

Case Information

23-2-01183-08 | Rachel McKibban vs Jopen LLC

Case Number	Court	
23-2-01183-08	Cowlitz	
File Date	Case Type	Case Status
12/07/2023	MSC2 Miscellaneous - Civil	Active

Party

Plaintiff
McKibban, Rachel

Active Attorneys ▼
Lead Attorney
Abolins, Talis Merle
Retained

Defendant
Jopen LLC

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

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

Plaintiffs,

vs.

JOPEN, LLC, Texas 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;
OLISTICA, an unincorporated association;
MIT THERAPY INC., an Idaho corporation;
DURITY DISTRIBUTION, INC., an Idaho
corporation; HUSH WORLDWIDE LLC, a
Wyoming limited liability company; DRIP
DROP DISTRO LLC, an Idaho limited liability
company; BEDROCK MFG LLC, a Wyoming
limited liability company; CLOUD HOUSE
VAPORZ, INC., a Washington corporation;
and JOHN & JANE DOES 1 THROUGH 10.

Defendants.

NO.

**COMPLAINT FOR
WRONGFUL DEATH**

COMES NOW the above-named plaintiff, by and through her attorneys of record, Talis

Abolins and Michael Cowgill of **mctlaw**; and alleges the following in support of her claims:

II. PARTIES

1. ESTATE OF JORDAN McKIBBAN (“Jordan”). The Estate of Jordan McKibban

1 has been opened in a probate action by the Cowlitz County Superior Court. Jordan McKibban
2 was a single man who, until the time of his death, resided in Cowlitz County, Washington.
3 Before his death he was a single, hardworking man in industrial shipping and receiving, and
4 loving son to his parents and loving brother to his siblings.

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

10 3. Defendant JOPEN, LLC (doing business as A1 Wholesale; Party Nuts; Party Nuts
11 Distributions; Innovo Activas; and Evolutionary Organics) ("JOPEN") was and is a Texas-
12 based Limited Liability Company, that also conducts business in Colorado and Georgia. On
13 information and belief, Plaintiff alleges that affiliates, members, and managers for JOPEN's
14 "WHOLE HERBS" kratom activities include Aether, LLC; Aghosh Corp.; Eyal Gabbey;
15 Peyton Palaio; Mark Jennings; Mark Reilly; and Jacob Fletcher. On further information and
16 belief, Plaintiff alleges that JOPEN conducts its kratom activities as a part of the larger Olistica-
17 OPMS kratom enterprise, which operates through a secretive web of affiliates, individuals,
18 shell companies, alter egos, business names, assumed names, and/or trade names, including
19 but not limited to: LP IND., LLC; CAG HOLDINGS, LLC; RMH HOLDINGS, INC.; HUSH
20 WORLDWIDE LLC; Lunar Labs LLC; Shaman Supplies, LLC; Kono Labs; Eyal Gabbey;
21 Petyon Shea Palaio; Mark Jennings; Mark Reilly; and Jacob Fletcher.

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

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

9 7. Defendant the OLISTICA LIFE SCIENCES GROUP (also doing business as
10 Olistica; Olistica Group; OPMS; LP; CAG; RMH; Cannopy Corporation; JOPEN; A1
11 Wholesale; Party Nuts; Party Nuts Distributions; Innovo Activas; and Evolutionary Organics)
12 (“OLISTICA”) is an unincorporated association of kratom business interests that operates
13 through a secretive web of affiliates, individuals, shell companies, alter egos, business names,
14 assumed names, and/or trade names, including but not limited to: LP; CAG; RMH
15 HOLDINGS, INC.; HUSH WORLDWIDE LLC; Lunar Labs LLC; Shaman Supplies, LLC;
16 Kono Labs; Eyal Gabbey; Petyon Shea Palaio; Mark Jennings; Mark Reilly; and Jacob
17 Fletcher.
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19 8. Defendant MIT THERAPY INC. (doing business as PurKratom and Ultra
20 Products LTD) (“MIT THERAPY”) was and is an Idaho-based Corporation with its principal
21 place of business in Boise, Idaho. MIT THERAPY is a manufacturer, wholesaler and retailer
22 of kratom products. On information and belief, Plaintiff alleges that affiliates, members, and
23 managers responsible for MIT THERAPY kratom activities include DURITY
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1 DISTRIBUTION INC.; Durity Vape 2 Inc.; Nuwave Botanicals LLC; Evan Drake Fischer;
2 and Rachael Bahrenfuss.

