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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR COWLITZ COUNTY

7 RACHEL McKIBBAN, individually and as
8 Personal Representative of the Estate of
9 JORDAN McKIBBAN, deceased;

10 Plaintiffs,

vs.

11 JOPEN, LLC, Texas limited liability company;
12 JOHNSON FOODS, LLC, a Wyoming limited
13 liability company; LP IND., LLC, a Wyoming
14 limited liability company; CAG HOLDINGS,
15 LLC, a Wyoming limited liability company;
16 RMH HOLDINGS, INC., a Wyoming
17 corporation; OLISTICA, an unincorporated
18 association; MIT THERAPY INC., an Idaho
19 corporation; DURITY DISTRIBUTION, INC.,
20 an Idaho corporation; HUSH WORLDWIDE
21 LLC, a Wyoming limited liability company;
22 DRIP DROP DISTRO LLC, an Idaho limited
23 liability company; BEDROCK MFG LLC, a
24 Wyoming limited liability company; CLOUD
25 HOUSE VAPORZ, INC., a Washington
corporation; AMERICAN KRATOM
ASSOCIATION, a Virginia non-profit
corporation, and JOHN & JANE DOES 1
THROUGH 10.

Defendants.

NO. 23 2 01183 08

**AMENDED COMPLAINT FOR
WRONGFUL DEATH**

1 COMES NOW the above-named plaintiff, by and through her attorneys of record, Talis
2 Abolins and Michael Cowgill of **mctlaw**; and alleges the following in support of her claims:

3 **II. PARTIES**

4 1. ESTATE OF JORDAN McKIBBAN (“Jordan”). The Estate of Jordan McKibban
5 has been opened in a probate action by the Cowlitz County Superior Court. Jordan McKibban
6 was a single man who, until the time of his death, resided in Cowlitz County, Washington.
7 Before his death he was a single, hardworking man in industrial shipping and receiving, and
8 loving son to his parents and brother to his siblings.

9 2. RACHEL McKIBBAN is Jordan’s sister and the duly appointed Personal
10 Representative of his Estate. She was and is a resident of Kalama, Cowlitz County, State of
11 Washington. She brings claims on behalf of the Estate and its beneficiaries, including herself;
12 Pam Mauldin, Jordan’s mother; Dennis McKibban, Jordan’s brother; and Dennis McKibban,
13 Jordan’s father.

14 3. Defendant JOPEN, LLC (doing business as A1 Wholesale; Party Nuts; Party Nuts
15 Distributions; Uziel; Innovo Activas; and Evolutionary Organics) (“JOPEN”) was and is a
16 Texas-based Limited Liability Company, that also conducts business in Colorado and Georgia.
17 On information and belief, Plaintiff alleges that affiliates, members, and managers for
18 JOPEN’s “WHOLE HERBS” branded kratom activities include Aether, LLC; Aghosh Corp.;
19 Eyal Gabbey; Peyton Palaio; Mark Jennings; Mark Reilly; and Jacob Fletcher. On further
20 information and belief, Plaintiff alleges that JOPEN conducts its kratom activities as a part of
21 the larger Olistica kratom enterprise, which operates through a secretive web of affiliates,
22 individuals, shell companies, alter egos, business names, assumed names, and/or trade names,
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1 including but not limited to: LP; CAG; RMH HOLDINGS, INC.; Lunar Labs LLC; Martian
2 Sales, Inc.; Shaman Supplies, LLC; Kono Labs; Beeman Inc.; Uziel LLC; 1199 Industrial
3 LLC; 1100 Alpha LLC; Engaged Investments LLC; Eyal Gabbey; Petyon Shea Palaio; Mark
4 Jennings; Mark Reilly; and Jacob Fletcher.

5 4. Defendant JOHNSON FOODS, LLC (doing business as Olistica Life Sciences
6 Group; Olistica Group; Olistica; OPMS; Companion Agriculture; Companion AG; Jordan
7 Process; Cascade Naturals; Della Terra Pharmaceuticals; Cannopy Corp.; and Canopy Corp.)
8 (“JOHNSON FOODS”), was and is a Wyoming Limited Liability Company. On information
9 and belief, JOHNSON FOODS conducts its kratom activities as a part of the larger Olistica-
10 OPMS kratom enterprise, which operates through a secretive web of affiliates, individuals,
11 shell companies, alter egos, business names, assumed names, and/or trade names, including
12 but not limited to: CAG; JOPEN; RMH HOLDINGS, INC.; LP; Lunar Labs LLC; Martian
13 Sales, Inc.; Shaman Supplies, LLC; Kono Labs; Eyal Gabbey; Peyton Shea Palaio; Mark
14 Jennings; Mark Reilly; and Jacob Fletcher.

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16 5. Defendant LP IND., LLC (doing business as Olistica Life Sciences Group;
17 Olistica Group; Olistica; OPMS; Companion Agriculture; Companion AG; Jordan Process;
18 Cascade Naturals; Della Terra Pharmaceuticals; Cannopy Corp.; and Canopy Corp.) (“LP”),
19 was and is a Wyoming Limited Liability Company with kratom operations in Colorado and
20 Georgia. On information and belief, LP conducts its kratom activities as a part of the larger
21 Olistica-OPMS kratom enterprise, which operates through a secretive web of affiliates,
22 individuals, shell companies, alter egos, business names, assumed names, and/or trade names,
23 including but not limited to: CAG; JOPEN; RMH HOLDINGS, INC.; Lunar Labs LLC;
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1 Martian Sales, Inc.; Shaman Supplies, LLC; Kono Labs; Eyal Gabbey; Peyton Shea Palaio;
2 Mark Jennings; Mark Reilly; and Jacob Fletcher.

3 6. Defendant CAG Holdings, LLC (doing business as CAG Holdings CO, LLC;
4 Olistica Life Sciences Group; Olistica Group; Olistica; OPMS; Companion Agriculture;
5 Companion AG; Jordan Process; Cascade Naturals; Della Terra Pharmaceuticals; and Canopy
6 Corp. (“CAG”), was and is a Wyoming Limited Liability Company, that is both registered and
7 conducting kratom business operations in Colorado. On information and belief, CAG conducts
8 its kratom activities as a part of the larger Olistica-OPMS kratom enterprise, which operates
9 through a secretive web of affiliates, individuals, shell companies, alter egos, business names,
10 assumed names, and/or trade names, including but not limited to: LP; JOPEN; RMH
11 HOLDINGS, INC.; Lunar Labs LLC; Martian Sales, Inc.; Shaman Supplies, LLC; Kono Labs;
12 Eyal Gabbey; Petyon Shea Palaio; Mark Jennings; Mark Reilly; and Jacob Fletcher.

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14 7. Defendant RMH Holdings, LLC (doing business as Olistica Life Sciences Group;
15 Olistica Group; Olistica; OPMS; Companion Agriculture; Companion AG; Jordan Process;
16 Cascade Naturals; Della Terra Pharmaceuticals; and Canopy Corp. (“RMH”), was and is a
17 Wyoming Limited Liability Company, that is both registered and conducting kratom business
18 operations in Colorado. On information and belief, CAG conducts its kratom activities as a
19 part of the larger Olistica-OPMS kratom enterprise, which operates through a secretive web of
20 affiliates, individuals, shell companies, alter egos, business names, assumed names, and/or
21 trade names, including but not limited to: LP; JOPEN; CAG HOLDINGS, INC.; Lunar Labs
22 LLC; Martian Sales, Inc.; Shaman Supplies, LLC; Kono Labs; Eyal Gabbey; Petyon Shea
23 Palaio; Mark Jennings; Mark Reilly; and Jacob Fletcher.

