

EXHIBIT 23

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Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

ESTATE OF DANIEL SCOTT PAUL BY	)	Case No.: 21CV33403
AND THROUGH KATHRYN ANN	)	
PAUL AS PERSONAL	)	
REPRESENTATIVE, an Oregon citizen,	)	
	)	
Plaintiff,	)	PLAINTIFF'S SECOND AMENDED
	)	COMPLAINT
v.	)	(Civil Action For Wrongful Death/Product
	)	Liability)
OPMS (A/K/A, D/B/A, AND/OR F/K/A	)	
OPTIMIZED PLANT MEDIATED	)	DEMAND FOR JURY TRIAL
SOLUTIONS; O.P.M.S.; OPMS	)	
SOLUTIONS, INC.; OPMS SOLUTIONS	)	Prayer Amount: \$ 10,000,000.00
GROUP LLC; OPMS SOLUTIONS; OPMS	)	Fee - \$ 884.00 ORS 21.160(1)(d)
WHOLESALE; OPMS TECH 2, LLC;	)	
CHOICE ORGANICS; LUNAR LABS,	)	CLAIM NOT SUBJECT TO
LLC; LGI HOLDINGS, LLC; ALPHABET	)	MANDATORY ARBITRATION
WHOLESALE; LIV GROUP, INC.;	)	
BIOPHARMACEUTICAL TECHNOLOGY	)	
SERVICES, INC.; OLISTICA, LLC;	)	

PAGE 1 – PLAINTIFF'S SECOND AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL

1 **OLISTICA LIFE, LLC; OLISTICA LIFE)**
 2 **SCIENCES GROUP; PRECISION)**
 3 **BIOLOGICS, INC.; SHAMAN SUPPLIES,)**
 4 **LLC; SHAMAN BOTANICALS KRATOM;)**
 5 **BOTANICAL PROS; STL RELEAF;)**
 6 **SHAMAN SUPPLIES, INC.; WG)**
 7 **DISTRIBUTION, LLC; AXIS HOLDINGS)**
 8 **COMPANY, LLC; PUR BOTANICALS,)**
 9 **LLC; NVN, LLC; NP PHARMA)**
 10 **HOLDINGS, LLC; ORGANIC)**
 11 **INVESTMENTS, LLC; PACIFIC WEST)**
 12 **HOLDINGS, LLC; AMG HOLDINGS, INC.;)**
 13 **OMERTA LABS, LLC; RVR HOLDINGS,)**
 14 **LLC; RIVER VALLEY REMEDIES, LLC;)**
 15 **IND GROUP, LLC; AND/OR JOPEN, LLC);)**
 16 **MARTIAN SALES, INC.; SOUTH SEA)**
 17 **VENTURES (D/B/A SOUTH SEA)**
 18 **VENTURES, LLC; SSV, LLC; MIT 45;)**
 19 **SANTIANO NOVASIO; AND/OR CROWN)**
 20 **TRADING); CHRISTOPHER NOVASIO)**
 21 **(A/K/A SANTIANO CHRISTOPHER)**
 22 **NOVASIO; AND CHRISTOPHER DAVID)**
 23 **JAMES NOVASIO); KS FOOD MARKET;)**
 24 **JOPEN, LLC (D/B/A PARTYNUTS; A1)**
WHOLESALE; A1 WHOLESALE)
SHIPPING DEPT; FCT55, LLC; PK55,)
LLC; AND SECOND 55 VENTURE, LLC);)
KIM'S TRADING, INC.; RVR)
HOLDINGS, LLC; RIVER VALLEY)
REMEDIES, LLC; IND GROUP, LLC; LIV)
GROUP, INC.; PRECISION BIOLOGICS,)
INC.; PUR BOTANICALS, LLC; NVN,)
LLC; NP PHARMA HOLDINGS, LLC;)
ORGANIC INVESTMENTS, LLC;)
PACIFIC WEST HOLDINGS, LLC; AMG)
HOLDINGS, INC.; MARK REILLY;)
PEYTON PALAIO (A/K/A PEYTON)
PALAIA; AND PAYTON PALAIO); TED)
PALAIO (A/K/A TED LAVELLE; AND)
TED PALAIA); LAWRENCE LARSEN)
(A/K/A LAWRENCE PALAIO; AND)
LAWRENCE PALAIA); MARK)
JENNINGS; JASON FOSTER; AND JOHN)
DOES 1-8,)

Defendant(s).

1 _____)
2 Plaintiff alleges:

3 **INTRODUCTION**

4 1.

5 This is a product liability action against the designers, manufacturers, licensors,
6 distributors, and sellers of kratom, a non-prescription dietary supplement. Plaintiff brings this
7 action on behalf of her husband, the decedent, alleging claims of negligence, strict product liability,
8 breach of implied warranties, and negligent misrepresentation.

9 **PARTIES**

10 2.

11 Plaintiff Kathryn Paul is the surviving spouse of Daniel Paul (“decedent”) and the duly
12 appointed personal representative of the Estate of Daniel Paul. At all relevant times, plaintiff and
13 decedent resided in Multnomah County, Oregon. She brings claims on behalf of the Estate and its
14 beneficiaries, including herself and decedent’s surviving minor child, Davy Scott Paul.

15 3.

16 At all relevant times, defendant OPMS (a/k/a Optimized Plant Mediated Solutions;
17 O.P.M.S.; OPMs Solutions, Inc.; OPMS Solutions Group, LLC; OPMSolutions, OPMS
18 Wholesale, OPMs Tech 2, LLC; Choice Organics; Lunar Labs, LLC; LGI Holdings, LLC;
19 Alphabet Wholesale; LIV Group, Inc.; Biopharmaceutical Technology Services, Inc.; Olistica,
20 LLC; Olistica Life, LLC; Olistica Life Sciences Group; Precision Biologics, Inc.; Shaman
21 Supplies, LLC; Shaman Botanicals Kratom; Botanical Pros; STL Releaf; Shaman Supplies, Inc.;
22 WG Distribution, LLC; Axis Holdings Company, LLC; Pur Botanicals, LLC; NVN, LLC; NP
23 Pharma Holdings, LLC; Organic Investments, LLC; Pacific West Holdings, LLC; AMG Holdings,

1 Inc.; Omerta Labs, LLC; RVR Holdings, LLC; River Valley Remedies, LLC; IND Group, LLC;
2 and/or JOpen, LLC) (hereinafter “OPMS”) was and is a designer, manufacturer, distributor, and
3 seller of kratom products throughout the United States, including Oregon. After due diligence,
4 plaintiff has been unable to locate defendant OPMS in Oregon with precision because OPMS is
5 absent from the state and/or is intentionally and willfully concealing its principals, alter egos, entity
6 status, principal place of business and registered agent for service. Defendant OPMS’s product
7 packaging and website presence does not lead to reliable contact information for service, and there
8 is no apparent corporate headquarters or registration within the state of Oregon. Plaintiff has served
9 OPMS through the Oregon Secretary of State and approved alternative means pursuant to ORCP
10 7. OPMS is an unregistered and otherwise unidentifiable entity that is understood to be the alter
11 ego of the a/k/a, d/b/a, and f/k/a entities stated herein. Each alter ego is within the chain of
12 distribution of OPMS products, operates as OPMS, controls, or owns OPMS, and/or is an affiliate
13 of OPMS. Each alter ego shares principals, membership, agents, and addresses of each other alter
14 ego indicative of a corporate shell game. Because of OPMS’ intentional concealment through use
15 of corporate shells and ongoing evasive litigation tactics, some alter egos may be misnamed or
16 misidentified, but each alter ego is on notice of this lawsuit based upon the already executed service
17 of this complaint and the impending service of this second amended complaint. In short, OPMS
18 has employed a corporate web of deceit to evade government regulation of kratom, defraud
19 creditors, and avoid accountability for the harm caused by kratom including the death of Daniel
20 Scott Paul.¹

21
22
23 ¹ Plaintiff has included and continues to include John Does in this matter because of OPMS’
corporate shell game and web of deceit.

