

# EXHIBIT 35

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

**KATHLEEN MOLLER**

**VERSUS**

**MARTIAN SALES, INC; JOPEN, LLC,  
a Texas limited liability company;  
JOHNSON FOODS, LLC, a Wyoming  
limited liability company; LP IND., LLC,  
a Wyoming limited liability company;  
CAG HOLDINGS, LLC, a Wyoming  
limited liability company; RMH  
HOLDINGS, INC., a Wyoming  
corporation; ABC INSURANCE  
COMPANY and John Does 1-4.**

**\* CIVIL ACTION NO. 24-0228-WBV-DPC**

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**\* JUDGE WENDY B. VITTER**

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**\* MAGISTRATE DONNA PHILLIPS  
\* CURRAULT**

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**DEFENDANT MARTIAN SALES, INC.'S SUPPLEMENTAL RESPONSES AND  
OBJECTIONS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES**

TO: Plaintiff, Kathleen Moller, by and through her attorneys of record, Nelson W. Wagar, III, Sarah Wagar Hickman, Wagar Hickman, LLP, 1401 West Causeway Approach, Mandeville, Louisiana 70471 and Michael Cowgill, Tamara J. Spires, mctlaw, 1515 Ringling Blvd., Suite 700, Sarasota, Florida 34236.

Defendant Martian Sales, Inc. ("Defendant"), pursuant to the Federal Rules of Civil Procedure, responds to Plaintiff Kathleen Moller's Third Set of Interrogatories ("Interrogatories"), as follows:

**SPECIFIC OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. Defendant objects to the definition of "identify" to the extent that it contradicts, is inconsistent with, or imposes on Defendant any obligations in excess of the requirements of the Federal Rules of Civil Procedure.

2. Per the Magistrate Judge's ruling regarding a reasonable time period at the December 3, 2025 hearing, Defendant will search for and produce documents for the following dates: January 1, 2020, through February 6, 2023.

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

**RESPONSES TO THIRD SET OF INTERROGATORIES**

1. Please identify all changes to OPMS kratom labeling, warnings, instructions for use, and disclaimers including the date in chronological order and a description of the changes made.

**ANSWER:** Defendant objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome because it seeks, without any limitation as to time or specific product, “all changes to OPMS kratom labeling, warnings, instructions for use, and disclaimers,” which is not reasonably tailored to the claims and defenses in this proceeding, which only concern events which allegedly occurred in Louisiana in February 2023. Defendant further objects to this Interrogatory to the extent it seeks to require Defendant to respond on behalf of any entity other than Defendant or otherwise seeks information or documents that are not in its possession, custody, or control. Given Plaintiff’s representations in her initial disclosures and her discovery responses that Decedent consumed OPMS Silver Maeng Da capsule and powder kratom products, Defendant responds to this Interrogatory as to OPMS Silver products. *See* Pla.’s Responses to Def.’s First Interrogatories, Interrogatory No. 15; Pla.’s Responses to Def.’s First Requests for Production of Documents; Pla.’s Initial Disclosures; MOLLER\_0000023 – 26.

Subject to the foregoing objections, Defendant responds as follows:

**Warning/Disclaimer:**

As of January 1, 2020 and through approximately mid-2020, OPMS Kratom products, including OPMS Silver products, included a warning that provided:

Defendant also refers Plaintiff to the labels and packaging for OPMS Silver Maeng Da capsule and powder products that Defendant previously produced and Bates-labeled DEF\_MOLLER\_002941 – 43 (capsules), and DEF\_MOLLER\_002953 – 55 (powder).

2. Please identify every person responsible for OPMS kratom labeling, warnings, instructions for use, and disclaimers, including job title and dates of employment.

**ANSWER:** Defendant objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome because it seeks, without any limitation as to time, “every person responsible for OPMS kratom labeling, warnings, instructions for use, and disclaimers,” which is not reasonably tailored to the claims and defenses in this proceeding, which only concern events which allegedly occurred in Louisiana in February 2023. Subject to the foregoing objections, Defendant responds that it was responsible for OPMS Kratom labeling and warnings from January 1, 2020, through February 6, 2023. During this period, Mark Reilly was Defendant’s president. Mr. Reilly approved OPMS Kratom’s labeling and warnings based on directions from legal counsel, and received recommendations from David Gabbay at A1 Wholesale.

3. Please identify all documents, discussions, meetings, e-mails, text messages, phone calls, video calls, and drafts related to decision(s) to change the disclaimer language on the OPMSkratom.com website in or around June 2022, including the addition of: “Some publications have suggested kratom may be associated with serious potential side effects including seizures, liver damage, withdrawal, addiction, abuse, and death.”

**ANSWER:** Defendant objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome because it seeks “all documents, discussions, meetings, e-mails, text messages, phone calls, video calls, and drafts,” regarding the subject disclaimer language, which is not reasonably tailored to the claims and defenses in this proceeding, which only concern events which allegedly occurred in Louisiana in February 2023. Defendant further objects to this

Interrogatory as vague and ambiguous with respect to the phrase “related to decision(s) to change the disclaimer language on the OPMSkratom.com website in or around June 2022.” Finally, Defendant objects on the ground that this Interrogatory seeks information protected by the attorney-client privilege.

Subject to the foregoing objections, Defendant responds that it consulted and relied on the advice of counsel regarding the disclaimer language.

