynine spesiosa leaf, processing it into capsulated and powder form, packaging, and illegally distributing and selling the product in Louisiana and throughout the United States by placing it in the nationwide stream of commerce where it was purchased and consumed by the decedent. In the alternative, the core manufacturers under Louisiana law are Nuza, Calibre, Martian, and JOPEN.

Plaintiff claims that the product was defective and unreasonably dangerous due to its design and inadequate warnings of potential cardiac death at the time it left Defendants' control and which proximately caused the death of Harmony Moller.

DEFENDANTS:

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 [Doc. 184] at 2; *see also* Third Amended Complaint ("TAC") [Doc. 100]. O.P.M.S. Silver kratom is the sole product at issue in this lawsuit. The O.P.M.S. Silver product 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.

Defendants LP, CAG, RMH, Johnson Foods, FMK, PNW, and CC US have no involvement with or control over O.P.M.S. Silver kratom products. Defendants Peyton Palaio, Mark Jennings, David Gabbay, and Mark Reilly had no involvement with the O.P.M.S. Silver product outside of their formal managerial roles with the corporate defendants.

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 ordered limited postmortem toxicology testing that confirmed the presence of at least two drugs (promethazine, which was not prescribed to Harmony, and diphenhydramine) and marijuana (delta-9 THC and delta-9 Carboxy THC), all of which 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.

In addition, 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. And 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. Any additional warning would have been futile.

7. A single listing of all uncontested material facts.
 - a. Harmony Moller died on February 6, 2023;
 - b. A postmortem autopsy and a limited toxicology screen was performed;
 - c. Mitragynine was detected in the decedent's postmortem toxicology screens authorized by the St. Tammany Parish Coroner's Office;
 - d. At least two drugs (promethazine, which was not prescribed to Harmony Moller, and diphenhydramine) were detected in the decedent's postmortem toxicology screens authorized by the St. Tammany Parish Coroner's Office;
 - e. Two unopened packages of OPMS kratom were found at decedent's residence;

8. A single listing of the contested issues of fact.

PLAINTIFF:

- a. The cause of death of Harmony Moller on February 6, 2023;
- b. The existence of a single business enterprise among and between the Defendants in this litigation;
- c. Whether the OPMS kratom product was defective as defined by the Louisiana Products Liability Act;
- d. Whether the OPMS kratom product was a contributing cause of death to Harmony Moller;
- e. The amount of damages which would fairly and adequately compensate Plaintiff and her husband for the death of their daughter.

DEFENDANTS:

- a. Plaintiff alleges that Harmony Moller consumed O.P.M.S. Silver Kratom ground leaf material sold as a loose powder or with the powder placed in a capsule.
- b. Harmony was not feeling well and thought she had food poisoning immediately prior to her death.
- c. Both O.P.M.S. Silver kratom powder products contained identical “directions” and “disclaimer” and “warning” labels.
- d. All medical experts in this matter agree that Ms. Moller died of a ventricular arrhythmia.
- e. Ms. Moller had a coronary anomaly described as an “abnormally high left coronary ostia takeoff.”
- f. Ms. Moller’s “left coronary artery arises 5 mm above the sinotubular ridge with an acute angle of origin[]” and “an inferior aortic wall flap[.]”
- g. Limited postmortem toxicology testing was performed by NMS Labs, and testing was performed on femoral blood and vitreous blood (the “NMS Labs Test”).
- h. The NMS Labs Test did not quantify the amount of caffeine – it was only a presumptive positive.
- i. The NMS Labs Test did not include testing to screen for food poisoning.
- j. Mitragynine was detected at a concentration of 150 ng/mL.

- k. Other positive findings included diphenhydramine (64 ng/mL), promethazine (18 ng/mL), caffeine, and marijuana (delta-9 THC and delta-9 Carboxy THC).
- l. Diphenhydramine and promethazine have been scientifically proven to cause QT prolongation that can lead to a ventricular arrhythmia.
- m. THC has been linked to serious cardiovascular complications, including QTc prolongation, ventricular arrhythmias, and sudden cardiac arrest.
- n. Harmony Moller did not have a prescription for either diphenhydramine or promethazine.
- o. Harmony Moller took Zofran (ondansetron), which was not prescribed to her, on the night before her death.
- p. There is no evidence that Harmony Moller consumed O.P.M.S. kratom products before her death, as Plaintiff admitted she was unaware that Harmony Moller had ever consumed kratom before her death.
- q. The unopened O.P.M.S. Silver kratom products were found in the hallway of Plaintiff's house.
- r. Other items located in or around Harmony's bedroom included several marijuana products, 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.
- s. Plaintiff claims she threw away all of these items on the day of Harmony Moller's death except for one supplement and the two O.P.M.S. Silver kratom packages.
- t. Other items located in or around Harmony's bedroom included multiple supplements that contained caffeine and one supplement that contained yohimbine.
- u. Among Harmony Moller's possessions found by investigators was 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."
- v. Formed in 2012, JOpen is a Texas-based distributor of a variety of products to the convenience store market. One of the many thousands of products it distributes is O.P.M.S. kratom.
- w. JOpen distributes O.P.M.S. kratom pursuant a contract with Defendant Martian Sales, which owns the O.P.M.S. trademarks. JOpen oversees packaging and distributes products, including the O.P.M.S. Silver product at issue, using O.P.M.S. trademarks owned by Martian Sales.