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

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

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

2 12. Defendant BEDROCK MFG LLC (doing business as Bedrock Manufacturing;
3 BDRK MFG; BedRock MFG; Bedrock Distro) (“BEDROCK”) was and is a Wyoming Limited
4 Liability Company, with a foreign registration in Idaho, and its principal place of business in
5 Boise, Idaho. On information and belief, Plaintiff alleges that affiliates, members and
6 managers responsible for BEDROCK’s kratom activities include: HUSH; DRIP DROP
7 DISTRO; Vanguard Enterprises, LLC; Troy Palmer; Josh Palmer; Mark Ciccarello; John
8 Chavez; and Douglas T. Campbell.

9 13. Defendant CLOUD HOUSE VAPORZ, INC. (doing business as Cloud House,
10 Cloud Vaporz, and Natures Kratom) (“CLOUD HOUSE”), was and is a Washington based
11 corporation with its principal place of business in Woodland, Cowlitz County, Washington.
12 The member and manager responsible for CLOUD HOUSE kratom activities is CHANNING
13 PLOURD.

14 14. Defendants JOHN AND JANE DOES 1 THROUGH 10 are individuals and/or
15 entities whose names and addresses are unknown, but who have directly and personally
16 participated (separately or as alter egos, agents, or joint venturers) in the wrongful import,
17 manufacture, distribution and/or sale of the kratom product, described more fully below.
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19 15. This pleading is being served upon the Attorney General’s Office of Washington,
20 pursuant to RCW 19.86.095, as it includes a request for injunctive relief under the Washington
21 Consumer Protection Act (Chapter 19.86 RCW), to enjoin the sale of kratom in Washington.
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23 **III. JURISDICTION AND VENUE**

24 16. This Court has original subject matter jurisdiction pursuant to the Constitution of
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1 the State of Washington, Article 4, Section 6. Jurisdiction is proper in the Superior Court of
2 the State of Washington because the Plaintiff and Defendant CLOUD HOUSE VAPORZ, INC.
3 are Washington residents, and Defendant CLOUD HOUSE VAPORZ, INC. sold kratom to
4 Jordan McKibban in Washington, contributing to his injuries and death in Washington.

5 17. Venue is proper in the Cowlitz County Superior Court pursuant to RCW 4.12.020
6 and RCW 4.12.025 in that the Plaintiff's injuries and cause of action arose in Cowlitz County;
7 in addition, Cowlitz County is where Defendant CLOUD HOUSE VAPORZ, INC. and
8 CHANNING PLOURD resides, transacts business, and committed torts upon which these
9 claims are based.

10 **IV. INTRODUCTION**

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

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

15 20. Across the nation, a growing number of death certificates have formally
16 established deaths caused or contributed to by the "Toxic Effects of Mitragynine (Kratom)".

17 21. Cowlitz County is already familiar with the tragic toll of Kratom.

18 22. On July 18, 2023, a Cowlitz County jury issued a verdict of \$2,500,000. The jury
19 held the Kratom seller responsible under the Washington Product Liability Act (WPLA) and
20 Consumer Protection Act (CPA). (Cowlitz County Cause No. 20-2-00874-08).
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22 23. Now, another Cowlitz County family must seek justice for a tragic death to a
23 young resident caused by the "Toxic Effects of Mitragynine (Kratom)".
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1 establishing that Kratom is safe for human consumption before marketing it.