1 8. Defendant the OLISTICA LIFE SCIENCES GROUP (also doing business as
2 Centralized Services; Olistica; Olistica Group; Interactive Earth Sciences Corp.; Liv Group
3 Inc.; Cascade Naturals; Johnson Foods, LLC; Della Terra Pharmaceuticals (“Della Terra”); NP
4 Pharma Holdings, LLC; OPMS; Choice Organics; LP IND., LLC; Jordan Process (“Jordan”);
5 Precision Biologics; CAG HOLDINGS, LLC; RMH HOLDINGS, INC.; Cannopy
6 Corporation; JOPEN; A1 Wholesale; Party Nuts; Party Nuts Distributions; Innovo Activas;
7 and Evolutionary Organics) (“OLISTICA”) is an unincorporated association of kratom
8 business interests that operates through a secretive web of affiliates, individuals, shell
9 companies, alter egos, business names, assumed names, and/or trade names, including but not
10 limited to: LP; CAG; RMH HOLDINGS, INC.; Lunar Labs LLC; Martian Sales, Inc.; Shaman
11 Supplies, LLC; Kono Labs; Highway 160 Way LLC; PFI LLC; Nuza LLC; Nuza; Nuza
12 Logistics; Calibre Manufacturing LLC; Advanced Nutrition; 1099 Industrial LLC; 1100 Alpha
13 LLC; Hush Worldwide LLC; Eyal Gabbey; Petyon Shea Palaio; Mark Jennings; Mark Reilly;
14 Dina Hemminger; and Jacob Fletcher.

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16 9. Defendant MIT THERAPY INC. (“MIT THERAPY”) was and is an Idaho-based
17 Corporation with its principal place of business in Boise, Idaho. MIT THERAPY is a
18 wholesaler and seller of kratom products that are manufactured in Southeast Asia by persons
19 beyond the jurisdiction of the court. On information and belief, Plaintiff alleges that affiliates,
20 members, and managers responsible for MIT THERAPY kratom activities include DURITY;
21 PurKratom; Ultra Products LTD; Evan Drake Fischer; and Rachael Bahrenfuss.

22 10. Defendant DURITY DISTRIBUTION INC. (doing business as Durity; Durity
23 Vape; Durity Smoke & Vape; Durity Vape and Smoke; and/or Durity Vape & Smoke (2); and
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1 formerly known as Durity Distribution LLC) (“DURITY”) was and is an Idaho-based Limited
2 Liability Company with its principal place of business in Boise, Idaho. DURITY is the
3 purported distributor of MIT THERAPY kratom products. On information and belief, Plaintiff
4 alleges that affiliates, members, and managers, responsible for DURITY kratom activities
5 include MIT Therapy; Rachael Bahrenfuss; Mason R. Kluge; and Evan Drake Fischer (aka
6 Drake Fischer).

7 11. Defendant HUSH WORLDWIDE LLC (doing business as Hush, and Hush
8 Kratom) (“HUSH”) was and is a Wyoming Limited Liability Company, with a foreign
9 registration in Idaho, with its principal place of business in Boise, Idaho. HUSH is a kra On
10 information and belief, Plaintiff alleges that affiliates, members and managers responsible for
11 HUSH kratom activities include: Alluvion, LLC; DRIP DROP DISTRO; BEDROCK; Douglas
12 T. Campbell, Jr.; Troy Palmer; Matthew “Motu” Nu’uvali; Michael Larson; and Mark
13 Ciccarello.

14 12. Defendant DRIP DROP DISTRO LLC (formerly known as Merica Distribution
15 LLC) (“DRIP DROP DISTRO”) was and is an Idaho Limited Liability Company, with its
16 principal place of business in Boise, Idaho. On information and belief, Plaintiff alleges that
17 affiliates, members and managers responsible for DRIP DROP DISTRO kratom activities
18 include: HUSH; BEDROCK; HFO, LLC; Douglas T. Campbell, Jr.; Troy Palmer; and
19 Matthew “Motu” Nu’uvali.

20 13. Defendant BEDROCK MFG LLC (doing business as Bedrock Manufacturing;
21 and BDRK MFG) (“BEDROCK”) was and is a Wyoming Limited Liability Company, with a
22 foreign registration in Idaho, and its principal place of business in Boise, Idaho. On
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1 information and belief, Plaintiff alleges that affiliates, members and managers responsible for
2 BEDROCK's kratom activities include: HUSH; DRIP DROP DISTRO; Vanguard Enterprises,
3 LLC; Troy Palmer; Josh Palmer; and Douglas T. Campbell.

4 14. Defendant CLOUD HOUSE VAPORZ, INC. (doing business as Cloud House,
5 Cloud Vaporz, and Natures Kratom) ("CLOUD HOUSE"), was and is a Washington based
6 corporation with its principal place of business in Woodland, Cowlitz County, Washington.
7 The member and manager responsible for CLOUD HOUSE kratom activities is CHANNING
8 PLOURD.

9 15. Defendant AMERICAN KRATOM ASSOCIATION ("AKA") is a Virginia non-
10 profit corporation with its principal place of business located at 13575 Heathcote Blvd. Ste,
11 320 Gainesville, VA 20155.

12 16. Defendants JOHN AND JANE DOES 1 THROUGH 10 are individuals and/or
13 entities whose names and addresses are unknown, but who have directly and personally
14 participated (separately or as alter egos, agents, joint venturers and/or predecessors) in the
15 wrongful import, manufacture, distribution and/or sale of the kratom product, described more
16 fully below.

17 **III. JURISDICTION AND VENUE**

18 17. This Court has original subject matter jurisdiction pursuant to the Constitution of
19 the State of Washington, Article 4, Section 6. Jurisdiction is proper in the Superior Court of
20 the State of Washington because the Plaintiff and Defendant CLOUD HOUSE VAPORZ, INC.
21 are Washington residents, and Defendant CLOUD HOUSE VAPORZ, INC. sold kratom to
22 Jordan McKibban in Washington, contributing to his injuries and death in Washington.
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1 18. This Court has personal jurisdiction over the non-resident Defendants pursuant to
2 the 14th Amendment of the United States Constitution and Washington’s long arm statute,
3 RCW 4.28.185. Each defendant has aggressively marketed, distributed, sold, and/or otherwise
4 promoted kratom products into Washington, for consumption by Washington consumers, such
5 that they have minimum contacts with the state. These defendants’ interstate kratom activities
6 involve the transaction of business and the commission of tortious acts within Washington.
7 These defendants are subject to the jurisdiction of the Washington courts as a matter of fair
8 play and substantial justice to Washington consumers who are and continue to be exposed to
9 their injurious and wrongful activities.

10 19. Venue is proper in the Cowlitz County Superior Court pursuant to RCW 4.12.020
11 and RCW 4.12.025 in that the Plaintiff’s injuries and cause of action arose in Cowlitz County;
12 in addition, Cowlitz County is where Defendant CLOUD HOUSE VAPORZ, INC. and
13 CHANNING PLOURD resides, transacts business, and committed torts upon which these
14 claims are based.

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16 **IV. INTRODUCTION**

17 20. Plaintiffs re-allege and incorporate by reference the paragraphs above as if fully
18 stated herein.

19 21. Kratom is a complex and powerful substance that is toxic to multiple organ systems.

20 22. Across the nation, a growing number of death certificates have formally established
21 deaths caused or contributed to by the “Toxic Effects of Mitragynine (Kratom)”.

22 23. Cowlitz County is already familiar with the tragic toll of Kratom.

23 24. On July 18, 2023, a Cowlitz County jury issued a verdict of \$2,500,000. The jury
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1 held the Kratom seller responsible under the Washington Product Liability Act (WPLA) and
2 Consumer Protection Act (CPA). (Cowlitz County Cause No. 20-2-00874-08).

3 25. Now, another Cowlitz County family must seek justice for a tragic death caused by
4 the “Toxic Effects of Mitragynine (Kratom)”.

5 26. The Plaintiffs respectfully ask this Court to hold these Defendants accountable for
6 the painful losses they have caused, and to issue a preliminary and permanent injunction barring
7 these Defendants from the distribution and sale of Kratom in Washington.

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9 **V. STATEMENT OF FACTS**

10 27. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
11 fully stated herein.

12 28. Kratom is the name given to botanical products derived from the leaves of
13 the *Mitragyna Speciosa* tree, which grows in Southeast Asia.