- x. Martian Sales is a Wyoming Company formed in 2012. It was founded and fully-owned by Defendant Mark Reilly, who serves as its president and is the sole employee.
- y. Martian Sales is not affiliated with, owned by, or under common control with any other corporate Defendant, whether through subsidiaries, parent companies, or otherwise.
- z. Martian Sales owns the trademarks for O.P.M.S. kratom.
- aa. 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.
- bb. Martian Sales is paid a flat fee by JOpen for use of the O.P.M.S. trademark.
- cc. Martian Sales is adequately capitalized and observes all corporate formalities as a Wyoming company.
- dd. Martian Sales does not have common offices, common property, common accounting systems, common directors and officers, or common employees with any other Defendant.
- ee. Martian Sales does not finance any other Defendant; does not pay the salaries, expenses or losses of any other Defendant; and does not utilize the services of any employee of any other Defendant.
- ff. Martian Sales exerts no authority over the internal business operations or daily operations of any other Defendant.
- gg. LP is a Wyoming company formed in 2012 with operations in Colorado.
- hh. LP is a manufacturer of bulk kratom.
- ii. LP did not and has never manufactured the O.P.M.S. kratom allegedly consumed by decedent.
- jj. CAG is a Wyoming company formed in 2019. It is no longer in operation, but formerly operated a manufacturing facility that processed industrial hemp, and had no involvement with kratom.
- kk. CAG has never marketed, distributed, or sold any kratom-containing products (or any other products) to consumers.
- ll. RMH is a Wyoming company formed in 2015. It is no longer in operation. It formerly operated a manufacturing facility that processed industrial hemp, and has no involvement in kratom.

- mm. RMH has never marketed, distributed, or sold any kratom-containing products (or any other products) to consumers.
- nn. CC US Holdings is a Wyoming company which provides management and accounting services for LP, CMG, RMH and a number of other companies.
- oo. CC US Holdings has never been involved in the distribution, sale, design, manufacture or marketing of kratom, in Louisiana or anywhere.
- pp. PNW is a Wyoming holding company.
- qq. PNW has never been involved in the distribution, sale, design, manufacture or marketing of kratom, in Louisiana or anywhere.
- rr. FMK is a Wyoming holding company, and the sole member of Defendants CAG, LP, PNW, and CC US Holdings.
- ss. FMK has never been involved in the distribution, sale, design, manufacture or marketing of kratom.
- tt. Johnson Foods is a Wyoming company formed in 2021.
- uu. Johnson Foods has had no common ownership or control with any other Defendant at any relevant time.
- vv. Johnson Foods has never marketed, distributed, or sold any kratom-containing products (or any other products) in Louisiana.
- ww. Nuza is a Wyoming logistics company that assists in sourcing and transporting kratom from the manufacturer to the distributor.
- xx. Nuza does not distribute, sell, design, manufacture, or market kratom products in Louisiana. It has never done business in Louisiana.
- yy. Calibre is a Wyoming kratom manufacturer that puts kratom powder into capsules and liquids. Calibre then sends the bulk kratom product to JOpen in Texas for packaging and distribution.
- zz. Calibre does not distribute, sell, design, manufacture, or market kratom products in Louisiana.
- aaa. Peyton Palaio was formerly the manager of Defendants LP, CAG, RMH, CC US Holdings, and FMK.

- bbb. Mark Jennings is the manager of Defendants LP, CAG, RMH, Johnson Foods, Nuza, Calibre, FMK, PNW, and CC US Holdings.
- ccc. Mark Reilly is the manager and sole employee of Martian Sales.
- ddd. David Gabbay is the manager of JOpen.
- eee. Kratom (*Mitragyna speciosa*) is a tropical tree native to Southeast Asia.
- fff. Two alkaloids in kratom are mitragynine and 7-hydroxymitragynine, which interact with receptors in the brain.
- ggg. Kratom has been consumed for thousands of years in Southeast Asia. Kratom was traditionally used in Southeast Asia for fatigue and to improve stamina (by laborers), pain relief, and for opium withdrawal.
- hhh. Kratom is typically consumed as crushed leaves, powder, extracts, capsules, liquids, or brewed into tea.
- iii. In the U.S. and elsewhere, kratom is used to help with chronic pain, anxiety or depression, and opioid withdrawal or substitution.
- jjj. Unlike opioids, kratom does not produce respiratory depressant effects, nor carry opioid-like risks of death.
- kkk. The product at issue here consists only of ground leaves from the tree – there is no other ingredient.
- lll. These factual statements have been evaluated and verified as true by the Drug Enforcement Administration (“DEA”), the U.S. Assistant Secretary of Health, and the World Health Organization’s Expert Committee on Drug Dependence which conducted an initial review to determine if kratom warranted a full review as a potential path to international scheduling and determined that the evidence did not warrant such.
- mmm. Kratom is not an opioid or narcotic due to the nature of its botanical origin, its chemical structure, its known overall pharmacology, and the fact that it does not have the high abuse potential and national drug threat assessment necessary to meet statutory requirements for U.S. Controlled Substances Act (“CSA”) Scheduling or requirements for inclusion in the United Nations International Drug Control Treaties.
- nnn. Most people use kratom for health and well-being, including as a supplement to, or replacement for, caffeinated beverages and to self-manage depression, anxiety, pain, opioid and other drug withdrawal.

