

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.	*	
*****	*	

**PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT THAT OPMS
KRATOM PRODUCTS ARE UNREASONABLY DANGEROUS, OR IN THE
ALTERNATIVE, FOR A DECLARATION AND AN ORDER FINDING ESTABLISHED
FACTS**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, Kathleen Moller, who respectfully moves this Honorable Court for partial summary judgment pursuant to Federal Rule of Civil Procedure 56 that OPMS kratom products and specifically OPMS Silver Green Vein Maeng Da Kratom, are unreasonably dangerous under the Louisiana Products Liability Act, La.

R.S. § 9:2800.51 *et seq.*, for the reasons more fully explained in the Memorandum in Support attached hereto.

In the alternative, Ms. Moller moves the Court to enter a partial summary judgment declaring that OPMS kratom products including, the OPMS Silver Green Vein Maeng Da kratom at issue in this case, are adulterated and misbranded under §§ 350b(a), 342(f)(1)(B), 343(e), 343(y) and 352(f)(1) of the Food, Drug and Cosmetics Act, and an order pursuant to Rule 56(g) finding that there is no genuine dispute of the following material facts, which will be treated as established in the case:

1. OPMS kratom products, and specifically OPMS Silver Green Vein Maeng Da powder and capsules, contain kratom or *Mitragyna Speciosa*.
2. OPMS kratom products are sold for the purpose of human consumption.
3. Kratom is a botanical that qualifies as a dietary ingredient under the Federal Food, Drug, and Cosmetic Act (the Act) section 21 U.S.C. § 321(ff)(1).
4. When marketed as a dietary ingredient, the U.S. Food & Drug Administration (FDA) considers kratom to be a new dietary ingredient (NDI) under the Food, Drug & Cosmetic Act § 21 U.S.C. 350b(d).
5. The FDA has not determined that kratom is reasonably expected to be safe, which would require adequate information for a reasonable assurance that and NDI does not present a significant or unreasonable risk of illness or injury.
6. The FDA has instead issued an import alert since August 18, 2015, stating that the importation of kratom, an NDI, for human consumption, was not permitted and such

kratom products should be detained. The import alert was renewed as recently as February 21, 2025.¹

7. Products containing kratom and kratom-containing dietary supplements, including OPMS kratom products, are deemed “adulterated” under the Food, Drug & Cosmetic Act, § 342(f) (1)(B) because they contain a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury.
8. It is a violation of Federal law to distribute an adulterated NDI, including dietary supplements containing kratom or *Mitragyna Speciosa* such as OPMS kratom, for human consumption in the United States.
9. The warnings on Defendants’ packaging do not acknowledge that OPMS Silver kratom is an adulterated product.
10. Defendants know that OPMS Silver kratom is and adulterated product pursuant to the FDCA.
11. The warnings on Defendants’ packaging do not acknowledge that OPMS Silver kratom carries a risk of death or serious injury.
12. Defendants know that OPMS Silver kratom, and kratom more generally, carries a risk of death or serious injury.
13. Defendants know or reasonably anticipated that customers will ingest their product.
14. OPMS kratom products are not prominently labeled with information as to their adulterated nature or the risk of severe dangers, including death, that ingestion may cause.

¹ See Import Alert 54-15, available at: https://www.accessdata.fda.gov/cms_ia/importalert_1137.html (last accessed February 24, 2026).

15. There is no instruction on Defendants' packaging for determining what amount is safe to use, for recognizing or for mitigating the risk of adverse reaction or overdose, for actions to take during an adverse event, or for proper reporting of an adverse event to the parties responsible for OPMS Silver kratom.
16. There is no indication on Defendants' packaging that too great a dose of kratom may cause an overdose.
17. OPMS kratom products, are deemed "misbranded" under the Food, Drug & Cosmetic Act, § 343(e) & 343(y).
18. Defendants make the false claim that an entity identified as "Choice Organics" is responsible for the OPMS Silver kratom product.
19. Choice Orgnaics is a non-existent entity. Pursuant to 21 USC 343(e) and 21 CFR § 101.5(d), a product label shall include the name and place of business, including the city, state, and zip code for the party responsible for OPMS Silver kratom.
20. Defendants fail to specify a complete domestic address of domestic phone number through which the responsible person for OPMS kratom may receive a report of a serious adverse event. See 21 USC § 343(y).

WHEREFORE, Plaintiff, Kathleen Moller, prays that this requested relief be granted and that her Motion for Partial Summary Judgment be granted, or in the alternative that the Court enter a judgment declaring OPMS kratom products "adulterated" and "misbranded" under the FDCA, and adopt an order finding the facts listed above are established in this case.

Respectfully submitted,

/s/ Michael Cowgill

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