14 29. While the nature and extent of Kratom's impact upon human physiology
15 remains largely unknown, medical and scientific research confirms that the powdered
16 Kratom sold in the United States is far more dangerous than other natural products that are
17 sold over the counter.

18 30. Kratom contains dozens of psychoactive compounds or alkaloids, many of
19 which are not understood. The two most-studied alkaloids are mitragynine and 7-
20 hydroxymitragynine. These two alkaloids bind to the same opioid brain receptors as
21 morphine. Like opiates, these compounds can lead to analgesia (release of pain), euphoria,
22 and sedation.

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24 31. Kratom was not marketed as a dietary ingredient in the United States before
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1 October 15, 1994, and is therefore a “new dietary ingredient” under industry standards.

2 32. As a new dietary ingredient, Kratom must not be marketed or sold for human
3 consumption without premarket verification that it is safe for that purpose.

4 33. None of the Defendants have ever satisfied the basic industry standard for
5 establishing that Kratom is safe for human consumption before marketing it.

6 34. The most recent attempt by the kratom industry to legitimize its illegal
7 kratom products occurred on October 21, 2022. On that date, JOHNSON FOODS submitted
8 its “New Dietary Ingredient Notification for NPI-001, a Dried Leaf Powder”.

9 35. When this Notification was submitted, JOHNSON FOODS (and the affiliated
10 WHOLE HERBS DEFENDANTS) knew that no such Notification had previously satisfied the
11 premarket safety standards required to lawfully distribute and sell kratom in the United
12 States.

13 36. Like premarket notifications before it, the JOHNSON FOODS New Dietary
14 Ingredient Notification for the kratom powder was inadequate, incomplete, and
15 incompetent to satisfy the important standards of premarket safety necessary for the safe
16 marketing, distribution and sale of over-the-counter kratom.

17 37. The JOHNSON FOODS’ New Dietary Ingredient Notification was insufficient
18 under the industry standards for the safe marketing, distribution or sale of botanical
19 ingredients and supplements.

20 38. A growing body of independent scientific and medical research and literature
21 confirms that no form of psychoactive kratom will ever satisfy the basic standard of
22 premarket safety when it comes to over-the-counter sale of kratom for human
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1 consumption.

2 39. Rather than safe, Kratom is known to cause a wide range of adverse events,
3 including: nervousness, agitation, aggression, sleeplessness, hallucinations, delusions,
4 tremors, loss of libido, constipation, skin hyperpigmentation, nausea, vomiting, addiction,
5 severe withdrawal, heart arrhythmias, respiratory depression, seizures, drug-drug
6 interactions, overdose, and death.¹

7 40. According to recent research, Kratom is 63 times more deadly than other
8 natural products that are sold to American consumers.²

9 41. Thus, it is not scientifically possible for Kratom sellers to verify that their
10 products are safe for human consumption when sold over the counter like coffee, tea, or
11 other natural products.

12 42. Unable to verify kratom's safety, the Kratom industry has instead been built
13 upon clandestine and fraudulent business activities, including the unlawful importation of
14 Kratom as "plant food", "incense", "cosmetic" powders, and other legal items.³

15 43. For years, Federal agencies (and courts) have attempted to protect the public
16 by seizing Kratom and taking other civil and criminal actions against Kratom importers,
17 distributors, and those who illegally sell Kratom as an unapproved replacement for
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20 ¹ See, e.g., Xiaotong Li, et al., *An evaluation of adverse drug reactions and outcomes attributed to kratom in the*
21 *US Food and Drug Administration Adverse Event Reporting System from January 2004 through September 2021*
22 *(Clinical and Translational Science, 00:1-10; 2023); Mori J. Krantz, et al, *Ventricular Arrhythmias Associated With**
Over-the-Counter and Recreational Opioids (Journal of American College of Cardiology, Vol. 81, No. 23, 2023);
23 Donna Papsun, *Forensic Implications of Kratom: Kratom Toxicity, Correlation with Mitragynine Concentrations,*
and Polypharmacy (Current Addiction Reports; published online May 19, 2023)

24 ² Xiaotong Li, et al., *An evaluation of adverse drug reactions and outcomes attributed to kratom in the US Food*
and Drug Administration Adverse Event Reporting System from January 2004 through September 2021 (Clinical
25 and Translational Science, 00:1-10; 2023);

³ See FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html) (last accessed
October 23, 2023).

1 significant medical conditions such as chronic pain, anxiety, addiction, or withdrawal.⁴

2 44. In addition to enforcement actions at the national level, an increasing
3 number of states and cities have passed laws making Kratom illegal at the local level.

4 45. Despite these efforts, the industry is successfully smuggling billions of dollars
5 worth of Kratom across the border. Once it gets past customs and border officials, the
6 Kratom is quickly channeled into chains of distribution managed by individuals and entities
7 generating huge profits from millions of consumers. Despite the serious risks of kratom
8 use, profit-seeking companies continue to market kratom products with unproven and
9 deceptive claims about its safety and ability to cure, treat or prevent medical conditions
10 and diseases. The FDA's examples of illegal claims include statements such as: "many
11 people use kratom to overcome opiate addiction," and kratom is frequently used "as a
12 natural alternative" to treat various health conditions, replacing opiate prescriptions.⁵

14 46. Because kratom is adulterated, many of the leading kratom businesses
15 conceal their identities and activities behind mysterious and evolving shell companies, and
16 misleading labels.

17 47. Each Defendant in this case has profited from unfair and deceptive business
18 practices by promoting, distributing and/or selling dangerous Kratom products to
19 Washington residents.
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22 ⁴ See Seizures and Injunctions – Health Fraud (<https://www.fda.gov/consumers/health-fraud-scams/seizures-and-injunctions-health-fraud>) (last accessed October 23, 2023); FDA Statement, 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 October 23, 2023);

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24 ⁵ 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 October 23, 2023).
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1 48. The WHOLE HERBS kratom is imported, packaged, distributed, and sold
2 through the complex web of companies referred to herein as the OLISTICA enterprise.
3 These companies include Defendants OLISTICA, JOPEN, JOHNSON FOODS, LPI, CAG and RHI
4 (the “WHOLE HERBS DEFENDANTS”).

5 49. The OLISTICA enterprise (part of which includes the WHOLE HERBS
6 DEFENDANTS) is one of the largest kratom distributors in the United States, including
7 Washington.

8 50. The OLISTICA brands include but are not limited to: WHOLE HERBS, OPMS,
9 and Remarkable Herbs.

10 51. Despite its prominence in the kratom industry, OLISTICA’s evasive tactics
11 and abuse of corporate forms has been highlighted by recent investigative reports, as well
12 as public filings in multiple lawsuits and claims brought by those harmed by its
13 misconduct.⁶

14 52. One key player in OLISTICA’s corporate operations is Peyton Palaio.

15 53. Mr. Palaio was implicated by criminal investigators as a major manufacturer
16 and distributor of the deadly synthetic known as “Spice”; Palaio was also named as a
17 defendant in a wrongful death lawsuit brought by the parents of a high schooler who
18 drowned after taking Spice.⁷

19 54. Through its various alter egos and agents, OLISTICA has supported the
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22 ⁶ See, e.g., Hannah Critchfield, *A major US kratom brand relies on a maze of companies. Here’s the list*, TAMPA
23 BAY TIMES (Dec. 19, 2023) ([https://www.tampabay.com/investigations/2023/12/19/major-us-kratom-brand-relies-
24 maze-companies-heres-list/](https://www.tampabay.com/investigations/2023/12/19/major-us-kratom-brand-relies-maze-companies-heres-list/)); Hannah Critchfield, Helen Freund and Langston Taylor, *DEADLY DOSE PART 3:
Kratom’s path across the US is marked by deception and secrets*, TAMPA BAY TIMES (December 17, 2023
(<https://project.tampabay.com/investigations/deadly-dose/kratom-industry-opms-supply-chain-indonesia-florida/>)).

25 ⁷ Critchfield, *DEADLY DOSE PART 3*, *supra* note 6.

1 import, distribution, and sale of three of the most popular kratom brand names on the
2 market: OPMS, Remarkable Herbs, and the WHOLE HERBS product at issue in this case.