1 4.

2 At all relevant times, defendant Martian Sales, Inc. (hereinafter “Martian Sales”) was and
3 is an active Wyoming corporation and apparent owner of OPMS and/or its trademarks. On
4 information and belief, defendant Martian Sales is directly involved in the design, manufacture,
5 marketing, distribution, and sale of OPMS kratom products. Martian Sales is also independently
6 liable as the licensor of the OPMS trademark. Hereinafter, all references to OPMS incorporate and
7 include Martian Sales.

8 5.

9 At all relevant times, defendant Mark Reilly was and is President of Martian Sales, Inc.,
10 and apparent owner of OPMS and/or its trademarks. Mark Reilly is also the president of the now
11 dissolved OPMS alter ego, Lunar Labs, LLC, and is a manager of OPMS alter ego AMG Holdings,
12 Inc. Lunar Labs, LLC was directly implicated (along with Peyton Palaio, Omerta Labs, and WG
13 Distribution) in the sale of a synthetic marijuana product “Mogo Diamond Extreme 100x
14 Potpourri” that led to the wrongful death of Chase Corbitt Burnett on March 4, 2012, in South
15 Carolina. On information and belief, defendant Mark Reilly is directly involved in the
16 manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all
17 references to OPMS and Martian Sales incorporate and include Mark Reilly. On information and
18 belief Mark Reilly has and continues to operate OPMS, Martian Sales, and other alter egos from
19 within the State of Oregon.

20 6.

21 At all relevant times, defendant Peyton Palaio (A/K/A Peyton Palaia; and Payton Palaio)
22 (hereinafter “Peyton Palaio”) was and is President of various OPMS alter egos including but not
23 limited to LGI Holdings, LLC; LIV Group, Inc.; Olistica Group; Organic Investments, LLC; AMG

1 Holdings, Inc.; NP Pharma Holdings, LLC; and RVR Holdings, LLC; and is an apparent owner of
2 OPMS. Peyton Palaio was also directly implicated (along with affiliates Lunar Labs, LLC, Omerta
3 Labs and WG Distribution) in the sale of a synthetic marijuana product “Mogo Diamond Extreme
4 100x Potpourri” that led to the wrongful death of Chase Corbitt Burnett on March 4, 2012, in South
5 Carolina. On information and belief, defendant Peyton Palaio is directly involved in the
6 manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all
7 references to OPMS incorporate and include Peyton Palaio. On information and belief Peyton
8 Palaio has and continues to operate OPMS and other alter egos from within the State of Oregon.

9 7.

10 At all relevant times, defendant Ted Palaio (a/k/a Ted Lavell; and Ted Palaia) (hereinafter
11 “Ted Palaio”) was and is Principal of various OPMS alter egos including but not limited to LGI
12 Holdings, LLC; LIV Group, Inc.; Olistica Group., and is an apparent owner of OPMS and/or its
13 trademarks. On information and belief, defendant Ted Palaio is directly involved in the
14 manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all
15 references to OPMS incorporate and include Ted Palaio.

16 8.

17 At all relevant times, defendant Lawrence Larsen (A/K/A Lawrence Palaio; and Lawrence
18 Palaia) (hereinafter “Lawrence Larsen”) was and is Principal of various OPMS alter egos including
19 but not limited to LGI Holdings, LLC; LIV Group, Inc.; Olistica Group., and is an apparent owner
20 of OPMS and/or its trademarks. On information and belief, defendant Lawrence Larsen is directly
21 involved in the manufacture, marketing, distribution, and sale of OPMS kratom products.
22 Hereinafter, all references to OPMS incorporate and include Lawrence Larsen.

1 9.

2 At all relevant times, defendant Mark Jennings was and is President of various OPMS alter
3 egos including but not limited to RVR Holding, LLC; Olistica Life Sciences Group; and Pur
4 Botanicals, LLC, and is an apparent owner of OPMS and/or its trademarks. On information and
5 belief, defendant Mark Jennings is directly involved in the manufacture, marketing, distribution,
6 and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include
7 Mark Jennings.

8 10.

9 At all relevant times, defendant Jason Foster was and is a principal of various OPMS alter
10 egos including but not limited to LGI Holdings, LLC; LIV Group, Inc.; Olistica Group., and is an
11 apparent owner of OPMS and/or its trademarks. On information and belief, defendant Jason Foster
12 is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom
13 products. Hereinafter, all references to OPMS incorporate and include Jason Foster.

14 11.

15 At all relevant times, defendant RVR, Holdings, LLC (hereinafter “RVR”) was and is an
16 active Oregon Limited Liability Company, with its principal place of business in Lane County, at
17 1155 Chambers St. Eugene, Oregon 97303. At all relevant times, RVR was and is an apparent
18 owner of OPMS. Defendant Peyton Palaio is a member of RVR and defendant Mark Jennings is
19 a manager of RVR. On information and belief, defendant RVR is directly involved in the
20 manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all
21 references to OPMS incorporate and include RVR.

12.

At all relevant times, defendant River Valley Remedies, LLC (hereinafter “River Valley Remedies”) was and is an active Oregon Limited Liability Company, with its principal place of business in Lane County, at 1985 W 7th Ave Eugene, OR 97402. Defendant Peyton Palaio is the owner and operator of River Valley Remedies. At all relevant times, River Valley Remedies was and is an apparent owner of OPMS. On information and belief, defendant River Valley Remedies is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include River Valley Remedies.

13.

At all relevant times, defendant IND Group, LLC (hereinafter “IND”) was and is an active Oregon Limited Liability Company, with its principal place of business in Lane County, at 1155 Chambers St. Eugene, Oregon 97303. Defendant Peyton Palaio is a member of IND and defendant Mark Jennings is a manger of IND. At all relevant times, IND was and is an apparent owner of OPMS. On information and belief, defendant IND is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include IND.

14.

At all relevant times, defendant Organic Investments, LLC (hereinafter “OI”) was and is an active Oregon Limited Liability Company, with its principal place of business in Polk County, at 1595 Stryker Rd Independence, OR 97351. Defendant Peyton Palaio is a member of OI and Defendant Mark Jennings is the manager of OI. On information and belief, defendant OI is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include OI.

15.

At all relevant times, defendant Pacific West Holdings, LLC (hereinafter “PWH”) was and is an active Oregon Limited Liability Company, with its principal place of business in Polk County, at 1595 Stryker Rd Independence, OR 97351. Defendant Peyton Palaio is a member of PWH and Defendant Mark Jennings is the manager of PWH. On information and belief, defendant PWH is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include PWH.

16.

At all relevant times, defendant AMG Holdings, Inc. (hereinafter “AMG”) was and is an active Oregon Limited Liability Corporation, with its principal place of business in Marion County, at 5305 River Rd N Ste B Keizer, OR 97303. Defendant Peyton Palaio is a manager of AMG and Defendant Mark Jennings is the member of PWH. Defendant Mark Reilly is also the manager of a Georgia registered branch of AMG. On information and belief, defendant AMG is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include AMG.