- ooo. The vast majority of the evidence from which the foregoing facts were obtained was generated by independent researchers primarily supported by the National Institutes of Health (“NIH”) and NIDA.
- ppp. These studies have been published at an increasing rate year by year over the past decade in leading biomedical research institutions, including Johns Hopkins, University of Florida, the NIDA intramural program itself, and many others.
- qqq. Kratom is a legally marketed and sold in 43 states.
- rrr. Several of the states that placed kratom as a Schedule I drug in their Controlled Substances Act between 2014 to 2016 are presently in the process of replacing those laws with laws to ensure legal access.
- sss. Kratom is legally sold in the United States after Congress, the DEA, and the Department of Health and Human Services (“HHS”)—the agency under which the FDA is organized—intensively investigated and deliberated about how to classify it.
- ttt. The Secretary of HHS and Commissioner of the FDA have both testified before Congress that it is in the public health interest to keep kratom available for purchase over the counter. They concluded that thousands of people would die from opioid overdoses if kratom was not made available as a substitute to opioids to the millions of people in the country who regularly purchase kratom.
- uuu. On August 21, 2014, the DEA requested that HHS conduct a medical and scientific evaluation of kratom to determine whether it should be recommended for scheduling as a controlled substance pursuant to the CSA. While HHS’s evaluation was ongoing, on August 31, 2016, the DEA announced its intent to temporarily add kratom to Schedule I of the CSA. In response, thousands of citizens submitted numerous formal comments providing compelling evidence and testimony that kratom is not harmful, but rather critical to healing, managing pain, and combating opiate and alcohol addiction. These comments explained that kratom is safer than prescription opioids and that, compared to opioids, deaths attributable to kratom overdose are essentially non-existent.
- vvv. U.S. Representatives Mark Pocan (D-WI) and Matt Salmon (R-AZ) sent a letter to DEA and the Office of Management and Budget—a letter that received bipartisan support and was signed by 50 members of Congress—against any ban. The letter noted that kratom is an internationally consumed herb and condemned the proposed ban as “hasty” because of known beneficial effects of kratom. The letter said that a ban would adversely affect consumer access to kratom’s known benefits and undermine innovative products that could be used to treat individuals suffering from addiction.
- www. A bipartisan group of U.S. Senators sent a generally similar letter to the DEA as the Representatives letter, making similar arguments about the adverse public health benefits of a Schedule I ban. The co-sponsors were Orrin G. Hatch (R-UT), Michael F. Bennet (D-

CO), Angus S. King, Jr. (I-ME), Mark Kirk (R-IL), Mike Lee (R-UT), Bernard Sanders (I-VT), Thom Tillis (R-NC), Mark R. Warner (D-VA), and Ron Wyden (D-OR).