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

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

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

11 35. Unable to verify safety, the Kratom industry has instead been built upon
12 clandestine and fraudulent business activities, including the unlawful importation of
13 Kratom as “plant food”, “incense”, “cosmetic” powders, and other legal items.³

14 36. For years, Federal agencies (and courts) have attempted to protect the
15 public by seizing Kratom and taking other civil and criminal actions against Kratom
16 importers, distributors, and those who illegally sell Kratom as an unapproved replacement
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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 for significant medical conditions such as chronic pain, anxiety, addiction, or withdrawal.⁴

2 37. 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 38. Despite these efforts, the industry is successfully smuggling billions of
5 dollars worth of Kratom across the border. At that point, the Kratom is quickly channeled
6 into chains of distribution managed by individuals and entities generating huge profits
7 from millions of consumers.

8 39. Despite the serious risks of kratom use, profit-seeking companies continue to
9 market kratom products with unproven and deceptive claims about its safety and ability to cure,
10 treat or prevent medical conditions and diseases. Examples of illegal claims about kratom
11 include statements such as: “many people use kratom to overcome opiate addiction,” and kratom
12 is frequently used “as a natural alternative” to treat various health conditions, replacing opiate
13 prescriptions.⁵

14 40. Each of the Defendants in this case has profited from unfair and deceptive
15 business practices by distributing and selling dangerous Kratom products to Washington
16 residents.

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

2 42. At 37-years old, Jordan was healthy, fit, and physically active. He loved spending
3 time outdoors and he was passionate about fishing and other activities.

4 43. Occasionally, Jordan struggled with pain in his hands and back.

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

8 45. Before his death, Jordan purchased and consumed the following four Kratom
9 products: (1) Whole Herbs capsules; (2) Hush liquid shots; and (3) CLOUD HOUSE bulk
10 powders.

11 46. Jordan's friends and family members observed his use of these products and as
12 well as associated packaging in his home and vehicle.

13 47. Whole Herbs kratom is imported, packaged, distributed, and sold by Defendants
14 OLISTICA, JOPEN, LPI, CAG and RHI (the "WHOLE HERBS DEFENDANTS").

15 48. Hush liquid shots are packaged, distributed and sold by Defendants HUSH, DRIP
16 DROP DISTRO, and BEDROCK (the "HUSH DEFENDANTS").

17 49. On information and belief, the OLISTICA defendants participate in the
18 ownership, control, and profits of HUSH as well as WHOLE HERBS kratom activities.

19 50. On information and belief, the CLOUD HOUSE bulk powders were distributed
20 and sold by Defendants MIT THERAPY and DURITY (the "MIT THERAPY
21 DEFENDANTS").

22 51. Jordan relied upon the Defendants' express and implied warranties, including the
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1 basic warranty that the Kratom products were lawfully imported and distributed, and
2 reasonably fit for their intended purposes, including the purpose of human consumption, and
3 for the management of pain and anxiety.

4 52. CLOUD HOUSE, along with the other Defendants, represented various
5 medicinal benefits from the consumption of the kratom products sold to Jordan.

6 53. For example, CLOUD HOUSE described red strains of Kratom as “the most
7 popular choice for those who are treating pain” and “having a more sedative effect” and “a
8 stronger euphoric effect”. Green is described as tending “to have more pain relieving
9 properties than the white, but more energetic than the red”. Maeng Da (typically green) is
10 described as “Higher on both pain relief and energy with an emphasis on mood lift.”

11 54. Relying on the Defendants’ marketing representations, CLOUD HOUSE
12 described Kratom as from the coffee family, used in herbal medicine, producing “opioid-like
13 effects” with higher doses, as well as reports of increased work capacity, sociability, sexual
14 desire, positive mood, and euphoria. “It’s also been known as a means to bring acute and
15 chronic pain relief.”
16

17 55. The MIT THERAPY DEFENDANTS represent that their Kratom products were
18 “GMP Certified”, safe for human consumption, and effective for controlling pain and anxiety.

19 56. The HUSH liquid shots sold to Jordan by CLOUD HOUSE were provided by
20 HUSH along with its affiliates Defendant BEDROCK and Defendant DRIP DROP DISTRO.