17.

At all relevant times, defendant LIV Group, LLC (hereinafter “LIV”) was and is an active Wyoming corporation and apparent owner of OPMS. On information and belief, Defendant Peyton Palaio is the owner and operator of LIV Group, LLC. On information and belief, defendant LIV is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include LIV.

18.

At all relevant times, defendant Precision Biologics, Inc. (hereinafter “Precision”) was and is an active Wyoming corporation and apparent owner of OPMS. Defendant Peyton Palaio is the CFO of Precision. On information and belief, defendant Precision is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include Precision.

19.

At all relevant times, defendant NP Pharma Holdings, LLC (hereinafter “NPH”) was and is an active Wyoming corporation and apparent owner of OPMS. Defendant Peyton Palaio is the apparent owner and operator of NPH. NPH is also the owner of various trademarks associated to kratom products. On information and belief, defendant NPH is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include NPH.

20.

At all relevant times, defendant Pur Botanicals, LLC (hereinafter “Pur”) was and is an active Georgia corporation and apparent owner of OPMS. Defendant Mark Jennings is the manager of Pur. On information and belief, defendant Pur is directly involved in the manufacture, marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS incorporate and include Pur.

21.

At all relevant times, defendant NVN, LLC (hereinafter “NVN”) was and is an active Nevada corporation and apparent owner of OPMS. Defendant Peyton Palaio is the manager of NVN. On information and belief, defendant NVN is directly involved in the manufacture,

1 marketing, distribution, and sale of OPMS kratom products. Hereinafter, all references to OPMS
2 incorporate and include NVN.

3 22.

4 At all relevant times, OPMS through its various alter egos has operated, conducted,
5 maintained, and cultivated business in Oregon. This Oregon activity includes the use and
6 maintenance of a warehouse for storage, packaging, processing, and distribution of imported
7 kratom within the State of Oregon. For instance, in April of 2020, OPMS alter ego Alphabet
8 Wholesale (a/k/a LGI) arranged for the transfer of 40 metric tons of kratom to an address in
9 Oregon. This initial transaction was followed by 20 other orders, with payments typically made
10 by OPMS alter ego JOpen, LLC (d/b/a A1 Wholesale). OPMS and this series of transactions
11 ultimately resulted in litigation by the kratom supplier against LGI, Olistica, Peyton and Ted
12 Palaio, “and their myriad web of shell companies” allegedly responsible for a scheme to acquire
13 confidential information and other aspects of deliberate fraud.

14 23.

15 Upon information and belief, at all relevant times, OPMS, RVR; River Valley Remedies;
16 IND; LIV; Precision; Pur; NVN; NPH; OI; PWH; AMG; Mark Reilly; Peyton Palaio; Ted Palaio;
17 Lawrence Larsen; Mark Jennings; Jason Foster; and all OPMS alter egos have improperly
18 disregarded the corporate form of OPMS and its alter egos, have control of both OPMS and the
19 improper conduct alleged herein, have improperly commingled assets, improperly transferred
20 assets, and undercapitalized business such that the corporate form of OPMS shall be disregarded
21 and the individuals who own, operate, or control OPMS and its alter egos shall be personally liable
22 for the injuries described herein.

24.

At all relevant times, defendant South Sea Ventures (on information and belief doing business as or under South Sea Ventures, LLC, SSV, LLC, MIT 45, Santiano Novasio, and/or Crown Trading) was and is a designer, manufacturer, distributor, and seller of kratom, including the “MIT 45” kratom products that are sold to Oregon consumers. After due diligence, plaintiff has been unable to locate defendant South Sea Ventures in Oregon because South Sea Ventures is absent from the state and/or is intentionally and willfully concealing its true identity and registered agent for service. South Sea Ventures and its MIT 45 websites and product packaging do not provide reliable contact information, and there is no apparent corporate headquarters or registration within the state of Oregon. SSV, LLC, is currently incorporated and at home in either or both of Utah and Nevada.

25.

At all relevant times, defendant Christopher Novasio (also known as Santonio Christopher Novasio, and Christopher David James Novasio) (hereafter “Novasio”) was identified as a manager of South Sea Ventures, SSV, LLC, MIT 45, and Crown Trading. On information and belief, defendant Novasio is a resident of the state of Utah. As an individual, Novasio has been personally involved in the manufacture, marketing, and distribution of the highly concentrated and dangerous MIT 45 product throughout the U.S., including in Oregon. Novasio has held out South Sea Ventures and MIT 45 as legitimate entities operating in the U.S., even though it has concealed from consumers accurate information regarding the identity and registered agent of the MIT 45 manufacturer and distributor. Hereinafter, all references to South Sea Ventures incorporate and include Novasio.

26.

At all relevant times, defendant KS Food Market operated as an Oregon Limited Liability Company, with its principal place of business in Multnomah County, at 15231 SE Division St., Portland, Oregon 97236. Defendant KS Food Market was and is a seller of kratom products manufactured and distributed by the other named defendants.

27.

At all relevant times, defendant JOpen, LLC, (d/b/a PartyNuts; A1 Wholesale; A1 Wholesale Shipping Dept; FCT55, LLC; PK55, LLC; and Second 55 Venture, LLC) is a for-profit entity conducting business in Multnomah County, Oregon, with its principal place of business in Dallas County, at 11700 Preston Road, Suite 660-666 Dallas, TX 75230-6112. Defendant JOpen, LLC was and is a distributor and seller of kratom products manufactured and distributed by the other named defendants. Upon information and belief JOpen, LLC, is an alter ego of OPMS. To the extent JOpen, LLC, is an alter ego of OPMS, JOpen is included in any reference to OPMS, and “Manufacturer Defendants” used herein.

28.

At all relevant times, defendant Kim’s Trading, Inc. is a for-profit corporation conducting business in Multnomah County, Oregon, with its principal place of business in Pierce County, at 8715 Portland Avenue East, Tacoma, WA 98445. Defendant Kim’s Trading, Inc. was and is a distributor and seller of kratom products manufactured and distributed by the other named defendants.

29.

Upon information and belief, defendants John Doe 1 through 8 are unknown individuals and/or entities whose names and addresses of residence are unknown, but who have directly

1 participated in the wrongful design, manufacture, distribution, and sale of kratom products,
2 described more fully below. These John Doe defendants include, but are not limited to, owners,
3 managers, agents, and/or affiliates involved in the kratom transactions at issue, and whose
4 identities and roles have remained undisclosed or hidden.

5 30.

6 Defendants OPMS; Martian Sales; RVR; River Valley Remedies; IND; LIV; Precision; Pur; NVN;
7 NPH; OI; PWH; AMG; Mark Reilly; Peyton Palaio; Ted Palaio; Lawrence Larsen; Mark Jennings;
8 Jason Foster; South Sea Ventures; Christopher Novasio; and John Does 1-8 are collectively
9 referred to as “Manufacturer Defendants.”

10 31.

11 Defendants KS Food Market, JOpen, LLC, (d/b/a PartyNuts; A1 Wholesale; A1 Wholesale
12 Shipping Dept; FCT55, LLC; PK55, LLC; and Second 55 Venture, LLC), and Kim’s Trading,
13 Inc., are collectively referred to as “Distributor Defendants.” All defendants collectively referred
14 to as “Defendants.”