3 55. The WHOLE HERBS DEFENDANTS rely on an evolving web of
4 undercapitalized shell entities and fictitious business names in order to avoid
5 responsibility for deaths and harms caused by kratom.

6 56. The WHOLE HERBS DEFENDANTS have not procured liability insurance to
7 cover the risk of wrongful death or other injury caused by their dangerous kratom
8 operations.

9 57. A key individual behind the WHOLE HERBS product is Eyal Gabbay. In 2010,
10 Mr. Gabbay was publicly confronted regarding his sale of dangerous synthetic marijuana
11 products.⁸ Before they were banned, such products were sold as “K2”, “Hush” or “Swerve”.
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13 58. In recent years, Eyal Gabbay has played a prominent role with Mr. Palαιο,
14 Mark Reilly, and others in the promotion, distribution, and sale of kratom through the
15 WHOLE HERBS DEFENDANTS.

16 59. HUSH liquid shots are another leading brand of kratom product, generating
17 millions in sales nationwide from their location in Idaho, proclaimed as the kratom capitol
18 of the Pacific Northwest. HUSH is packaged, distributed and sold by Defendants HUSH,
19 DRIP DROP DISTRO, and BEDROCK (the “HUSH DEFENDANTS”).
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21 60. On information and belief, the WHOLE HERB DEFENDANTS have an
22 ownership interest in HUSH DEFENDANTS, and receive profits from the sale of the HUSH
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24 ⁸ James Ragland, *Puff n Stuff Smoke Shop Tells Me To Stuff It*, THE DALLAS MORNING NEWS (August 4, 2010)
25 (<https://www.dallasnews.com/news/2010/08/04/james-ragland-puff-n-stuff-smoke-shop-tells-me-to-stuff-it/>).

1 products in Washington to Washington consumers.

2 61. Like the WHOLE HERBS DEFENDANTS, the HUSH DEFENDANTS are backed
3 by individuals who appear to have experience dealing with deadly synthetic products.

4 62. The owners of DRIP DROP DISTRO, proudly tout their criminal backgrounds:
5 “Yes, our owners are felons by definition of the law Not scared to work, run, and play
6 with the castaways, pariahs, & those left behind.”⁹ This is not mere puffery.

7 63. Troy Palmer (a CEO and Principal of BEDROCK) and Mark Ciccarello (a
8 Governor of HUSH) were previously indicted and convicted on federal charges arising from
9 the manufacture of synthetic “Spice”, and laundering money from nationwide Spice sales.¹⁰

10 64. Douglas Campbell (a member of BEDROCK, and President and Manager of
11 DRIP DROP DISTRO), is believed to have plead guilty to federal charges in Idaho involving
12 his possession of a firearm and ammunition as a prohibited person.¹¹

13 65. The HUSH DEFENDANTS rely on undercapitalized shell entities and fictitious
14 business names in order to avoid responsibility for deaths and harms caused by kratom.

15 66. The HUSH DEFENDANTS have not procured liability insurance to cover the
16 risk of wrongful death or other injury caused by their dangerous kratom operations.

17 67. Idaho is the home base for MIT THERAPY and DURITY (the “MIT THERAPY
18 DEFENDANTS”).
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22 ⁹ *Drip Drop Distro - Behind the Scenes*, HEADQUEST MAGAZINE (February 1, 2023)

(<https://www.headquest.com/drip-drop-distro/>).

23 ¹⁰ *PRESS RELEASE: Boise Man Pleads Guilty To Conspiracy In Treasure Valley “Spice” Case*, US ATTORNEY’S
OFFICE, DISTRICT OF IDAHO (February 10, 2014) ([https://www.justice.gov/usao-id/pr/boise-man-pleads-guilty-
24 conspiracy-treasure-valley-spice-case](https://www.justice.gov/usao-id/pr/boise-man-pleads-guilty-conspiracy-treasure-valley-spice-case)).

25 ¹¹ *PRESS RELEASE: Meridian Man Pleads Guilty To Gun Crime*, US ATTORNEY’S OFFICE, DISTRICT OF
IDAHO (January 28, 2013) (<https://www.justice.gov/usao-id/pr/meridian-man-pleads-guilty-gun-crime>).

1 68. According to MIT THERAPY’s social media account, DURITY DISTRIBUTION
2 is “the O N L Y distributor of **Mit Therapy**” kratom.

3 69. The MIT THERAPY DEFENDANTS arrange for their kratom to be tested by
4 Sante Laboratories, in Austin, Texas. The Certificates of Analysis for MIT THERAPY kratom
5 identify the “Customer” as DURITY DISTRIBUTION, in Boise Idaho.

6 70. These MIT THERAPY DEFENDANTS are able to manufacture over 1,500,000
7 gelatin capsules of kratom each day, using a state-of-the-art facility with the ability to
8 generate “powder enhanced extract”.

9 71. In addition to their own branded products, the MIT THERAPY DEFENDANTS
10 offer unbranded bulk kratom products for local retailers to sell directly to consumers,
11 without labels or warnings of any kind.

12 72. The MIT THERAPY DEFENDANTS represent that their “therapeutic” Kratom
13 products were “GMP Certified”, safe for human consumption, and effective for controlling
14 pain and anxiety.

15 73. Through its home page, MIT THERAPY publishes statements from alleged
16 consumers who tout the safe and efficacious use of kratom for medical purposes, including:
17 “Mit Therapy works the very best for controlling pain and the anxiety that accompanies it.”
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19 74. On the “About Us” page of its website, MIT THERAPY includes a disclaimer
20 indicating that MIT THERAPY is owned and operated by the entities and individuals behind
21 PurKratom: “PurKratom.com and its owners or employees cannot be held responsible for
22 ... any information whatsoever herein provided.”
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24 75. On information and belief, the owners and operators of the business known
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1 as PurKratom.com share in the liability of MIT THERAPY.

2 76. The MIT THERAPY DEFENDANTS rely on undercapitalized shell entities and
3 fictitious business names in order to avoid responsibility for deaths and harms caused by
4 kratom.

5 77. The MIT THERAPY DEFENDANTS have not procured liability insurance to
6 cover the risk of wrongful death or other injury caused by their dangerous kratom
7 operations.

8 78. CLOUD HOUSE is a local retail store in Woodland, Washington. CLOUD
9 HOUSE purchases and sells a variety of kratom products to Washington consumers in
10 Cowlitz County.

11 79. Among its line of branded kratom products, CLOUD HOUSE sold the HUSH
12 liquid shots distributed by the HUSH DEFENDANTS.

13 80. In addition to branded kratom, CLOUD HOUSE purchased and sold the MIT
14 THERAPY bulk kratom products in unmarked plastic bags, direct to Washington
15 consumers.

16 81. CLOUD HOUSE, like the other Defendants, represented various medicinal
17 benefits from the consumption of the kratom products sold to Jordan.

18 82. For example, CLOUD HOUSE described red strains of Kratom as “the most
19 popular choice for those who are treating pain” and “having a more sedative effect” and “a
20 stronger euphoric effect”. Green is described as tending “to have more pain-relieving
21 properties than the white, but more energetic than the red”. Maeng Da (typically green) is
22 described as “Higher on both pain relief and energy with an emphasis on mood lift.”
23
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1 83. CLOUD HOUSE described Kratom as from the coffee family, used in herbal
2 medicine, producing “opioid-like effects” with higher doses, as well as reports of increased
3 work capacity, sociability, sexual desire, positive mood, and euphoria. “It’s also been
4 known as a means to bring acute and chronic pain relief.”

5 84. CLOUD HOUSE represents to consumers that kratom is not considered
6 addictive.

7 85. CLOUD HOUSE is an undercapitalized entity. CLOUD HOUSE has not
8 procured liability insurance to cover the risk of wrongful death or other injury caused by
9 their dangerous kratom operations.

10 86. All the kratom defendants described above have benefitted from the work of
11 the American Kratom Association (“AKA”), a trade industry group that has fostered the
12 narrative that kratom is appropriate for over-the-counter sale for human consumption,
13 while disregarding the industry standard of safety first.