21 57. On April 5, 2022, Jordan came home from work. A short time later, Jordan’s
22 nephew A.R. heard a loud noise from the bathroom. When A.R. could not open the door, he
23 began calling family members for help to investigate the situation.
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1 58. Jordan’s mother arrived and, upon opening the door, found Jordan collapsed on
2 the floor and unresponsive. She called 911, and emergency responders arrived and Jordan was
3 rushed to the hospital and admitted with concerns of a possible overdose. It was there, at the
4 hospital, where the family learned that Jordan did not make it. He was 37-years-old.

5 59. Back at the home, an open bag of bulk kratom powder from CLOUD HOUSE sat
6 on the kitchen counter, where Jordan had mixed his last drink. In Jordan’s car and bedroom,
7 lay empty bottles of the Hush liquid shot.

8 60. The Cowlitz County Coroner’s office investigated the cause and manner of
9 Jordan McKibban’s death. An autopsy was performed by forensic pathologist Dr. Clifford
10 Nelson, and a postmortem expanded forensic toxicology test was requested from NMS Labs.

11 61. On May 26, 2022, NMS Labs issued its Toxicology Report. The Toxicology
12 Report showed a positive finding for Mitragynine (the main Kratom alkaloid), in the amount
13 of 3,000 ng/mL.

14 62. A copy of the NMS Labs report was hand delivered to Dr. Nelson, to aid in the
15 completion of the autopsy report and issuance of the death certificate.

16 63. Based on the report, and with the guidance of forensic pathologist Dr. Clifford
17 Nelson, the Cowlitz County Coroner issued its case report and cause of death for Jordan
18 McKibban: Jordan McKibban died from the “Toxic Effects of Mitragynine (Kratom)”.

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21 **V. CAUSES OF ACTION AND DAMAGES**

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

24 2. JORDAN MCKIBBAN suffered an untimely death as a direct and proximate
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1 result of the products that were imported, manufactured, marketed, distributed and/or sold by
2 each of the Defendants.

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

8 4. Each and every Defendant wrongfully contributed to JORDAN MCKIBBAN's
9 escalating cycle of Kratom tolerance, dependence and use, which led predictably to the toxic
10 levels that ultimately caused his death.

11 5. The ESTATE OF JORDAN MCKIBBAN and its beneficiaries have incurred and
12 will continue to incur enormous general and special damages in an amount to be determined
13 by the jury at the close of trial.

14 6. The Defendants were all manufacturers, distributors and/or product sellers of
15 kratom under Chapter 7.72 RCW, and are jointly and severally liable for the damages caused
16 to the ESTATE OF JORDAN MCKIBBAN and its beneficiaries.

17
18 **COUNT ONE –FAILURE TO WARN**
19 **[Wash. Rev. Code Section 7.72.010(4) and .030(1)]**

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

22 8. Each named Defendant was involved in the promotion, distribution, and sale of
23 the Kratom product that killed JORDAN MCKIBBAN.

24 9. The Defendants' Kratom products were continuously sold without adequate
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1 warnings or instructions regarding the serious health risks of the product, including the risks
2 of abuse, dependence, addiction, overdose, and death.

3 10. An ordinary consumer would reasonably conclude that Defendants' kratom
4 products are not reasonably safe when sold without warnings or instructions about the serious
5 adverse health risks, including the risk of overdose and death suffered by JORDAN
6 MCKIBBAN.

7 11. In addition, at the time of manufacture, the likelihood that Defendants' kratom
8 products would cause and contribute to the serious harms inflicted on JORDAN MCKIBBAN
9 (including increasing toxicity and death) rendered Defendants' Kratom warnings and
10 instructions completely inadequate, even though reasonable instructions and warnings about
11 the risk of those serious harms could easily have been provided.

12 12. At the times and on the occasions in question, JORDAN MCKIBBAN was using
13 the Defendants' Kratom products for the very purposes intended and promoted by the
14 Defendants, including: (a) human consumption; (b) relief from pain; and (c) relaxation and
15 relief from anxiety.
16

17 13. Without proper warnings and instructions, the products were unreasonably
18 dangerous, unfit for its intended use, and defective.