15 JURISDICTION AND VENUE

16 32.

17 This court has personal jurisdiction over all defendants because they have and continue to
18 conduct regular and sustained business activity in Oregon and committed the torts alleged herein.
19 In addition, defendants purposefully availed themselves of the jurisdiction of this court by
20 targeting their kratom products toward Oregon retailers and consumers, including plaintiff.

21 33.

22 Venue is proper in this court pursuant to ORS 14.080(1) and (2) because plaintiff and
23 defendant, KS Food Market is or was domiciled in Multnomah County, Oregon or registered to do

1 business in the state of Oregon. In addition, defendants are or were conducting regular sustained
2 business activity in Multnomah by manufacturing, marketing, distributing and/or selling kratom
3 to decedent in Multnomah County, contributing to his injuries and death here.

4 **FACTUAL ALLEGATIONS**

5 34.

6 Decedent Daniel Paul lived in Corbett, Oregon with his wife, plaintiff Kathryn Ann Paul,
7 and their three-year-old son, Davy Scott Paul.

8 35.

9 Decedent also enjoyed a successful career as a general contractor in the Portland, Oregon
10 metropolitan area and the greater Pacific Northwest.

11 36.

12 For many years, decedent suffered from pain, nerve issues, muscular ailments, and anxiety
13 related to such ailments, after playing Division 1 college football and working as a manual laborer.
14 Before his death, decedent began using kratom products as a supplement to his medical treatment
15 related to the ailments noted above.

16 37.

17 Decedent purchased kratom products from defendant KS Food Market in Multnomah
18 County.

19 38.

20 Decedent used kratom products manufactured, distributed, and sold by Defendants to
21 manage his pain, nerve issues, muscular ailments, and anxiety related to such ailments.
22
23

39.

In the days preceding his death, decedent purchased OPMS and MIT 45 concentrated liquid kratom products from KS Food Market.

40.

Distributor Defendant, JOpen, LLC, distributes and sells OPMS kratom products to KS Food Market.²

41.

Distributor Defendant, Kim's Trading Inc. distributes and sells MIT 45 kratom to KS Food Market.

42.

On July 9, 2019, decedent went to his bedroom to sleep at approximately 11:00 p.m. after enjoying the MLB all-star game with his wife and mother-in-law.

43.

As was his practice, decedent consumed the concentrated liquid kratom product he had recently purchased before falling asleep.

44.

On July 10, 2019, plaintiff awoke to find decedent unresponsive in bed and covered in urine with yellow fluid coming from his mouth.

45.

Medical personnel and the Multnomah County Sheriff's Officers reported to the scene.

² Upon information and belief, JOpen, LLC is also a manufacturer of OPMS kratom and is an alter ego of OPMS.

1 46.

2 Decedent's wife and mother-in-law watched in shock and agony as medics attempted
3 without success to revive decedent, and he was declared dead.

4 47.

5 After a thorough investigation, the Multnomah County Coroner issued its case report for
6 decedent, confirming the cause of death as "mitragynine (kratom) toxicity."

7 48.

8 The Multnomah County Sheriff's Office report documented empty OPMS and MIT 45
9 liquid kratom bottles in decedent's bedroom and bathroom.

10 49.

11 Plaintiff brought this lawsuit within three years of decedent's date of death.

12 50.

13 The injuries from the dangerous and defective kratom products that killed decedent have
14 caused, and will continue to cause, economic losses to his estate in the form of past medical
15 expenses and loss of wages and earning capacity, in an amount to be determined by the jury in
16 accordance with the law, not to exceed:

17 \$ 15,000.00 in past medical and funeral expenses; and

18 \$ 4,000,000.00 in lost future wages and earning capacity.

19 51.

20 Daniel Paul's injury and death have caused and continue to cause plaintiff's beneficiaries
21 and his estate non-economic damages, including pain and suffering, in an amount to be determined
22 by the jury in accordance with the law, not exceeding \$5,000,000.

FACTUAL BACKGROUND:
DEFENDANTS' DESIGN AND MARKETING OF KRATOM

I. Kratom is a dangerous drug.

52.

Kratom, also known as “mitragynine,” is derived from the *Mitragyna Speciosa* tree native to Southeast Asia.

53.

Kratom is a regulated substance in the United States, and there are no FDA-approved uses for Kratom.

54.

Although not formally classified as an opiate, kratom contains dozens of psychoactive compounds or alkaloids, many of which are not understood. While research is ongoing, the two most-studied alkaloids are mitragynine and 7-hydroxymitragynine. These two alkaloids bind to the same opioid brain receptors as morphine. Like opiates, these compounds can lead to analgesia (release of pain), euphoria, and sedation.

55.

Kratom manufacturers and distributors have no reliable basis for specifying the variable doses and potencies of kratom’s various psychoactive compounds in product packaging.

56.

Kratom’s serious health risks include risks of abuse, dependence, addiction, overdose, and death.³ Scientific literature has documented serious concerns regarding the toxicity of kratom in

³ See FDA News Release, FDA issues warnings to companies selling illegal, unapproved kratom drug products (<https://www.fda.gov/news-events/press-announcements/fda-issues-warnings-companies-selling-illegal-unapproved-kratom-drug-products-marketed-opioid>) (last accessed

multiple organ systems. Consumption of kratom can lead to many adverse health impacts, including respiratory depression, nervousness, agitation, aggression, sleeplessness, hallucinations, delusions, tremors, loss of libido, constipation, skin hyperpigmentation, nausea, vomiting, and severe withdrawal signs and systems.⁴ Effective treatments for kratom addiction and overdose have not been fully developed by the medical community.⁵

57.

Over the past ten years, reports of kratom poisonings and overdose deaths have risen dramatically throughout the country.

58.

Kratom is illegally sold in violation of FDA regulations without premarket verification of reasonable safety. Kratom is not approved for medical purposes. The FDA has issued numerous warnings against the use of products containing kratom or its psychoactive compounds and has taken action against those who illegally sell the product for pain treatment and other medical uses.⁶

59.

More research is needed to understand kratom's safety profile, including the potential impact of kratom's various compounds on underlying medical conditions or their interactions with

March 14, 2022); see also DOJ DEA Drug Fact Sheet – Kratom (https://www.dea.gov/sites/default/files/2020-06/Kratom-2020_0.pdf) (last accessed March 14, 2022).

⁴ See FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html) (last accessed March 14, 2022).

⁵ See FDA News Release, FDA and Kratom (<https://www.fda.gov/news-events/public-health-focus/fda-and-kratom>) (last accessed March 14, 2022).

⁶ See FDA Statement, Statement from FDA Commissioner Scott Gottlieb, M.D. on FDA advisory about deadly risks associated with kratom (<https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-fda-advisory-about-deadly-risks-associated-kratom>) (last accessed March 14, 2022).

1 other drugs. The FDA determined there is inadequate information to provide any reasonable
2 assurance that kratom does not present significant or unreasonable risk of illness or injury.⁷

3 60.

4 In recent years, certain kratom manufacturers have begun producing and marketing
5 concentrated forms of kratom. These manufacturers include Defendant OPMS producing the
6 OPMS liquid shot; and Defendant South Sea Ventures, producing the MIT 45 liquid shot.

7 61.

8 The OPMS and MIT 45 kratom liquid shots are particularly dangerous because they are
9 intended to provide consumers with higher concentrations of the psychoactive alkaloids,
10 substantially increasing the risk of overdose and death.