14 87. The AKA works with and receives direct funding from a broad range of
15 kratom sellers across the nation, including Defendants in this case.

16 88. The AKA promotes the distribution and sale of its members’ kratom products
17 much like Big Tobacco and Big Pharma. The AKA does so through paid lobbyists, industry-
18 funded researchers who are associated with the tobacco industry, mis-information
19 campaigns promoting kratom as safe and efficacious.

20 89. The AKA also promotes several kratom brands as certified under a so-called
21 Good Manufacturing Practices (“GMP”) Validation program. This GMP program purports to
22 replicate federal industry standards for legitimate products. This GMP program
23
24
25

1 misleadingly certifies that certain kratom “vendors” (and kratom brands disguised as
2 “vendors”) have objectively met or exceeded “high” industry standards in manufacturing
3 and bringing their kratom products to market. The AKA claims that the GMP certification
4 will “further enhance the safety of kratom-containing products”, with labeling that
5 “provides all the information required for consumers to make an informed purchasing
6 decision.”

7 90. The AKA is also able to rally thousands of kratom advocates who value and
8 depend upon easy over-the-counter access to their opiate-like kratom products. Those
9 who question the AKA’s mission are frequently called out and subject to ridicule and
10 disparagement through a variety of channels, including Youtube and social media.

11 91. The AKA’s lead lobbyist is C. McClain “Mac” Haddow. The Tampa Bay Times
12 asked Mr. Haddow about the need to address the risk of death from kratom. Mr. Haddow
13 had this to say about the AKA’s position on those killed by the profitable kratom products:
14 “Can we regulate stupid? I can’t do that – no one can.”¹²

15 92. The AKA works very closely with the principals behind the kratom brands
16 that it certifies, including the WHOLE HERBS DEFENDANTS.

17 93. The AKA promotes the WHOLE HERBS brand at the top of its list of “KRATOM
18 CONSUMER CHAMPIONS” and “PLATINUM VENDORS”.¹³ This honor is shared with other
19 brands associated with the JOPEN-OLISTICA enterprise, including OPMS and Remarkable
20
21

22 ¹² Kirby Wilson and Sam Ogozalek, *DEADLY DOSE PART 2: As dangerous kratom products go unregulated,*
23 *lobbyists write the laws*, TAMPA BAY TIMES (December 13, 2023)
24 (<https://project.tampabay.com/investigations/deadly-dose/american-kratom-association-lobbyists-fda-florida/>).

25 ¹³ <https://www.amerikankratom.org/> (last accessed January 12, 2024).

1 Herbs.

2 94. The following kratom brands associated with the OLISTICA enterprise are
3 prominently promoted at the top of AKA's list of "AKA GMP Qualified" Vendors: WHOLE
4 HERBS, OPMS, and Remarkable Herbs.¹⁴

5 95. The AKA is familiar with and actively works to support the evasive and
6 clandestine practices of the individuals and entities behind WHOLE HERBS.

7 96. On information and belief, the WHOLE HERBS DEFENDANTS are founding
8 members of the AKA and created the AKA as a kratom marketing arm while concealing the
9 identities of those who are actually responsible for its business operations, owners, and
10 managers.

11 97. The AKA holds its certified brands out to the public as, reputable,
12 merchantable, unadulterated, and legitimate for over-the-counter consumption.

13 98. While doing so, the AKA conceals the identities of owners and operators
14 behind several brands, including the WHOLE HERBS brand. The AKA is obedient to and
15 complicit with the efforts of the WHOLE HERBS DEFENDANTS to avoid accountability to
16 the law, and accountability for those Washington consumers who are harmed or killed by
17 their kratom products.

18 99. The WHOLE HERBS DEFENDANTS provide substantial funding and other
19 support to the AKA. The WHOLE HERBS DEFENDANTS work closely with the AKA to
20 protect their over-the-counter kratom distribution activities.

21 100. On information and belief, the WHOLE HERBS DEFENDANTS are involved in
22

23
24 ¹⁴ <https://www.amerikan kratom.org/gmp-qualified-vendors> (last accessed January 12, 2024).

1 the packaging and distribution of all three of these sister brands, under the umbrella of the
2 OLISTICA enterprise.

3 101. While hiding behind their corporate charades, the WHOLE HERBS
4 DEFENDANTS use the AKA as a marketing and advocacy arm to preserve and promote its
5 wrongful distribution of the WHOLE HERBS kratom product lines, while lobbying federal
6 officials for support in their effort to dominate the kratom industry.

7 102. For example, the AKA hosted meetings between the WHOLE HERBS
8 Defendant OLISTICA and Geoffrey Laredo, a former official from the National Institute of
9 Health (“NIH”). OLISTICA paid Mr. Laredo to pursue federal funding from NIH for the
10 development of pure kratom for scientific research.

11 103. The HUSH Defendants also support and work with the AKA, and paid for the
12 AKA’s GMP Validation status for the HUSH Kratom brands.

13 104. With support from the kratom selling Defendants, the AKA has engaged in a
14 targeted effort to legitimize the kratom industry and promote a false sense of safety and
15 merchantability for kratom. The AKA does so by:
16

- 17 a. Engaging in a campaign to smear the FDA’s credibility regarding safety. For
18 instance, the AKA has stated that the FDA is “gaslighting of the public”¹⁵ by
19 asserting that kratom is dangerous. The AKA also blames the FDA for a failure
20 to regulate kratom,¹⁶ yet also claims that the FDA exceeds its authority when
21

22 ¹⁵ See https://assets-global.website-files.com/61858fcfc6543059f0617522/657386faba36bc4fb9241847_AKA%20Response%20to%20Tampa%20Bay%20Times%20Article%20Dec%208%202023.pdf (last accessed December 21, 2023).

23 ¹⁶ https://assets-global.website-files.com/61858fcfc6543059f0617522/64c7b2a60ecf41853aa60a21_AKA%20Release%207.31.pdf (last accessed
24 December 21, 2023).
25

1 taking any action to regulate kratom.¹⁷

2 b. Providing guidance to industry actors, including defendants, regarding
3 marketing and labeling of kratom. For instance, the AKA advised kratom
4 industry actors and to avoid medical claims on packaging, while many
5 defendants continue to promote and/or sell kratom for medical purposes.¹⁸

6 c. Using its authority as the kratom industry trade association to spread a fog
7 of misleading information to persuade consumers that over-the-counter
8 kratom is merchantable, safe, and appropriate for human consumption. AKA
9 guidance and talking points is pervasive on the internet and anyone who
10 searches for information on kratom for the first time is likely to come across
11 the AKA's pro-kratom propaganda.

12 d. Undermining any information revealing kratom's dangerous propensity,
13 including independent research published in peer reviewed medical
14 journals.¹⁹

15 e. Engaging in a nationwide campaign to pass the Kratom Consumer Protection
16 Act ("KCPA") in U.S. States and now at the federal level, purporting to protect
17 a non-existent right to sell over-the-counter kratom as "safe" and
18 "unadulterated" for human consumption, while knowing full well that no
19
20

21
22 ¹⁷ <https://www.americankratom.org/news/press-release-fda-creates-an-unauthorized-pocket-ban-authority> (last
accessed December 21, 2023).

23 ¹⁸ [https://assets-global.website-
files.com/61858fcfc6543059f0617522/6568c229145d4a260a3a4048_AKA%20Kratom%20Guidelines%20Nov%2030%202023%20Final.pdf](https://assets-global.website-files.com/61858fcfc6543059f0617522/6568c229145d4a260a3a4048_AKA%20Kratom%20Guidelines%20Nov%2030%202023%20Final.pdf) (last accessed December 21, 2023).

24 ¹⁹ <https://www.americankratom.org/news/op-ed-kratom-misinformation-in-medical-journals> (last accessed
25 December 21, 2023).