**SUPPLEMENTAL RESPONSE:** At the hearing on December 3, 2025, the Court requested that Defendant consider whether reliance on advice of counsel waived privilege. After a review of the relevant case law, the privilege is not waived here, as any documents responsive to this request do not “support an element of a legal claim or defense.” *In re Itron, Inc.*, 883 F.3d 553, 558 (5th Cir. 2018). Namely, “[t]his is not a case in which a party has asserted a claim or defense that explicitly relies on the existence or absence of the very communications for which he claims a privilege.” *In re Burlington Northern, Inc.*, 822 F.2d 518, 533 (5th Cir. 1987). Any disclaimer language on the OPMSkratom.com website is either sufficient or insufficient as a matter of law. Defendant does not argue that the disclaimer is sufficient because counsel advised to add such disclaimer. Rather, Defendant states that the “decision(s) to change the disclaimer language on the OPMSkratom.com website” was made on advice of counsel, and thus any documents related to such decision are privileged. This does not relate to an element of any claim or defense here, and thus the privilege is not waived under Louisiana law.

4. Please identify all publications and documents that you considered in your decision to include the following statement on the OPMS Disclaimer Page in or around June 2022: “Some publications have suggested kratom may be associated with serious potential side effects including seizures, liver damage, withdrawal, addiction, abuse, and death.”

**ANSWER:** Defendant objects to this Interrogatory as vague and ambiguous with respect to the phrase “maximum safe dose,” and as argumentative and assuming facts not in evidence to the extent that the Interrogatory assumes that kratom products may be lethal or otherwise unsafe. Defendant further objects that this Interrogatory prematurely seeks expert opinion. Defendant will provide expert opinions in accordance with the scheduling order governing this matter.

6. Please state the maximum safe dose for OPMS Silver Green Vein Maeng Da powder.

**ANSWER:** Defendant objects to this Interrogatory as vague and ambiguous with respect to the phrase “maximum safe dose,” and as argumentative and assuming facts not in evidence to the extent that the Interrogatory assumes that kratom products may be lethal or otherwise unsafe. Defendant further objects that this Interrogatory prematurely seeks expert opinion. Defendant will provide expert opinions in accordance with the scheduling order governing this matter.

7. Please state the instructions for use of OPMS Silver Green Vein Maeng Da capsules.

**ANSWER:** Defendant objects to this Interrogatory as vague and ambiguous with respect to the phrase “instructions for use of OPMS Silver Green Vein Maeng Da capsules.” Subject to these objections, Defendant states that the directions contained on the packaging for OPMS Silver Green Vein Maeng Da capsules provide: “Consult your healthcare professional to determine if this product is right for you & how to use it safely. 1 capsule per use. Read leaflet and visit [www.OPMSkratom.com](http://www.OPMSkratom.com) for full directions.” The referenced website provides for OPMS Silver products: “**Directions:** DO NOT USE IF SEAL IS BROKEN. Do not use before reading the package folds and visiting [www.opmskratom.com](http://www.opmskratom.com) and reading the full directions, disclaimers, terms, and warnings. By using this product or by opening the seal of its packaging, you agree to the terms, found at [www.opmskratom.com](http://www.opmskratom.com). Consult with a licensed healthcare provider before

Martian Sales is not involved in any manufacturing of OPMS Silver kratom products. Such manufacturing processes include extensive quality control measures. Moreover, the manufacturing process has changed over time. As such, the phrase “manufacturing process” in this Request is not specific enough for Defendant to reasonably respond and is more properly answered by the manufacturers.

10. Please describe the design process for OPMS Silver Green Vein Maeng Da capsules.

**ANSWER:** Defendant objects to this Interrogatory as vague and ambiguous with respect to the phrase “design process.” Subject to these objections, Defendant refers Plaintiff to the design specification sheet for O.P.M.S. kratom products that it is producing concurrently with these discovery responses. The design specifications for O.P.M.S. kratom products have never changed from those shown on the specification sheet.

**SUPPLEMENTAL RESPONSE:** Defendant objects to this Interrogatory as vague and ambiguous with respect to the phrase “design process” as OPMS Silver Green Vein Maeng Da capsules go through a variety of different processes prior to them being listed for sale. Such processes include ingredient sourcing, quantities, formulation, specifications, and design approvals, and involve numerous different entities at every stage. Defendant refers Plaintiff to the specification sheets for O.P.M.S. Kratom products that it produced on December 24, 2025.

11. Please describe the manufacturing process for OPMS Silver Green Vein Maeng Da powder.

**ANSWER:** Defendant objects to this Interrogatory as vague and ambiguous with respect to the phrase “manufacturing process.” Defendant further objects on the grounds that this Interrogatory is unduly burdensome because Defendant does not manufacture any kratom

**SUPPLEMENTAL ANSWER:** Defendant has produced all responsive, non-privileged documents in its possession, custody, or control. Those documents speak for themselves.

20. Do You contend that the OPMS Kratom that Harmony Moller consumed was inauthentic, changed, altered, or modified in any way after it was manufactured (i.e., in any way that is relevant to the incident and alleged defect at issue)? If so, please describe with specificity all contentions in this regard, and identify the entity or person(s) who You contend made the changes.

**ANSWER:** Defendant lacks the knowledge to respond to this Interrogatory at this point in the litigation. Defendant reserves the right to supplement its response to this Interrogatory as the litigation progresses.

21. Please state the identity of each person who aided in answering these interrogatories and which number interrogatories such individuals assisted in answering.

**ANSWER:** Mark Reilly, President of Martian Sales, c/o Gwendolyn Payton, 1420 Fifth Avenue, Suite 3700 Seattle, WA 98101. Counsel assisted Mr. Reilly.

DATED: December 30, 2025

Respectfully submitted,

By /s/ Gwendolyn C. Payton

**Hayley R. Ambler**

Louisiana Bar No. 25848

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