- xxx. Less than two months later, on October 13, 2016, the DEA withdrew its intent to schedule kratom because of “numerous comments from the public.” The DEA stated that it was persuaded to take the highly unusual action of reversing itself because of the need to consider “comments offering their opinions regarding the pharmacological effects of these substances.”
- yyy. The DEA “requested that the FDA expedite its scientific and medical evaluation and scheduling recommendation for this substance, which DEA previously requested” The agency also set a December 1, 2016 deadline for additional comments and in fact received more than 23,000 comments during the 6-week comment period—most of which supported access to kratom.
- zzz. On October 1, 2017, HHS officials wrote a letter to the DEA recommending scheduling kratom. Once again, many individuals—both scientists and members of the public—submitted comments echoing the sentiment of the thousands of citizens who similarly opposed the ban when attempted in 2016.
- aaaa. For example, Dr. Andrew Kruegel, a Columbia University Professor of Chemistry studying kratom, stated: “I have major concerns about just pulling the rug out from under tens of thousands of people who are using this to support their health, especially in the case of people who are using it to stay off of more dangerous opioids.”
- bbbb. Researchers also expressed that scheduling kratom would make it more difficult to study kratom, because any clinical study would require the DEA’s permission.
- cccc. In August 2018 the Assistant Secretary of Health, Dr. Brett Giroir charged with FDA scheduling recommendations to DEA, withdrew FDA’s 2017 scheduling recommendation to the DEA. In the formal scheduling recission letter, he stated that the “recission is based on many factors, in part on new data, and in part on the relative lack of evidence, combined with an unknown and potentially substantial risk to public health if these chemicals were scheduled at this time.” As a result, the DEA ceased its scheduling efforts. This is the only time in United States’ history that the DEA has withdrawn a proposed scheduling.
- dddd. Since Dr. Giroir’s withdrawal letter, there have been several hundred new published research reports that further strengthen the case for kratom not being appropriate for scheduling. The DEA has not taken further action with respect to kratom.
- eeee. In December 2021, the Expert Committee on Drug Dependence (“ECDD”) at the World Health Organization and the U.S. Commission of Narcotic Drugs, comprised of 12 international experts on substance safety and addiction, unanimously concluded that there was insufficient evidence to recommend a critical international scheduling review of kratom. “People report using kratom to self-medicate a variety of disorders and conditions, including pain, opioid withdrawal, opioid use disorder, anxiety and depression,” the ECDD

said in its report. “Kratom is being used as a part of traditional medicine in some countries.” “The Committee considered information regarding the traditional use and investigation into possible medical applications of kratom” and “concluded that there is insufficient evidence to recommend a critical review of kratom.”

- ffff. The FDA has not begun to promulgate or issue a proposed or final rule specific to the regulation of kratom and has only recently begun to conduct formal scientific studies of kratom. In January 2024, the FDA posted a new grant opportunity to fund the first clinical trial “to characterize the abuse potential and subjective effects of botanical Kratom.”
- gggg. Recently, on September 19, 2024, the FDA issued preliminary results of its first study on kratom products, which showed clearly, as the agency put it, that “[k]ratom leaves appear safe even at high doses when taken in capsule form.” The study further noted: “The data suggest that at the doses tested, using the specific botanical kratom sourced for the study, and under carefully controlled clinical conditions . . . kratom was well tolerated.” Over the course of the study, the FDA found no serious complications and stated that it “recognize[s] that further studies are needed to advance our understanding of kratom.” The FDA noted plans for additional peer-reviewed research in the near future.
- hhhh. Kratom products are legal and widely available for purchase in physical stores in most states and through the Internet.
- iiii. The National Institute on Drug Abuse (“NIDA”) is studying and funding studies to investigate beneficial uses of kratom, including to help treat opioid addiction, and potential adverse effects. NIDA is one of 27 Institutes and Centers that comprise the National Institutes of Health, which is part of the U.S. Department of Health and Human Services.
- jjjj. A New Dietary Ingredient Notification (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.
- kkkk. The FDA is aware that there is no NDIN on file for kratom and allows kratom including O.P.M.S. Silver to be sold in stores all over the country.
- llll. The “required premarket notice and verification of safety under 21 U.S.C. § 350b(d)” refers to what is commonly called a New Dietary Ingredient Notification (“NDIN”).
- mmmm. Kratom is legally sold as a food.
- nnnn. No Defendant markets kratom as a drug, dietary supplement, or a food additive. If a seller were to want to sell a product as a drug, dietary supplement, or a food additive, it would need to obtain additional regulatory approval, including possibly an NDIN.
- oooo. Kratom has not received that additional regulatory approval to be sold drug, dietary supplement, or a food additive. For example, the FDA recognizes that kratom must be sold

as a food, and cannot be market as a drug, drug, dietary supplement, or a food additive, having stated that: “FDA has not approved any prescription or over-the-counter drug products containing kratom or its two main chemical components, mitragynine and 7-OH-mitragynine. There are no drug products containing kratom or its two main chemical components that are legally on the market in the U.S., and FDA has warned against the use of unapproved kratom products for medical treatment.”

- pppp. The HHS Secretary and FDA Commissioner have determined that ongoing legal over the counter sale of kratom is in the public interest, but they have not accepted any NDIN for any kratom product.
- qqqq. Acceptance by the FDA of an NDIN is not a requirement for legal sale of kratom as a food. The FDA only requires an NDIN for a drug product, a dietary supplement, or a food additive in conventional food.
- rrrr. Kratom was legal in Louisiana until August 1, 2025.
- ssss. Plaintiff alleges that her daughter, Harmony Moller, consumed O.P.M.S. Silver kratom before her death.
- tttt. The product label for O.P.M.S. Silver contained warnings, including that the botanical Kratom leaf powder was “[o]nly for use as a botanical specimen” and “[i]ngesting Mitragyna Speciosa can be dangerous.”
- uuuu. The label included directives 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 to “[i]nform your physician of the alkaloid content, labeled on the package.”
- vvvv. Plaintiff testified that, “[The label] says it is unapproved for dietary ingredients . . . so you shouldn’t consume it.” She further testified about the label that “The only thing they’re going to tell you is don’t take or do take.”
- www. There is no evidence in the record that Ms. Moller ever discussed her kratom use with a physician.
- xxxx. Plaintiff testified that Ms. Moller was not seeing a physician, apart from her dentist, and had not since moving back from Asia in approximately 2021.
- yyyy. Kratom has not been shown to increase the risk of adverse cardiovascular effects in humans, nor pose significant cardiovascular risks from chronic use at any dose evaluated.
- zzzz. The concentration of mitragynine in Ms. Harmony Moller’s postmortem femoral blood (150 ng/mL) was within the range of mitragynine concentrations measured in healthy