11 **II. Despite the danger of Kratom, defendants continue to market Kratom as a safe and
12 effective alternative to opiate prescriptions.**

13 62.

14 Despite the serious risks of kratom use, companies such as defendants continue to market
15 kratom products with unproven and deceptive claims about its safety and ability to cure, treat or
16 prevent medical conditions and diseases. The FDA's examples of illegal claims being made
17 include statements that "many people use kratom to overcome opiate addiction," and kratom is
18 frequently used "as a natural alternative" to treat various health conditions, replacing opiate
19 prescriptions.⁸

20 ⁷ See FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html)
21 (last accessed March 14, 2022).

22 ⁸ See FDA News Release, FDA issues warnings to companies selling illegal, unapproved kratom
23 drug products marketed for opioid cessation, pain treatment and other medical uses
(<https://www.fda.gov/news-events/press-announcements/fda-issues-warnings-companies-selling-illegal-unapproved-kratom-drug-products-marketed-opioid>) (last accessed March 14, 2022).

63.

All defendants attempt to sidestep applicable regulations and responsibility for the illegal sale of dangerous and unapproved supplements. OPMS and South Sea Ventures combine grandiose medicinal marketing statements with contradictory disclaimers that the products are not for human consumption.

64.

Kratom products are not safe for human consumption, and the deceptive marketing and sale of these products has encouraged consumers and patients to experiment with mysterious and dangerous compounds in lieu of seeking appropriate and approved medical treatments that can be safely supervised by medical professionals. Examples of OPMS' and South Sea Venture's deceptive marketing can be found in paragraphs 51, 52, 64-66, & 86 below.

65.

In short, defendants misrepresented and misled consumers about the risks and benefits of kratom use to the tragic detriment of decedent and his estate. Serious risks include but are not limited to: "kratom-associated withdrawal symptoms (KAWS) in adults, kratom-associated neonatal abstinence syndrome (KANAS), hypothyroidism, hypogonadism, kratom-induced hepatotoxicity (KIH), CNS effects causing seizure and coma or posterior reversible encephalopathy syndrome (PRES), acute respiratory distress syndrome (ARDS), overdose toxidrome, and fatalities."⁹

FIRST CLAIM FOR RELIEF

Negligence (Against Manufacturer Defendants)

⁹ See Elmad Alsarraf, et al., *Kratom from Head to Toe – Case Reviews of Adverse Events and Toxicities*, 7 Current Emergency and Hospital Medicine Reports 141-168 (2019) (internal citations omitted).

66.

Plaintiff realleges and incorporates by reference all previous paragraphs.

67.

As manufacturers, marketers, distributors and sellers of the dietary supplement kratom, Manufacturer Defendants, in general, had a duty to prevent foreseeable injuries arising from the use of their products, including making timely and truthful disclosures about kratom's risks and side effects; properly testing each batch of kratom for purity and potency; and conforming manufacturing practices to the standards necessary to produce a consistently pure and evenly potent product, prior to the time of sale, up to the time of plaintiff's injury and death in July 2019.

68.

Long before plaintiff's death in 2019, Manufacturer Defendants had at least constructive knowledge that kratom could cause serious harm to consumers, including addiction, dependency, tolerance, overdose, and death. As early as April 15, 2011, reports were being published of kratom related deaths.¹⁰ Manufacturer Defendants' actual or constructive knowledge of serious harm from kratom has continuously grown, as reflected in a growing list of additional publications, including but not limited to news articles and television segments, FDA announcements, and industry publications.

69.

After decedent began taking kratom, Manufacturer Defendants had actual or constructive knowledge of the risks of addiction, overdose, and death associated to kratom consumption.

¹⁰ See <https://www.fda.gov/files/drugs/published/Adverse-event-reports-for-Kratom-involving-death.pdf> (last accessed March 14, 2022).

1 Manufacturer Defendants had an ongoing duty to stay apprised of these risks, and to update their
2 labeling and marketing communications to warn of these risks.

3 70.

4 Manufacturer Defendants breached their duties of care toward plaintiff in one or more of
5 the following ways:

- 6 A. In producing kratom products with concentrated alkaloids with knowledge that
7 these concentrated products were far more likely to lead to overdose and death.
- 8 B. In failing to properly label and package their product in order to make Plaintiff and
9 consumers aware of the risks associated to Kratom.
- 10 C. In failing to properly label and package their product in order to provide effective
11 guidance for product use and consumption.
- 12 D. In failing to conform their manufacturing processes to ensure consistency of
13 potency so that packaged products did not contain hot spots of concentrated
14 alkaloids, which hot spots may result in dangerous doses.
- 15 E. Additionally, Manufacturer Defendant's failure to conform their manufacturing
16 processes to ensure consistency of potency means that each packaged product
17 purchased by Plaintiff contained different levels of alkaloid content thereby
18 rendering it impossible for Plaintiff to consume a consistent dose, which increases
19 the risk of overdose.

20 71.

21 In addition to breaching the duties described above in paragraphs 48 through 51, defendant
22 OPMS was negligent in one or more of the following particulars:

- 1 A. OPMS produced and marketed kratom products with highly concentrated alkaloids
2 with knowledge that these concentrated products were far more likely to lead to
3 overdose and death than kratom products with alkaloid levels that were already
4 known to be dangerous and subject to abuse.
- 5 B. OPMS' website "About" page explains that kratom is known "to remedy
6 everything, from morning sickness and drowsiness to pain and inflammation,"¹¹
7 thereby representing OPMS kratom as a product that can alleviate pain.
- 8 C. OPMS also states that kratom "does not show up" on drug tests, indicating OPMS
9 kratom may be a pain-relieving agent that can be used to subvert drug testing by
10 those who are inclined to abuse drugs. OPMS also notes on its website that
11 "Nicotine and kratom should NOT be mixed," but this warning does not appear on
12 its product packaging.¹²
- 13 D. Despite knowingly selling its concentrated OPMS products for human
14 consumption, OPMS publishes inconsistent information on its website, including a
15 warning that OPMS products are "only for use as a botanical specimen.
16 Mitragynine speciosa is an unapproved dietary ingredient."¹³
- 17 E. OPMS advertises its kratom formula as "stronger" for the pain relieving, anxiety
18 relieving, and mood improving aspects of kratom. For instance, OPMS markets its
19 OPMS Silver product as "stronger and more effective than other Kratom brands....
20
21

22 ¹¹ Id.

23 ¹² Id.

24 ¹³ Id.

1 It entails Mitragynine which is responsible for improving mood, calming anxiety,
2 pain relief and so much more.”¹⁴

3 F. OPMS also claims that its products can enhance mental clarity, improve
4 concentration, boost brain function, act as an antidepressant, help with anxiety and
5 stress, improve energy, induce euphoria, and relieve pain. “It is a pain reliever and
6 is beneficial in pain management by acting as a sedative to place you to sleep in
7 order that you don’t awaken thanks to pain.”¹⁵

8 G. Finally, OPMS explains that it has developed its own alkaloid standards “for many
9 of the alkaloids in kratom which do not have standards by no one else,”¹⁶ and that
10 its manufacturing process “focuses on extracting mostly 7-hydroxymitragynine,”
11 an alkaloid that “makes the kratom a powerful painkiller.”¹⁷

12 72.