1 kratom product has ever satisfied the required showing of premarket safety
2 necessary to make it unadulterated.²⁰

3 f. Creating a “Good Manufacturing Practice” (“GMP”) program to provide a seal
4 of safety and legitimacy for approved manufacturers including Whole Herbs
5 and Hush.²¹

6 g. Creating a false sense of safety for consumers who are misled to believe that
7 AKA GMP approved kratom is safe, merchantable, and unadulterated.

8 105. The AKA’s promotion of kratom is so pervasive that consumers routinely and
9 regularly come across and rely upon on the AKA’s guidance, misrepresentations, and
10 omissions regarding the regulatory, medical and scientific status of over-the-counter
11 kratom.

12
13 106. Jordan McKibban is one of many Washington residents who was exposed to
14 and relied upon the AKA’s pervasive messaging about over-the-counter kratom.

15 107. Jordan McKibban resided in Kalama, Cowlitz County, WA. He was beloved by
16 his family and friends. He was a loyal and successful employee with United Natural Foods,
17 Inc. (UNFI), where he worked in the shipping and receiving industry.

18 108. At 37-years old, Jordan was healthy, fit, and physically active. He loved
19 spending time outdoors and he was passionate about fishing. He promoted organic and
20 nutritional foods and dietary practices.

21
22 109. Occasionally, Jordan experienced work related pain in his hands and back.

23
24 ²⁰ <https://www.amerikratom.org/news/federalkcpa> (last accessed December 21, 2023); see also
<https://www.amerikratom.org/news/webinar-on-federal-kcpa> (last accessed December 21, 2023).

25 ²¹ <https://www.amerikratom.org/gmp-standards-program> (last accessed December 21, 2023).

1 110. In his search for a natural pain reliever, Jordan McKibban learned about and
2 relied on the pervasive statements, misrepresentations, and omissions concerning kratom
3 that were generated by the AKA and the other Defendants in this case.

4 111. Jordan relied upon the Defendants' express and implied warranties,
5 including the basic warranty that the Kratom products were lawfully imported and
6 distributed, merchantable, and reasonably fit for their intended purposes, including the
7 purpose of human consumption, and for the management of pain and anxiety.

8 112. Jordan learned that Defendant CLOUD HOUSE, in nearby Woodland, was
9 selling Kratom products. Jordan learned that these products were being sold as safe, legal,
10 and all-natural alternatives to pain medications and other prescriptions.

11 113. Jordan purchased and consumed the following Kratom products: (1) the
12 WHOLE HERBS capsules; (2) the HUSH liquid shots; and (3) the CLOUD HOUSE bulk
13 powders distributed by the MIT THERAPY Defendants.

14 114. Jordan's friends and family members observed Jordan's use of these
15 products, as well as associated packaging in his home and vehicle.

16 115. These kratom products all contributed to Jordan's gradually increasing
17 tolerance, dependency, and daily use of the toxic kratom products.

18 116. On April 5, 2022, Jordan McKibban's kratom use came to an end. A short time
19 after Jordan had arrived home from work, his young nephew A.R. heard a loud noise from
20 the bathroom. A.R. went to investigate, but could not open the door. He began calling family
21 members for help to investigate the situation.

22 117. Jordan's mother rushed to the home. She was able to force the door open.
23
24
25

1 She found Jordan collapsed on the floor and unresponsive. She called 911, and worked to
2 revive her son.

3 118. A short time later, emergency responders arrived. They took over efforts to
4 revive Jordan, and rushed Jordan to the hospital with concerns of a possible overdose.

5 119. It was there, at the hospital, where the family learned that Jordan did not
6 make it. He was 37-years-old.

7 120. Back at the home, an open bag of bulk kratom powder from CLOUD HOUSE
8 from the MIT THERAPY DEFENDANTS sat on the kitchen counter, where Jordan had mixed
9 his last drink. In Jordan's car and bedroom, family members found empty bottles of the
10 HUSH liquid shot. Those close to Jordan had previously seen him with the distinctive
11 WHOLE HERBS kratom product.
12

13 121. The Cowlitz County Coroner's office investigated the cause and manner of
14 Jordan McKibban's death. An autopsy was performed by forensic pathologist Dr. Clifford
15 Nelson, and a postmortem expanded forensic toxicology test was requested from NMS
16 Labs.

17 122. On May 26, 2022, NMS Labs issued its Toxicology Report. The Toxicology
18 Report showed a positive finding for Mitragynine (the main Kratom alkaloid), in the
19 amount of 3,000 ng/mL.
20

21 123. A copy of the NMS Labs report was hand delivered to Dr. Nelson, to aid in the
22 completion of the autopsy report and issuance of the death certificate.

23 124. Based on the report, and with the guidance of forensic pathologist Dr. Clifford
24 Nelson, the Cowlitz County Coroner issued its case report and cause of death: JORDAN
25

1 McKIBBAN died from the “Toxic Effects of Mitragynine (Kratom)”.

2 **VI. CAUSES OF ACTION AND DAMAGES**

3 125. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
4 fully stated herein.

5 126. JORDAN MCKIBBAN suffered an untimely death as a direct and proximate
6 result of the products that were imported, manufactured, marketed, distributed and/or
7 sold by each of the Defendants.
8

9 127. The Defendants in this case all failed to warn JORDAN MCKIBBAN that
10 Kratom is: (a) fraudulently imported; (b) wrongfully distributed, marketed and sold for
11 human consumption without the required premarket verification of safety; (c) causing
12 dependence, addiction, and withdrawal in regular users; (d) found to be 63 times more
13 deadly than other natural products; and (e) found to be a contributor or cause of numerous
14 overdoses and deaths.

15 128. Each and every Defendant wrongfully contributed to JORDAN MCKIBBAN’s
16 escalating cycle of Kratom tolerance, dependence and use, which led predictably to the
17 toxic levels that ultimately caused his death.
18

19 129. The ESTATE OF JORDAN MCKIBBAN and its beneficiaries have incurred and
20 will continue to incur enormous general and special damages in an amount to be
21 determined by the jury at the close of trial.

22 130. All kratom imported by a Defendant in this case was manufactured by
23 persons who are not subject to service of process or the jurisdiction of this Court.

24 131. The WHOLE HERBS, HUSH, MIT THERAPY, and CLOUD HOUSE DEFENDANTS
25

1 were sellers and/or manufacturers of kratom products under Chapter 7.72 RCW, and are
2 jointly and severally liable for the damages caused to the ESTATE OF JORDAN MCKIBBAN
3 and its beneficiaries.

4 **COUNT ONE— FAILURE TO WARN –**
5 **WHOLE HERBS, HUSH, MIT THERAPY, AND CLOUD HOUSE DEFENDANTS**
6 **[Wash. Rev. Code Section 7.72.010(4) and .030(1)]**

7 132. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
8 fully stated herein.

9 133. Each named Defendant was involved in the promotion, distribution, and sale
10 of the Kratom product that killed JORDAN MCKIBBAN.

11 134. The Defendants' Kratom products were continuously sold without adequate
12 warnings or instructions regarding the serious health risks of the product, including the
13 risks of abuse, dependence, addiction, overdose, and death.

14 135. An ordinary consumer would reasonably conclude that Defendants' kratom
15 products are not reasonably safe when sold without warnings or instructions about the
16 serious adverse health risks, including the risk of overdose and death suffered by JORDAN
17 MCKIBBAN.

18 136. In addition, at the time of manufacture, the likelihood that Defendants'
19 kratom products would cause and contribute to the serious harms inflicted on JORDAN
20 MCKIBBAN (including increasing toxicity and death) rendered Defendants' Kratom
21 warnings and instructions completely inadequate, even though warnings about the
22 poisonous nature of kratom and the risk of those serious harms could easily have been
23 provided.
24

1 137. At the times and on the occasions in question, JORDAN MCKIBBAN was using
2 the Defendants' Kratom products for the very purposes intended and promoted by the
3 Defendants, including: (a) human consumption of a natural, merchantable over-the-
4 counter product; (b) relief from pain; and (c) relaxation and relief from anxiety.

5 138. Without proper warnings and instructions, the products were unreasonably
6 dangerous, unfit for their intended use, and defective.