normal mitragynine users after a single 53.2 mg mitragynine dose—one not associated with toxicity.

aaaaa. Scientific literature demonstrates that the postmortem concentration of mitragynine is approximately triple that of premortem measurements.

bbbbb. At the time of Harmony Moller’s death in February 2023, published studies had assessed regular kratom users for evidence of cardiovascular toxicity through the performance of electrocardiograms and echocardiograms.

ccccc. For example, Leong Bin Abdullah and Singh (2021) reported that in a population of regular kratom users, serum levels of 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 on the electrocardiogram that only appeared in subjects at the higher ranges of mitragynine levels. Ms. Moller’s postmortem level of 150 ng/mL was less than a tenth of the *lowest* level found in that study.

ddddd. By February 2023, published literature had also established that mitragynine blood concentrations up to 191 ng/mL after kratom consumption were well tolerated and associated with no adverse effects.

eeeee. Papsun 2023 was authored by NMS Laboratories and published in May 2023.

fffff. Papsun 2023 reported that in instances 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.”

ggggg. Papsun 2023 reported that “[c]oncentrations of >1000 ng/mL are well above documented concentrations from the pharmacokinetic studies after drinking kratom tea.”

hhhhh. The Papsun 2023 manuscript suggests that blood mitragynine concentrations alone up to 1000 ng/mL are unlikely to cause death.

iiii. Plaintiffs’ expert, Dr. Wharton, cites Krantz, M.J. et. al. Ventricular Arrhythmias Associated With Over-the-Counter and Recreational Opioids. J Am Coll Cardiol 2023;81:2258–2268 (“Krantz”) as a comprehensive review of opioid-associated arrhythmia in North America.

jjjjj. Krantz published June 13, 2023, months after Ms. Moller’s death.

kkkkk. Krantz explained that even months after Ms. Moller’s death “no regulatory agency has issued warnings regarding proarrhythmic properties of kratom.”

lllll. Krantz also concluded that “causal determinations cannot be made” from it, and that “a convincing mechanistic link between mitragynine and ventricular arrhythmia is lacking.”

mmmmm. Notably, Krantz explained that “[a]dditional risky behaviors, including unmeasured illicit drug ingestion, may have played a role in case fatalities but not captured in voluntary reporting” and that “[t]his confounding may be particularly relevant for mitragynine, given discordance in lines of evidence.”

nnnnn. Plaintiff’s expert, Dr. Cadman, points to a March 20, 2023 publication by Xiaotong Li as identifying the “risks” posed by kratom.

ooooo. The Xiaotong Li study post-dates Harmony Moller’s death. It describes itself as the *first* study to “summarize the characteristics of kratom-related adverse reactions” and posits that the “[s]ignals detected in this study can serve as valuable hypotheses for future studies.” However, the Xiaotong Li study does not provide *any* analysis of mitragynine blood concentration levels.

ppppp. Plaintiff’s expert, Dr. Thundiyil, asserts—without analysis or citation—that Harmony Moller’s 150 ng/mL blood concentration of mitragynine was “a level sufficient to cause adverse events.” He similarly testified that “we don’t know the exact level [of kratom] that causes toxicity” and it is “nearly impossible . . . with the existing science, to have a dose that we know causes harm.” Dr. Thundiyil does not identify what kind of adverse events, offers no support for his conclusion, and crucially, provides no opinion or evidence that it was known in 2023 that a 150 ng/mL mitragynine concentration could cause death in any person, much less someone with Ms. Moller’s unique congenital heart defect.

qqqqq. Plaintiff’s expert Dr. Sarah Kowitt opines only that “studies published before February 2023 (when the Decedent’s death occurred)” merely “show associations between kratom use and health risks.” Dr. Kowitt offers no opinion on causation or foreseeability.

rrrrr. Plaintiff has not identified any published scientific evidence pre-dating February 2023 that would have put a manufacturer on notice that 150 ng/mL mitragynine could cause death, or that such levels posed a foreseeable risk of fatal cardiac events in a person with a congenital heart defect.

sssss. A later 2024 study by Defendants’ expert, Dr. Marilyn Huestis, confirmed doses up to 753 ng/mL were “well tolerated” with “no serious adverse events.”

ttttt. Additional studies by the FDA in 2025 and Heustis *et al.* in 2026 further confirmed the safety of low mitragynine levels like the one at issue in this litigation

9. A single listing of the contested issues of law.

PLAINTIFF:

- a. The personal jurisdiction of the Court over all defendants.
- b. The existence of a single business enterprise among and between all defendants in the illegal importation of mitragynine speciosa leaf, transportation, processing, packaging,

illegal distribution of kratom products nationally, and their sale for human consumption.