13 In addition to breaching the duties described above in paragraphs 48 through 51, defendant
14 South Sea Ventures (doing business as or under South Sea Ventures, LLC, MIT 45; Santiano
15 Novasio, and/or Crown Trading) was negligent in one or more of the following particulars:

16 A. Producing kratom products with concentrated alkaloids with knowledge that these
17 concentrated products were far more likely to lead to overdose and death than other
18 kratom products on the market.

19
20 ¹⁴ See <https://opmswholesale.com/all-products> (last accessed March 14, 2022).

21 ¹⁵ See <https://opmswholesale.com/opms-gold> (last accessed March 14, 2022).

22 ¹⁶ See <https://opmswholesale.com/opms-silver> (last accessed March 14, 2022).

23 ¹⁷ Id.; see also, Papsun, Donna M., *The Trouble With Kratom: Analytical and Interpretive Issues Involving Mitragynine*, Journal of Analytical Toxicology, 1015 (2019), stating, “...and clinical research suggests that 7-hydroxymitragynine...is four times more potent in its central nervous system (CNS) stimulant and depressant effects than mitragynine.”).

1 B. Holding out its MIT 45 product as the “gold standard”,¹⁸ with a name derived from
2 the high potency of the product which contains a 45% mitragynine isolate.¹⁹ Yet,
3 notwithstanding the purported product potency, MIT 45 fails to issue any sort of
4 warning related to MIT 45 on its website or on its product packaging.²⁰ MIT 45’s
5 wholesale website notes only that a product sold for human consumption is in fact
6 not FDA approved for human consumption.²¹

7 73.

8 Had Manufacturing Defendants disclosed the above risks and defects to decedent, he would
9 have avoided taking kratom for his chronic pain, or he would have discontinued taking it, thus
10 avoiding dependency, overdose, and death. Likewise, had defendants not negligently made the
11 above noted misrepresentations, decedent would not have started consuming Kratom products,
12 thus avoiding dependency, overdose, and death.

13 74.

14 Each Manufacturer Defendant’s negligence was a substantial contributing factor in causing
15 decedent’s death and damages to his estate.

16 **SECOND CLAIM FOR RELIEF**

17 **NEGLIGENCE (Against Distributor Defendants)**

18 75.

19 Plaintiffs re-allege and incorporate by reference all previous paragraphs.

20
21 ¹⁸ See <https://southseaventures.com/mit45/> (last accessed March 14, 2022).

22 ¹⁹ See <https://headquest.com/behind-the-scenes/south-sea-ventures/> (last accessed March 14, 2022).

23 ²⁰ See <https://southseaventures.com/mit45/> (last accessed March 14, 2022).

24 ²¹ See <https://mit45.com/buy-mit-45-gold-extract-wholesale/> (last accessed Aug. 3, 2021).

76.

As distributors of the Manufacturing Defendants' kratom, the Distributor Defendants had a duty to reasonably investigate and inspect these products before selling them to ensure they were safe for public consumption. Distributor Defendants also have a duty to ensure the products they sell are not adulterated or misbranded, and a duty to ensure the products they sell do not contain false representations of material facts.

77.

When the Distributor Defendants sold kratom products to decedent, Distributor Defendants knew or should have known that kratom was not approved and unreasonably dangerous for human consumption, especially for medicinal uses, such as the alleviation of chronic pain. Knowledge of kratom's dangers was readily available from news articles and news segments, medical literature, FDA, and the American Kratom Association which advises its members not advertise Kratom as effective for pain relief.²²

78.

Distributor Defendants breached their duties of care in selling kratom products in one or more of the following ways:

- A. Distributor Defendants knew or should have known of kratom's potential to cause serious side effects, including tolerance, addiction, overdose, and death.

²² See e.g. <https://www.amerikankratom.org/mediak/news/kratom-truth-in-labeling-policy-brief.html> (last accessed March 14, 2022); https://www.eastoregonian.com/news/local/pendleton-police-arrest-man-they-say-was-driven-to-psychosis-by-the-substance-kratom/article_40954120-5aa9-11eb-9d3c-7b3d883733f8.html (last accessed March 14, 2022); <https://www.kgw.com/article/news/health/coroners-report-leaves-questions-about-kratom-unanswered/283-71572311> (last accessed March 14, 2022).

1 B. Distributor Defendants knew or should have known that they were unlawfully selling
2 the products to customers for medical purposes, even though the unreasonable health
3 risks of such use were not properly understood, identified, disclosed, approved, or
4 regulated.

5 C. Distributor Defendants knew or should have known that the disclaimers were a sham
6 attempt to avoid responsibility for products that were not safe for human
7 consumption.

8 D. Distributor Defendants negligently passed on to consumers (including decedent)
9 representations about the products, including representations that kratom was safe
10 and appropriate for pain relief, and was an acceptable alternative to medically
11 approved and regulated treatments for pain management.

12 79.

13 Each Distributor Defendant's negligence was a substantial contributing factor in causing
14 plaintiff's damages.

15 **THIRD CLAIM FOR RELIEF**

16 **Strict Liability – Warnings Defect – ORS § 30.900 and §30.920**
17 **(Against All Defendants)**

18 80.

19 Plaintiffs re-allege and incorporate by reference all previous paragraphs.

20 81.

21 Manufacturer Defendants were engaged in the business of manufacturing, promoting,
22 distributing, and selling the kratom product that killed decedent, and Distributor Defendants were
23 engaged in the business of promoting, distributing, and selling the kratom product that killed
24 decedent.

82.

The kratom products decedent purchased and ingested were expected to and did, in fact, reach decedent without substantial change in the condition they were in at the time they left defendants' hands.

83.

Decedent used defendants' kratom products for chronic pain – the very purposes defendants intended and promoted.

84.

At the time they left defendants' hands, the kratom products were defectively labeled. They did not provide adequate warnings and instructions that an ordinary consumer would expect, and the inadequate warnings made the kratom products more dangerous than an ordinary consumer would expect. Specifically, the information accompanying Defendants' kratom products, including the packaging, promotional materials, website information, and directions for use, were inadequate in one or more of the following ways:

- A. Defendants failed to warn of the risks of abuse, dependence, addiction, overdose, and death. *See* paragraphs 51 and 52 above.
- B. Defendants failed to provide specific guidance regarding product use, including recommended levels of dosage and daily consumption limits. *See* paragraphs 52 and 53 above.
- C. Defendants failed to provide information regarding product purity and potency on product packaging. *See* paragraphs 52 and 53 above.
- D. Defendants promoted Kratom as a safe and effective alternative to prescription anxiety and/or pain medication. *See* paragraphs 52 and 53 above.

1 E. Defendants promoted Kratom as a safe stimulant similar to coffee.

2 F. Defendants promoted Kratom as an all-natural and safe medicinal as proven by its
3 use as an ancient herb in southeast Asia.

4 85.

5 In addition to the defects identified in paragraph 65 above, defendant OPMS' label
6 was also inadequate in one or more of the following particulars:

7 A. OPMS' liquid shots do not include any instructions for use.

8 B. OPMS' liquid shots include a warning that does not mention the known risks
9 of addiction, overdose, and death.

10 86.

11 In addition to the defects identified in paragraph 65 above, defendant South Sea
12 Ventures' label was also inadequate in one or more of the following particulars:

13 A. South Sea Ventures' MIT45 liquid shots do not include any instructions for
14 use.

15 B. South Sea Ventures' MIT45 liquid shots do not include a warning including
16 the known risks of addiction, overdose, and death.