7 139. If the products had been sold with appropriate warnings and instructions
8 regarding its poisonous nature and the health risks, including but not limited to adequate
9 disclosure of the major risks of overdose and death, then JORDAN MCKIBBAN's overdose
10 and death from the product would not have occurred.

11 140. The Defendants are liable for all damages caused by their failures to provide
12 adequate warnings and instructions that would have prevented the death caused by their
13 defective and unreasonably dangerous nature of their product. The manufacturer
14 defendants are subject to strict liability for these damages.

15 141. The Defendants also had a continuing, post-sale duty to warn regarding the
16 unreasonable risk of harm associated with the product after the product had been
17 distributed to JORDAN MCKIBBAN.

18 142. After JORDAN MCKIBBAN began purchasing and ingesting the products,
19 Defendants knew or should have known of the increasing scientific and medical
20 information confirming the serious risks and dangers associated with their adulterated
21 product, including the risk of death from a powerful substance that was never fit for
22 medically unsupervised use.
23
24
25

1 143. After JORDAN MCKIBBAN, began purchasing and ingesting the product,
2 Defendants all breached their duty to issue adequate post-sale instructions and warnings
3 to reduce and prevent the foreseeable risk of harm and death to JORDAN MCKIBBAN from
4 the products.

5 144. All Defendants failed to exercise reasonable care to provide adequate post-
6 sale instructions and warnings to JORDAN MCKIBBAN and other Washington residents
7 about the serious health risks and dangers of the product, including the risk and danger of
8 death.

9 145. As a direct and proximate result of the lack of reasonable and adequate post-
10 sale instructions or warnings regarding the defects in Kratom, Plaintiffs suffered the
11 injuries described above.
12

13 **COUNT TWO – DESIGN AND MANUFACTURING DEFECT**
14 **WHOLE HERBS, HUSH, MIT THERAPY, AND CLOUD HOUSE DEFENDANTS**
 [Wash. Rev. Code Section 7.72.010(2), (4), and .030]

15 146. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
16 fully stated herein.

17 147. At the time Defendants imported or manufactured the products sold to and
18 consumed by JORDAN MCKIBBAN, the products were not reasonably safe as designed.

19 148. The Kratom products were and are far more dangerous than the ordinary
20 consumer would reasonably expect, considering relevant factors, such as the product's
21 intrinsic nature, relative cost, severity of potential harm (including death), the industry
22 standards governing natural products, and the cost and feasibility of minimizing such risk.

23 149. The Defendants are unable to adequately assure that the manufacturing
24
25

1 processes for their Kratom products can achieve a product that is reasonably safe for
2 human consumption.

3 150. The products sold to JORDAN MCKIBBAN was unreasonably dangerous
4 beyond the expectations of the ordinary consumer and was unfit for its intended use.

5 151. At the time and on the occasions in question, JORDAN MCKIBBAN was using
6 the Defendants' products for the foreseeable purposes that Defendants knew of and
7 intended, and was in this respect defective, unsafe and unreasonably dangerous.

8 152. As a direct and proximate result of the defects in the Defendants products,
9 Plaintiffs suffered the injuries as described above.

10
11 **COUNT THREE – BREACH OF WARRANTY**
12 **WHOLE HERBS, HUSH, MIT THERAPY, AND CLOUD HOUSE DEFENDANTS**
13 **[Wash. Rev. Code Section 7.72.010(4), .030(2)(b) and .040(1)]**

14 153. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
15 fully stated herein.

16 154. Defendants all expressly and impliedly warranted that their products were
17 reasonably fit for their intended purposes of human consumption, improving health and
18 well-being, and as a safe and effective product for medical purposes such as pain relief and
19 anxiety.

20 155. Defendants issued these warranties to develop and promote the sale of their
21 products through their respective chains of distribution and retailing, ultimately resulting
22 in the sales to JORDAN MCKIBBAN.

23 156. As a Washington resident and employee, JORDAN MCKIBBAN was a
24 reasonably foreseeable end user of the product, and was a third-party beneficiary of all
25

1 warranties made and passed along by the Defendants through the chain of distribution to
2 the end users.

3 157. The Defendants' warranties regarding product related to material facts
4 regarding the safety and efficacy of Kratom.

5 158. The Defendants' warranties, including the warranties that the products were
6 merchantable and lawfully on the shelf, safe, and would not kill you, were part of the basis
7 of the bargain for JORDAN MCKIBBAN's purchases of the products.

8 159. The Defendants' warranties were untrue; the Defendants' products did not
9 conform to the representations that were made.

10 160. As a direct and proximate result of the breach of the Defendants' warranties
11 regarding the products, Plaintiff suffered the injuries and death described above.
12

13 **COUNT FOUR – MISREPRESENTATION**
14 **WHOLE HERBS, HUSH, MIT THERAPY, AND CLOUD HOUSE DEFENDANTS**
15 **[Wash. Rev. Code Section 7.72.010(4) and .040(1)]**

16 161. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
17 fully stated herein.

18 162. As stated above, Defendants made misrepresentations of material facts about
19 the Kratom product and intentionally concealed information about the product from
20 Plaintiffs during the time JORDAN MCKIBBAN bought and used the product.

21 163. Defendants possessed superior knowledge about the lack of clinical testing
22 and safety of its products, including the lack of reliable support for representations about
23 the asserted clinical and medicinal safety of the product, and the absence of deaths caused
24 by kratom products.
25

1 164. Defendants failed in their duty to disclose known material facts to Plaintiffs
2 regarding their products, including but not limited to:

- 3 a. The health risks (including deaths) associated with regular consumption
4 of kratom products.
5 b. Information regarding adverse events associated with kratom products.
6 c. The risk of overdose and death associated with kratom products.

7 165. Additional misrepresentations and concealment included, but were not
8 limited to:

- 9 a. Falsely representing that the product will not cause death.
10 b. Falsely representing that the product is safe and appropriate for regular
11 human consumption.
12 c. Falsely representing that every batch of Kratom product was lab tested
13 for quality and purity.
14 d. Falsely representing that the product is never adulterated.
15 e. Falsely representing that the product has no serious adverse health
16 effects.
17 f. Falsely representing that an AKA GMP certification assured the
18 consumer of a product that had satisfied the standards necessary to be
19 safe and ready to be sold off the shelf for human consumption

20 166. The foregoing representations and omissions were material and were made
21 with the intent to persuade and induce JORDAN MCKIBBAN to choose and regularly use the
22 product.

23 167. Defendants made the above representations or omissions knowing the
24 misrepresentations were false or were ignorant of the truth of the assertions.

25 168. The above representations and omissions are reflected in Defendants system
for marketing its product. Together, all these defendants unlawfully promoted and held out
for sale the unreasonably dangerous product for medicinal purposes to Washington
Residents.

1 169. Defendants made the above misrepresentations or omissions with the
2 intention and knowledge that Washington consumers would select the product for regular
3 consumption for the purposes identified in their marketing.

4 170. JORDAN MCKIBBAN relied upon and was induced to act in reliance on these
5 Defendants' misrepresentations and omissions when he in fact purchased the product to
6 achieve relief from chronic pain.

7 171. As a direct and proximate result of the breach of the warranties regarding
8 the product, Plaintiffs suffered injuries as described above.

9
10 **COUNT FIVE – NEGLIGENCE**
11 **WHOLE HERBS, HUSH, MIT THERAPY, AND CLOUD HOUSE DEFENDANTS**
12 **[Wash. Rev. Code Section 7.72.010(4) and .040(1)]**

13 172. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
14 fully stated herein.

15 173. The Defendants were all negligent and careless in the import, design,
16 manufacture, testing, marketing, distribution, and/or sale of Kratom products.

17 174. The Defendants, as product sellers, were negligent and careless in their
18 distribution, promotion and sale of Defendants' Kratom products.

19 175. The Defendants failed to follow the industry standard of safety first, which
20 exists for the protection of consumers from New Dietary Ingredients whose safety and
21 efficacy has not been established.