- c. The legality of the continuous and systematic distribution and sale of kratom products for human consumption in the United States pursuant to federal law.
- d. Whether OPMS kratom is an adulterated substance as defined by federal law is thus defective in composition as defined by the Louisiana Products Liability Act as a matter of federal law.
- e. Whether OPMS kratom is misbranded as a matter of federal law.
- f. Whether OPMS kratom is unreasonably dangerous for lack of adequate warning as a matter of law.
- g. Whether OPMS kratom is unreasonably dangerous in design as a matter of law;

DEFENDANTS:

Plaintiff's listing of contested issues of law includes numerous issues outside the claims alleged in this lawsuit. *See* TAC [Doc. 100]. 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 [Doc. 184] at 2; *see also* TAC [Doc. 100].

Contested issues of law include:

- Whether personal jurisdiction exists with respect to each Defendant, except JOpen, under Fed. R. Civ. P. 12(b)(2);
- Whether Plaintiff's TAC fails to state a claim under Fed. R. Civ. P. 12(b)(6);
- Whether Plaintiff establishes personal jurisdiction over Defendants under her single business enterprise theory of jurisdiction;
- Whether 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 Products Liability Act to support a products liability claim;

- Whether individual liability exists as to Peyton Palaio, Mark Jennings, David Gabbay, or Mark Reilly where each had no involvement with O.P.M.S. Silver outside of their formal managerial roles with the corporate defendants;
- Whether Plaintiff has alleged (and can prove) a design defect claim;
- Whether Plaintiff has alleged (and can prove) the existence of an alternative design for kratom that was capable of preventing the claimant's damage;
- Issues of causation; and
- Whether Plaintiff's failure to warn claim fails because a manufacturer cannot be required to warn of a risk that is scientifically unknown or unforeseeable.

10. A list and description of exhibits that each party intends to introduce at the trial:

a. List of exhibits to be admitted without objection:

PLAINTIFF: Plaintiff's exhibit list is attached hereto as Attachment # 1. The third column on Plaintiff's exhibit list shows whether agreement has been reached for the exhibit at issue to be admitted without objection

DEFENDANTS: Defendants' exhibit list is attached hereto as Attachment # 2. The third column on Defendants' exhibit list shows whether agreement has been reached for the exhibit at issue to be admitted without objection.

11. List of deposition testimony each party intends to offer into evidence at trial:

PLAINTIFF:

- a. 30(b)(6) video deposition/transcript of Martian Sales, Inc;
- b. 30(b)(6) video deposition/transcript of Johnson Foods
- c. 30(b)(6) video deposition/transcript of CAG Holdings
- d. 30(b)(6) video deposition/transcript of JOpen
- e. 30(b)(6) video deposition/transcript of Nuza
- f. 30(b)(6) video deposition/transcript of Calibre

- g. Video deposition/transcript of Mark Reilly
- h. Video deposition/transcript of David Gabbay;
- i. Video deposition/transcript of Peyton Palaio;
- j. Video deposition/transcript of Mark Jennings;
- k. This includes all depositions taken during jurisdictional discovery and those which the parties agreed may be shared into this matter from other matters including the Estate of Jordan McKibban and the Estate of Dustin Hernandez.

DEFENDANTS:

Defendants' deposition designations are attached hereto as Attachment # 3.

To date, Defendants have not received any deposition designations from Plaintiff and have had no opportunity to review and provide objections.

- 12. List of charts, graphs, models, schematic diagrams counsel intends to use in opening statements or closing arguments:

PLAINTIFF:

Plaintiff may use charts, graphs, or diagrams in opening statements or closing arguments, and may display them via PowerPoint or similar presentation including images of any exhibit listed above to which objection has not been made or decided, and including, but not limited to:

- 1. Enlargements of any exhibit listed above by Plaintiffs or Defendants;
- 2. Enlargements of any pleadings, including discovery responses;
- 3. Enlargements of any deposition testimony;
- 4. Enlargements of any Timeline of Events
- 5. Enlargements of any documents or photographs to be used for impeachment purposes during the trial;
- 6. Krantz Bar Chart, Ventricular Arrhythmia/Cardiac Arrest Reports to FDA;
- 7. Kratom's Risk of Death DFA Adverse Reporting System;
- 8. Picture of Razbag Medication Organizer;
- 9. Kratom Power Point presentation;