17 C. South Sea Ventures' MIT45 liquid shots dosage is based on an "average
18 reported use."

19 87.

20 Manufacturer Defendants' labels made the kratom products unreasonably dangerous and
21 defective, beyond what an ordinary consumer would expect.

88.

Had defendants' kratom products been sold with adequate warnings and instructions regarding their risks, decedent would not have taken defendants' kratom products for his chronic pain, and he would not have died from kratom toxicity.

89.

The unreasonably dangerous and defective labeling of each defendant's kratom products was a substantial factor contributing to decedent Daniel Paul's injury and death.

FOURTH CLAIM FOR RELIEF

**Strict Liability – Design Defect – ORS § 30.900 and §30.920
(Against All Defendants)**

90.

Plaintiff re-alleges and incorporates by reference all previous paragraphs.

91.

Manufacturer Defendants were engaged in the business of manufacturing, designing, distributing, and selling the kratom product that killed decedent, and Distributor Defendants were engaged in the business of promoting, distributing, and selling the kratom product that killed decedent.

92.

The kratom products decedent purchased and ingested were expected to and did, in fact, reach decedent without substantial change in the condition they were in at the time they left defendants' hands.

93.

Decedent used defendants' kratom products for chronic pain – the very purposes for which Manufacturer Defendants designed, manufactured, distributed, and sold these products, and

Distributor Defendants promoted, distributed, and sold these products. At the time Manufacturer Defendants manufactured, distributed, and sold, and Distributor Defendants distributed and sold, their kratom products to decedent, they were defectively manufactured and/or designed in one or more of the following ways:

- A. The products were adulterated in that they were contaminated with heavy metals, bacterial contaminants, fungal contaminants, and other contaminants including but not limited to lead, arsenic, and salmonella.
- B. The products did not conform to defendants' design specifications and purity standards in that the product contained higher or lower alkaloid content levels than designed, and/or the product contained the aforementioned contaminants.
- C. As designed, defendants' kratom products could not be made reasonably safe for human consumption because Manufacturer Defendants cannot conform their manufacturing process to ensure consistent potency or purity.
- D. From the standpoint of a reasonable consumer, the known risks of addiction, overdose, and death and the lack of consistent and reliable safety testing make the risks of kratom use outweigh the utility.

94.

Both OPMS and MIT 45 liquid shots claim to contain a concentration of kratom alkaloids such as mitragynine and 7-hydroxymitragynine that is unreasonable dangerous and defective, beyond what an ordinary consumer would expect. *See e.g.*, paragraphs 52 and 53 above.

95.

The above defects in design made defendants' kratom products unreasonably dangerous and defective, beyond what an ordinary consumer would expect.

96.

Had defendants' kratom products been adequately tested and designed, decedent would not have suffered injury or death.

97.

The unreasonably dangerous and defective design of defendants' kratom products was a substantial factor contributing to Daniel Paul's injury and death.

FIFTH CLAIM FOR RELIEF

**BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY
(Against All Defendants)**

98.

Plaintiffs re-allege and incorporate by reference all previous paragraphs.

99.

Defendants are in the business of selling kratom, including the kratom products purchased and consumed by decedent.

100.

Defendants impliedly warranted that their kratom product(s) were reasonably fit for its intended purpose of improving health and well-being, and as a safe pain relief supplement. Defendants' warranties included, without limitation, the representations specified on their websites (as described above in paragraphs 52, 53, 65 through 66, 74 and 75, including representations that the kratom product(s):

- a. Are of superior quality and safer than other forms of kratom on the market.
- b. Are always lab tested for safety and quality control.
- c. Are unadulterated.
- d. Do not have the potential to cause death.

e. Are a superior alternative to opiates and other medical treatments prescribed under the supervision of a doctor.

101.

Defendants issued these warranties to develop and promote the sale of their product(s) through their distribution chain, including the sales to decedent by Distributor Defendants KS Food Market, JOpen, LLC, and Kim's Trading, Inc.

102.

Decedent purchased the kratom products at KS Food Market. JOpen, LLC is a distributor and seller of OPMS kratom products. KS Food Market sold OPMS kratom products to Decedent. Kim's Trading, Inc., is a distributor and seller of MIT45 kratom products. KS Food Market sold MIT45 kratom products to Decedent. Therefore, all Defendants are in privity.

103.

Decedent used defendants' kratom products for the purposes for which defendants warranted that their products could be safely used.

104.

As an Oregon resident, decedent was a reasonably foreseeable end user of defendants' products and was a third-party beneficiary of all warranties made by defendants and passed along by KS Food Market, JOpen, LLC, and Kim's Trading Inc.

105.

Defendants' warranties related to material facts regarding the safety and efficacy of kratom.

106.

In addition to the warranties described in paragraph 81 above, defendant OPMS made the following specific warranties about the safety and efficacy of its kratom products:

A. That each batch is lab tested for safety.

1 B. That OPMS products provide safe pain relief.

2 C. That OPMS products help with anxiety.

3 D. And the allegations described in paragraphs 51, 64, and 65.

4 107.

5 In addition to the warranties described in paragraph 81 above, defendant South Sea
6 Ventures made the following specific warranties about the safety and efficacy of its kratom
7 products:

8 A. That each batch is lab tested for safety.

9 B. And the allegations described paragraphs 53, 65, and 67.

10 108.

11 Decedent relied on defendants' warranties, including the warranty that the kratom
12 product(s) were safe and would not kill you, in purchasing and consuming Defendants' products.

13 109.

14 Defendants breached their warranties because their kratom products were not of
15 merchantable quality and were unfit for their ordinary purposes. Specifically, contrary to
16 defendants' representations:

17 A. Defendants' kratom products were not, in fact, superior in quality or safer than
18 other forms of kratom on the market.

19 B. Defendants' kratom products were not always lab-tested for safety and quality
20 assurance.

21 C. Defendants' kratom products were, in fact, adulterated.

22 D. Defendants' kratom products had potentially deadly side effects.

1 E. Defendants' kratom products were not, in fact, a superior alternative to opiates and
2 other medical treatments prescribed under the supervision of a doctor.

3 110.

4 Defendants' products did not conform to the quality and representations defendants made.

5 111.

6 Defendants' breach of implied warranties was a substantial contributing factor in causing
7 decedent's death and damages to his estate.

8 **SIXTH CLAIM FOR RELIEF**

9 **NEGLIGENT MISREPRESENTATION**
10 **(Against All Defendants)**

11 112.

12 Plaintiffs re-allege and incorporate by reference all previous paragraphs.

13 113.

14 In the course of their business as manufacturers, and/or distributors, and sellers of kratom
15 products, defendants made misrepresentations of material facts and intentionally concealed
16 information about their products from decedent during the time decedent bought and used these
17 products.

18 114.

19 Defendants intended these misrepresentations and false information to serve as guidance
20 for consumers in deciding whether to purchase the kratom products and how to use them.

21 115.

22 Defendants' misrepresentations in general included one or more of the following:

23 A. Statements that their kratom products are safe for human consumption.

24 B. Statements that their kratom products help with pain relief and inflammation.

1 C. Statements that their kratom products can help with depression and anxiety.

2 D. Statements that they had conducted adequate clinical safety testing of their
3 products.

4 116.

5 In addition to the misrepresentations alleged in paragraph 96 above, defendant OPMS made
6 the specific misrepresentations to consumers, including decedent identified in paragraphs 52, 65,
7 81, and 87.