22 176. The Defendants failed to follow the industry standards which prohibit the
23 use of medical claims in the marketing, distribution, and sale of botanical ingredients for
24 human consumption.

1 177. The Defendants failed to follow the industry standards which require the
2 disclosure of material facts necessary to prevent consumers from being misled about the
3 relative safety or danger of the products that are proposed for their consumption.

4 178. The Defendants knew or should have known that the improperly imported
5 Kratom products were unreasonably dangerous for human consumption and especially for
6 medical uses including but not limited to the alleviation of chronic pain.

7 179. The Defendants knew that they were unlawfully selling the products to
8 customers for medical purposes, even though the unreasonable health risks of such use
9 were not properly understood, identified, disclosed, approved or regulated.

10 180. Defendants' failures to discharge their duties were a direct and proximate
11 cause of Plaintiffs' injuries as described above.

12
13 **COUNT SIX – UNFAIR TRADE PRACTICES**
14 **WHOLE HERBS, HUSH, MIT THERAPY, AND CLOUD HOUSE DEFENDANTS**
 [Wash. Rev. Code Section 19.86.010]

15 181. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
16 fully stated herein.

17 182. The acts by Defendants in this cause of action include, but are not limited to,
18 the following deceptive and unfair acts:

- 19 a. Representing that kratom is merchantable and safe for human consumption
20 as a natural over-the-counter product.
21 b. Failing to disclose adequate information about the safety and efficacy of the
22 Kratom product, either before or after Plaintiffs' purchase.
23 c. Failing to provide adequate warnings, labels or instructions about the
24

product's dangerous propensities.

- d. Knowingly selling the product for human consumption and the alleviation of chronic pain, despite sham reseller conditions that the product should only be sold for "research", "incense", "ornamental" or similar purposes that do not involve human consumption.
- e. Representing that the product is appropriately used for medicinal benefits.
- f. Representing that the product possesses many therapeutic effects.

183. Such acts occurred in the course of trade or commerce in the State of Washington.

184. Such acts affected, and still affect, the public interest of all the citizens of the State of Washington.

185. Such acts caused injury to JORDAN MCKIBBAN in his property and business, by forcing him to incur substantial expenditures on a product that instead of being safe and effective, was the cause of his death.

**COUNT SEVEN – INFORMATION NEGLIGENTLY SUPPLIED FOR THE
GUIDANCE OF OTHERS -- AKA
[Restatement of Torts, Section 552]**

186. Plaintiffs re-allege and incorporate by reference the paragraphs above as if fully stated herein.

187. The AKA supplied information for the guidance of Washington consumers, including decedent, JORDAN McKIBBAN, in their business transactions that were false.

188. The AKA knew or should have known that the information was supplied to guide Washington consumers, including the decedent, in their business transactions,

1 namely purchase of kratom products.

2 189. The AKA was negligent in obtaining or communicating the false information,
3 including but not limited to:

- 4 a. Claiming kratom was safe, particularly if purchased by a GMP certified
5 vendor.
- 6 b. Actively campaigning against warnings, enforcement action, and medical
7 literature from trusted actors including the FDA and medical journals
8 that call Kratom's safety and efficacy into question.
- 9 c. Actively campaigning to legitimize kratom through passage of the so-
10 called Kratom Consumer Protection Act.

11
12 190. JORDAN McKIBBAN relied on said false information, and such reliance was
13 reasonable.

14 191. The false information proximately caused the death of JORDAN McKIBBAN .

15 192. Further, the AKA had a duty to disclose to JORDAN McKIBBAN the following
16 information including but not limited to:

- 17 a. The risks associated to use of kratom, including addiction and
18 overdose.
- 19 b. The truth that GMP certification does not amount to safety.
- 20 c. The truth that even GMP certified labeling is both non-compliant
21 with FDA requirements but is wholly deficient for provision of a safe
22 product.

23
24 193. The AKA did not disclose this information to JORDAN McKIBBAN.

1 194. The AKA was negligent in failing to disclose this information.

2 195. Such disclosure would have caused JORDAN McKIBBAN to act differently,
3 and JORDAN McKIBBAN was damaged by the failure to disclose such information.

4 **COUNT EIGHT – NEGLIGENCE – AKA and WHOLE HERBS DEFENDANTS**
5 **[Restatement of Torts Section 324A]**

6 196. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
7 fully stated herein.

8 197. The AKA and WHOLE HERBS DEFENDANTS were negligent and careless in
9 their actions described herein, including their coordination and orchestration on a
10 campaign of misrepresentations made to the public and consumers regarding kratom’s
11 safety for human consumption; attacks on legitimate science examining Kratom’s safety
12 profile; attacks on kratom regulation including actions taken by the FDA; guidance and
13 advice provided to kratom manufacturers, distributors, and sellers; and the administration
14 of their GMP certification program.

15 198. The AKA and WHOLE HERBS DEFENDANTS knew or should have known that
16 improperly imported Kratom products were unreasonably dangerous for human
17 consumption and especially for medical uses including but not limited to the alleviation of
18 chronic pain.

19 199. The AKA and WHOLE HERBS DEFENDANTS knew or should have known that
20 their campaign to foster a market and create a sense of safety surrounding the use of
21 kratom was negligent insofar as the activities promote the unlawful sale of kratom products
22 to customers for medical purposes, even though the unreasonable health risks of such use
23
24
25

1 were not properly understood, identified, disclosed, approved, or regulated.

2 200. The AKA and WHOLE HERBS DEFENDANTS assumed a duty in relation to
3 kratom sales because they exert significant control over the kratom industry and other
4 members of the trade association through administration of the GMP certification program,
5 its funding structure, and its predominance over the public discourse over kratom
6 importation, manufacture, sale, and use. The AKA and WHOLE HERBS DEFENDANTS have
7 also assumed a duty because of their denial of known risks of kratom; their active role in
8 advocating for kratom's importation, manufacture, and sale; and their active role in
9 creating a market in which kratom is falsely viewed as safe by many consumers.
10

11 201. The AKA's failures to discharge their duties were a direct and proximate
12 cause of Plaintiffs' injuries as described above.

13 **COUNT NINE – CIVIL CONSPIRACY**
14 **AKA, WHOLE HERBS, HUSH, MIT THERAPY DEFENDANTS**
15 **[Restatement of Torts Section 876]**

16 202. Plaintiffs re-allege and incorporate by reference the paragraphs above as if
17 fully stated herein.

18 203. The AKA, WHOLE HERBS DEFENDANTS, HUSH DEFENDANTS, and MIT
19 THERAPY DEFENDANTS combined to accomplish an unlawful purpose, including the
20 importation, marketing, distribution, and sale of kratom within the United States and
21 Washington.

22 204. The AKA, WHOLE HERBS DEFENDANTS, HUSH DEFENDANTS, and MIT
23 THERAPY DEFENDANTS, entered into an agreement to accomplish the object of the
24 conspiracy including by creating, supporting and/or participating in the AKA's "Good
25

1 Manufacturing Program”; and by funding the AKA to engage in the actions described above
2 and incorporated herein.

3 205. The AKA and WHOLE HERBS DEFENDANTS (particularly the OLISTICA
4 enterprise),

5 206. Such civil conspiracy was a direct and proximate cause of Plaintiffs’ injuries
6 as described above.

7 **VII. PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL**

8 WHEREFORE, the ESTATE OF JORDAN MCKIBBAN, by and through and on behalf
9 of all its beneficiaries, respectfully requests a jury be impaneled to hear this case, and for
10 judgment against the Defendants:

- 11 (a) Awarding general and special damages in an amount to be proven at trial;
12 (b) Awarding injunctive relief pursuant to Chapter 19.86 RCW;
13 (c). Awarding reasonable attorney’s fees and costs, including attorney’s fees pursuant
14 to Chapter 19.86 RCW;
15 (d) Awarding punitive damages to the full extent allowed by Chapter 19.86 RCW;
16 (e) Awarding such other relief as the Court deems just and proper under the
17 circumstances of this case.
18

19 DATED this 12th day of January, 2024.

20 ATTORNEYS FOR PLAINTIFFS

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22 

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