10. Kratom graphics updates power point presentation;
11. Kratom DOJ Prosecution for Import;
12. United States v. 577 Cartons copy of complaint;
13. Kratom Consent Decree;
14. Michigan Man Sentenced for Unlawfully Importing and Distributing Misbranded Drugs;
15. USA v. Atofil, LLC Seizure Complaint;
16. FDA seizes \$3 million worth of kratom;
17. Sebastian Guthery Conviction.
18. Enlargement of any journal articles referenced in the exhibited listed above or otherwise relied upon by an expert.
19. Enlargements or tables or images from any journal articles referenced in the exhibited listed above or otherwise relied upon by an expert.
20. A chart or graph of IC50 for substances present in Harmony's blood postmortem.
21. A graphic depiction of Harmony's heart condition (left coronary ostia takeoff with aortic flap).
22. A graphic depiction of the stream of commerce for OPMS Silver Kratom identifying defendants and their role therein.
23. A graphic depiction of the human body, including heart and lungs.
24. A graphic depiction of kratom and the chemical structure of mitragynine and 7-Hydroxymitragynine.
25. A graphic depiction of decedent's pre-existing comorbidities.
26. Plaintiff reserves the right to supplement this as demonstrative exhibits are still being compiled at this time.

DEFENDANTS:

Defendants may use the following in their opening statement or closing arguments:

A chart depicting the corporate defendants' organizational structures;

A demonstrative of excerpts of test results by NMS Labs;

A demonstrative of the labels at issue in this lawsuit, including their warning language;

A demonstrative of photos by the St. Tammany Parish Sheriff's Office that have been produced in the lawsuit; and

A demonstrative of any exhibit appearing on Plaintiff's or Defendants' respective exhibit lists.

13. List of Witnesses

PLAINTIFFS:

Kathleen Moller – Mother of Decedent
127 E. LA 22, W#9
Madisonville, LA 70447

Dr. Christopher Williams – Expert Pharmacologist
3737 Lake Kristin Drive
Gretna, LA 70056

Dr. Josef Thundiyil – Expert Toxicologist
1335 Sligh Blvd., MP 31
Orlando, FL 32806

Evelyn Cadman – FDA Regulatory Expert
9172 West 92nd Ave.
Westminster, CO 80021

Dr. Sarah Kowitt – Warnings Expert
590 Manning Drive
247C
Chapel Hill, NC 27599

Dr. Ron Wharton – Expert Cardiologist
50 Finch Drive
Roslyn, NY 11576

Jason Moller – Brother of Decedent
1521 Louisville Avenue
St. Louis, MO 63139

Jessie Whiteman – Manager of Mande's Restaurant at the time of Decedent's death
340 N Causeway Blvd, Mandeville, LA 70448

Ryan Clark – Expert Certified Public Accountant
1 North Brentwood Blvd., Ste. 930
St. Louis, MO 63105

Dr. Michael Defatta – Forensic Pathologist; Coroner’s Office Medical Examiner who
performed autopsy
Jefferson Parish Coroner’s Office
2018 8th Street
Havey, LA 70058

Ross Ellison – Staff Research Associate; UCSF Mt. Zion Cancer Research Analyst

Roy Gerona, PhD – Associate Professor, UCSF Mt. Zion Cancer Research
(<https://profiles.ucsf.edu/roy.gerona>)

Andrea Carolina Noble, PhD. – Toxicology - NMS Labs Toxicology

Mark Jennings (by deposition)

Peyton Palaio (by deposition)

Mark Reilly (by deposition)

David Gabbay (by deposition)

Catherine Ann Miano (by deposition)

LP Ind., LLC (by deposition)

Calibre Manufacturing, LLC (by deposition)

Johnson Foods, LLC (by deposition)

Martian Sales, Inc. (by deposition)

Nuza, LLC (by deposition)

JOpen, LLC (by deposition)

RMH Holdings, LLC (by deposition)

CAG Holdings, LLC (by deposition)

John K. Pratt, LLC (by deposition)

Olistica Life Sciences Group (by deposition)

DEFENDANTS:

A. Mark Reilly

Mr. Reilly is the president and founder of Martian Sales, which owns the trademarks for O.P.M.S. kratom. He is a defendant and may be contacted through counsel.

B. David Gabbay

Mr. Gabbay is the manager of JOpen, which distributes many thousands of products, including O.P.M.S. kratom, to the convenience store market. He is a defendant and may be contacted through counsel.

C. Mark Jennings

Mr. Jennings is the Manager of Defendants LP, CAG, RMH, Nuza, Calibre, FMK, PNW, CC US Holdings, and Johnson Foods. He is a defendant and may be contacted through counsel.

D. Peyton Palaio

Mr. Palaio was previously the manager of Defendants CAG, FMK, CC US Holdings, LP, and RMH. He is a defendant and may be contacted through counsel.