19 14. If the products had been sold with appropriate warnings and instructions
20 regarding its health risks, including but not limited to adequate disclosure of the major risks of
21 overdose and death, then JORDAN MCKIBBAN's overdose and death from the product would
22 not have occurred.

23 15. The Defendants are liable for all damages caused by their failures to provide
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1 adequate warnings and instructions that would have prevented the death caused by their
2 defective and unreasonably dangerous nature of their product. The manufacturer defendants
3 are subject to strict liability for these damages.

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

7 17. After JORDAN MCKIBBAN began purchasing and ingesting the products,
8 Defendants knew or should have known of the increasing scientific and medical information
9 confirming the serious risks and dangers associated with their adulterated product, including
10 the risk of death from a powerful substance that was never fit for medically unsupervised use.

11 18. After JORDAN MCKIBBAN, began purchasing and ingesting the product,
12 Defendants all breached their duty to issue adequate post-sale instructions and warnings to
13 reduce and prevent the foreseeable risk of harm and death to JORDAN MCKIBBAN from the
14 products.

15 19. All Defendants failed to exercise reasonable care to provide adequate post-sale
16 instructions and warnings to JORDAN MCKIBBAN and other Washington residents about the
17 serious health risks and dangers of the product, including the risk and danger of death.

18 20. As a direct and proximate result of the lack of reasonable and adequate post-sale
19 instructions or warnings regarding the defects in Kratom, Plaintiffs suffered the injuries
20 described above.
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22 **COUNT TWO –**
23 **DESIGN AND MANUFACTURING DEFECT**
24 **[Wash. Rev. Code Section 7.72.010(2), (4), and .030]**
25

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

3 22. At the time Defendants imported or manufactured the products sold to and
4 consumed by JORDAN MCKIBBAN, the products were not reasonably safe as designed.

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

9 24. The Defendants are unable to adequately assure that the manufacturing processes
10 for their Kratom products can achieve a product that is reasonably safe for human consumption.

11 25. The products sold to JORDAN MCKIBBAN was unreasonably dangerous
12 beyond the expectations of the ordinary consumer and was unfit for its intended use.

13 26. At the time and on the occasions in question, JORDAN MCKIBBAN was using
14 the Defendants' products for the foreseeable purposes that Defendants' knew of and intended,
15 and was in this respect defective, unsafe and unreasonably dangerous.

16 27. As a direct and proximate result of the defects in the Defendants products,
17 Plaintiffs suffered the injuries as described above.

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19 **COUNT THREE – ALL DEFENDANTS – BREACH OF WARRANTY**
20 **[Wash. Rev. Code Section 7.72.010(4), .030(2)(b) and .040(1)]**

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

23 29. Defendants all expressly and impliedly warranted that their products were
24 reasonably fit for their intended purposes of human consumption, improving health and well-
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1 being, and as a safe and effective product for medical purposes such as pain relief and anxiety.

2 30. Defendants issued these warranties to develop and promote the sale of their
3 products through their respective chains of distribution and retailing, ultimately resulting in the
4 sales to JORDAN MCKIBBAN.

5 31. As a Washington resident and employee, JORDAN MCKIBBAN was a
6 reasonably foreseeable end user of the product, and was a third-party beneficiary of all
7 warranties made and passed along by the Defendants through the chain of distribution to the
8 end users.

9 32. The Defendants' warranties regarding product related to material facts regarding
10 the safety and efficacy of Kratom.

11 33. The Defendants' warranties, including the warranties that the products were
12 lawfully on the shelf, safe, and would not kill you, were part of the basis of the bargain for
13 JORDAN MCKIBBAN's purchases of the products.

14 34. The Defendants' warranties were untrue; the Defendants' products did not
15 conform to the representations that were made.

16 35. As a direct and proximate result of the breach of the Defendants' warranties
17 regarding the products, Plaintiff suffered the injuries and death described above.