8 117.

9 In addition to the misrepresentations alleged in paragraph 96 above, defendant South Sea
10 Ventures made the following specific misrepresentations to consumers, including decedent
11 identified in paragraph 53, 65, 81, and 88.

12 118.

13 The information above was false at the time it was supplied.

14 119.

15 Defendants possessed superior knowledge about the lack of clinical testing and safety of
16 their products, including the lack of reliable support for representations about the asserted clinical
17 and medicinal safety of kratom and the absence of deaths caused by kratom products.

18 120.

19 In misrepresenting the safety of their kratom products, defendants also failed in their duty
20 to disclose known material facts to decedent regarding kratom products, including but not limited
21 to:

- 22 a. The health risks associated with regular consumption of kratom.
23 b. Information regarding adverse events associated with kratom.

1 c. The risk of overdose and death associated with kratom.

2 121.

3 The above representations and omissions were material, and defendants made them with
4 the intent to persuade and induce decedent to choose and regularly use the products.

5 122.

6 Defendants made the above representations or omissions knowing the misrepresentations
7 were false or were ignorant of the truth of the assertions.

8 123.

9 The above representations and omissions are reflected in defendants' system for marketing
10 their kratom product(s) through their distributors, including KS Food Market, JOpen, LLC, and
11 Kim's Trading Inc. Together, all defendants unlawfully promoted and sold these unreasonably
12 dangerous products for medicinal purposes to Oregon consumers, including decedent.

13 124.

14 It was reasonable for Oregon consumers, including decedent, to rely on the misinformation
15 provided by defendants when deciding whether and how to use their kratom products. As
16 manufacturers, and/or distributors, and sellers of dietary supplements, defendants had superior
17 knowledge of kratom, its history, and its safety and risk profile that was unavailable to ordinary
18 consumers.

19 125.

20 Decedent relied upon and was induced to act in reliance on defendants' misrepresentations
21 and omissions when he purchased the product(s) to achieve relief from chronic pain.

126.

Each defendant's misrepresentations were a substantial contributing factor causing plaintiff's injuries.

SEVENTH CLAIM FOR RELIEF

**NEGLIGENCE PER SE
(Against All Defendants)**

127.

Plaintiffs re-allege and incorporate by reference all previous paragraphs.

128.

Defendants violated the following statutes 21 U.S.C. § 331; 21 U.S.C. § 342; 21 U.S.C. § 343; 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381; by importing; manufacturing, marketing, promoting, distributing, and selling adulterated and misbranded kratom products without the premarket verifications of safety and notifications required by statute.

129.

Plaintiff was injured because of Defendants' violation of 21 U.S.C. § 331; 21 U.S.C. § 342; 21 U.S.C. § 343; 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381.

130.

Plaintiff, as a consumer of kratom, a product subject to Food, Drug, and Cosmetic Act regulation, is a member of the class persons meant to be protected by 21 U.S.C. § 331; 21 U.S.C. § 342; 21 U.S.C. § 343; 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381. That class of persons consists of individuals who purchase and consume supplements and new dietary ingredients, as well as persons who purchase and consume products (i.e. drugs) for medicinal purposes.

131.

Plaintiff's injuries are of a type that 21 U.S.C. § 331; 21 U.S.C. § 342; 21 U.S.C. § 343; 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381 were enacted to prevent the harm that Daniel Paul ultimately suffered, namely his death due to the toxic effects of the kratom products consumed.

EIGHTH CLAIM FOR RELIEF

CIVIL CONSPIRACY

(Against Defendants OPMS, Martian Sales; RVR; River Valley Remedies; IND; LIV Group; Precision; Pur; NVN; NPH; OI; PWH; AMG; Mark Reilly; Peyton Palaio; Ted Palaio; Lawrence Larsen; Mark Jennings; and Jason Foster)

132.

Plaintiffs re-allege and incorporate by reference all previous paragraphs.

133.

OPMS; RVR; River Valley Remedies; IND; LIV Group, ; Precision; Pur; NVN; NPH; OI; PWH; AMG; Mark Reilly; Peyton Palaio; Ted Palaio; Lawrence Larsen; Mark Jennings; and Jason Foster, were and continue to be engaged in a course of action that involves a meeting of the minds of OPMS; RVR; River Valley Remedies; IND; LIV Group; Precision; Pur; NVN; NPH; OI; PWH; AMG; Mark Reilly; Peyton Palaio; Ted Palaio; Lawrence Larsen; Mark Jennings; and Jason Foster, with an object to be accomplished, specifically, the concealment of identity of OPMS owners and operators intended to evade accountability for the knowing violation of law through import, design, manufacture, distribution, promotion, marketing, and sale of kratom.

134.

In furtherance of the ongoing civil conspiracy, OPMS; RVR; River Valley Remedies; IND; LIV Group; Precision; Pur; NVN; NPH; OI; PWH; AMG; Mark Reilly; Peyton Palaio; Ted Palaio; Lawrence Larsen; Mark Jennings; and Jason Foster, have committed and continue to commit

1 unlawful overt acts including import of kratom in violation of 21 U.S.C. § 381; manufacture,
2 marketing, promotion, distribution, and sale of kratom in violation of 21 U.S.C. § 331; 21 U.S.C.
3 § 342; 21 U.S.C. § 343; 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381,
4 and Oregon tort law as alleged herein including causes of action 1, 3, 4, 5, 6, and 7.

5 135.

6 In furtherance of the ongoing civil conspiracy, OPMS; RVR; River Valley Remedies; IND;
7 LIV Group; Precision; Pur; NVN; NPH; OI; PWH; AMG; Mark Reilly; Peyton Palaio; Ted Palaio;
8 Lawrence Larsen; Mark Jennings; and Jason Foster, have committed and continue to commit
9 unlawful overt acts including import of kratom in violation of 21 U.S.C. § 381; manufacture,
10 marketing, promotion, distribution, and sale of kratom in violation of 21 U.S.C. § 331; 21 U.S.C.
11 § 342; 21 U.S.C. § 343; 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381,
12 and Oregon tort law as alleged herein including causes of action 1, 3, 4, 5, 6, and 7.

13 136.

14 Plaintiff was injured as a result of Defendants civil conspiracy.

15 137.

16 The following defendants OPMS; RVR; River Valley Remedies; IND; LIV Group, ;
17 Precision; Pur; NVN; NPH; OI; PWH; AMG; Mark Reilly; Peyton Palaio; Ted Palaio; Lawrence
18 Larsen; Mark Jennings; and Jason Foster, are all jointly liable for the damages stated herein based
19 upon their mutual agency in committing this civil conspiracy.

20 **PRAYER**

21 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as
22 follows:
23

1. For economic damages for past medical expenses, future lost earnings or earning capacity, and any other economic injuries suffered by decedent and his estate as a result of defendants' actions, in an amount to be determined by the jury but not to exceed \$ 4,000,000.00, subject to future amendment;
2. For noneconomic damages in an amount to be determined by the jury but not to exceed \$ 5,000,000.00, subject to future amendment;
3. Pre- and post-judgment interest as allowed by law;
4. For plaintiff's costs and disbursements incurred herein;
5. For other relief the Court deems just and equitable; and
6. Plaintiff demands a trial by jury.

DATED: July 8, 2022.



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CERTIFICATE OF SERVICE

I certify that on July 8, 2022 a true copy of the foregoing **PLAINTIFF'S SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** was served as indicated below:

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