E. Dr. Edward Boyer

Dr. Edward Boyer will testify regarding his opinions discussed in the Expert Report of Edward W. Boyer, MD Ph.D., served on December 18, 2025. He may be contacted through counsel.

F. Dr. Allen Dollar

Dr. Allen Dollar will testify regarding his opinions discussed in the Expert Report of Allen L. Dollar, MD, FACC, FACP, served on December 18, 2025. He may be contacted through counsel.

G. Dr. Winston Gandy, Jr.

Dr. Winston Gandy, Jr. will testify regarding his opinions discussed in the Expert Report of Dr. Winston Gandy, Jr., M.D., served on December 18, 2025. He may be contacted through counsel.

H. Dr. Jack Henningfield

Dr. Jack Henningfield will testify regarding his opinions discussed in the Expert Report of Dr. Jack Henningfield, Ph.D., served on December 18, 2025. He may be contacted through counsel.

I. Dr. Marilyn Huestis

Dr. Marilyn Huestis will testify regarding her opinions discussed in the Expert Report of Dr. Marilyn A. Huestis, Ph.D., served on December 18, 2025. She may be contacted through counsel.

J. Dr. Christopher McCurdy

Dr. Christopher McCurdy will testify regarding his opinions discussed in the Expert Report of Christopher R. McCurdy, Ph.D., BSPH, FAAPS, served on December 18, 2025. He may be contacted through counsel.

K. Stanley A. Murphy

Stanley A. Murphy will testify regarding his opinions discussed in the Expert Report of Stanley A. Murphy, CPA/ABV/CFF, CIRA/CDBV, CVA, served on December 18, 2025. He may be contacted through counsel.

L. Dr. Dennis Paustenbach

Dr. Dennis Paustenbach will testify regarding his opinions discussed in the Expert Report of Dennis J. Paustenbach, Ph.D., DABT, CIH, served on December 18, 2025. He may be contacted through counsel.

M. Dr. Amber Wang

Dr. Amber Wang will testify regarding her opinions discussed in the Expert Report of Amber R. Wang, MD, served on December 18, 2025. She may be contacted through counsel.

N. Dr. Michael DeFatta

Jefferson Parish Coroner's Office
2018 8th Street
Harvey, Louisiana 70058

Dr. Michael DeFatta may testify about the autopsy report and toxicology report regarding Harmony Moller.

Defendants object to Plaintiff's proposed use of deposition transcripts in lieu of eliciting live testimony—particularly from witnesses that Plaintiff has not shown are unavailable for trial, such as multiple Defendants in this lawsuit. To date, Plaintiff has provided no deposition designations to Defendants for review. In addition, Defendants believe certain proposed

deposition transcripts are from depositions not taken in this matter and conducted under different governing rules and law and discussing different products and parties. Defendants object to Plaintiff's improper use of those transcripts in this matter.

14. This is a jury case applicable to all aspects of the case except those decided by the Court as a matter of law. The parties have conferred and preliminarily discussed proposed jury instructions, the jury verdict form, and voir dire, which shall be electronically filed with the Court as ordered by the Court following the Pretrial Conference.

15. The issue of liability (will or will not) be tried separately from that of quantum.

DEFENDANTS:

Defendants ask that the issue of liability be tried separately from that of quantum. Defendant JOpen, LLC's Motion to Bifurcate Trial [Doc. 235] is pending. Defendant JOpen, LLC moves, under Federal Rule of Civil Procedure 42(b), for an Order granting a phased bifurcation of trial, whereby the trial will proceed in two separate and distinct phases: a first phase—tried to verdict—on liability alone, and a second phase, if necessary, to proceed immediately thereafter on damages, before the same jury. A phased bifurcation of trial will limit prejudice to Defendant and promote judicial economy, while doing so conveniently and without prejudice to Plaintiff.

Plaintiff opposes bifurcation of the trial for the reasons stated in her opposition to Defendant's Motion regarding same.

16. A statement describing any other matters that might expedite a disposition of the case.

None at this time.

17. Trial shall commence on April 13, 2026 at 9:00 AM. Plaintiff estimates that her case in chief will require five days to complete. Plaintiff is prepared to try this matter notwithstanding the lack of Defendants' answer which should be filed prior to trial and for which Plaintiff waives any additional motions practice. To the extent any hitherto unknown defenses are asserted by Defendants, they can be addressed during trial. Plaintiff has incurred substantial expense in reliance on this Court's trial date, including lodging, flights, and expert arrangements.

Defendants anticipate a two-week trial.

18. This Pretrial Order has been formulated after conference at which counsel for the respective parties have appeared in person via remote conferencing. Reasonable opportunity has been

afforded counsel for corrections, or additions, prior to signing. Hereafter, this Pretrial Order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.”

19. The statement that: “Possibility of settlement of this case was considered.”

ORDERED, this the ____ day of March, 2026.

UNITED STATES DISTRICT JUDGE

WAGAR HICKMAN, LLC

s/ Nelson W. Wagar, III

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