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19 **COUNT FOUR – ALL DEFENDANTS – MISREPRESENTATION**
20 **[Wash. Rev. Code Section 7.72.010(4) and .040(1)]**

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

23 37. As stated above, Defendants made misrepresentations of material facts about the
24 Kratom product and intentionally concealed information about the product from Plaintiffs
25

1 during the time JORDAN MCKIBBAN bought and used the product.

2 38. Defendants possessed superior knowledge about the lack of clinical testing and
3 safety of its products, including the lack of reliable support for representations about the
4 asserted clinical and medicinal safety of the product, and the absence of deaths caused by
5 kratom products.

6 39. Defendants failed in their duty to disclose known material facts to Plaintiffs
7 regarding their products, including but not limited to:

- 8 a. The health risks associated with regular consumption of kratom products.
9 b. Information regarding adverse events associated with kratom products.
10 c. The risk of overdose and death associated with kratom products.

11 40. Additional misrepresentations and concealment included, but were not limited to:

- 12 a. Falsely representing that the product will not cause death.
13 b. Falsely representing that the product is safe and appropriate for regular human
14 consumption.
15 c. Falsely representing that every batch of Kratom product was lab tested for
16 quality and purity.
17 d. Falsely representing that the product is never adulterated.
18 e. Falsely representing that the product has no serious adverse health effects.

19 41. The above representations and omissions were material and were made with the
20 intent to persuade and induce JORDAN MCKIBBAN to choose and regularly use the product.

21 42. Defendants made the above representations or omissions knowing the
22 misrepresentations were false or were ignorant of the truth of the assertions.

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

44. Defendants made the above misrepresentations or omissions with the intention

1 and knowledge that Washington consumers would select the product for regular consumption
2 for the purposes identified in their marketing.

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

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

8 **COUNT FIVE – ALL DEFENDANTS – NEGLIGENCE**
9 **[Wash. Rev. Code Section 7.72.010(4) and .040(1)]**

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

12 48. The Defendants were all negligent and careless in the import, design,
13 manufacture, testing, marketing, distribution, and/or sale of Kratom products.

14 49. The Defendants, as product sellers, were negligent and careless in their
15 distribution, promotion and sale of Defendants' Kratom products.

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

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

22 52. Defendants' failures to discharge their duties were a direct and proximate cause
23 of Plaintiffs' injuries as described above.
24
25

1 **COUNT SIX – ALL DEFENDANTS – UNFAIR TRADE PRACTICES**
2 **[Wash. Rev. Code Section 19.86.010]**

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

5 54. The acts by Defendants in this cause of action include, but are not limited to, the
6 following deceptive and unfair acts:

- 7 a. Failing to disclose adequate information about the safety and efficacy of the
8 Kratom product, either before or after Plaintiffs’ purchase.
9 b. Failing to provide adequate warnings, labels or instructions about the
10 product’s dangerous propensities.
11 c. Knowingly selling the product for human consumption and the alleviation of
12 chronic pain, despite sham reseller conditions that the product should only
13 be sold for “research”, “incense”, “ornamental” or similar purposes that do
14 not involve human consumption.
15 d. Representing that the product is appropriately used for medicinal benefits.
16 e. Representing that the product possesses many therapeutic effects

17 55. Such acts occurred in the course of trade or commerce in the State of
18 Washington.

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

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

24 **VI. PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL**

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

- 1 (a) Awarding general and special damages in an amount to be proven at trial;
2 (b) Awarding injunctive relief pursuant to Chapter 19.86 RCW;
3 (c). Awarding reasonable attorney's fees and costs, including attorney's fees pursuant
4 to Chapter 19.86 RCW;
5 (d) Awarding punitive damages to the full extent allowed by Chapter 19.86 RCW;
6 and
7 (e) Awarding such other relief as the Court deems just and proper under the
8 circumstances of this case.

9 DATED this 13th day of November, 2023.

10
11 ATTORNEYS FOR PLAINTIFFS

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13 

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