

1 Leslie W. O’Leary, OSB 990908
loley@justicelawyers.com
2 **JOHNSON JOHNSON LUCAS & MIDDLETON, P.C.**
975 Oak St., Suite 1050
3 Eugene, OR 97401-3124
Telephone: (541) 484-2434
4 Facsimile: (541) 484-088

5 Michael J. Cowgill, OSB 153277
mcowgill@mctlaw.com
6 Michele Stephan, FL BN 96628
To be admitted *Pro Hac Vice*
7 mstephan@mctlaw.com

Talis M. Abolins, WA SBN 21222
8 To be admitted *Pro Hac Vice*
tabolins@mctlaw.com

9 **MAGLIO CHRISTOPHER & TOALE**
1325 4th Ave. # 1730
10 Seattle, WA 98101
Phone: (888) 952-5242
11 Facsimile: (941) 952-5042

12 *Attorneys for Plaintiff*

13 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
14 **FOR MULTNOMAH COUNTY**

15 **ESTATE OF DANIEL SCOTT PAUL BY**) Case No.:
16 **AND THROUGH KATHRYN ANN**)
PAUL AS PERSONAL)
17 **REPRESENTATIVE, an Oregon citizen,**)
)
18 **Plaintiff,**) **COMPLAINT**
) (Civil Action For Wrongful Death/Product
19 **v.**) **Liability)**
)
20 **OPMS (A/K/A OPTIMIZED PLANT**) **DEMAND FOR JURY TRIAL**
MEDIATED SOLUTIONS; O.P.M.S.;)
21 **OPMS SOLUTIONS, INC.; OPMS**) Prayer Amount: \$ 10,000,000.00
SOLUTIONS GROUP LLC; OPMS) Fee - \$1,178.00 ORS 21.160(1)(e)
22 **SOLUTIONS; OPMS WHOLESALE;**)
OPMS TECH 2, LLC; AND/OR) CLAIM NOT SUBJECT TO
23 **CHOICE ORGANICS); MARTIAN**) MANDATORY ARBITRATON
SALES, INC.; SOUTH SEA VENTURES)
24 **(D/B/A SOUTH SEA VENTURES, LLC;**)

1 **MIT 45; SANTIANO NOVASIO;**)
 AND/OR CROWN TRADING);)
2 **CHRISTOPHER NOVASIO (A/K/A**)
 SANTIANO CHRISTOPHER)
3 **NOVASIO; AND CHRISTOPHER**)
 DAVID JAMES NOVASIO); WEECE’S)
4 **MARKET; KS FOOD MARKET; AND**)
 JOHN DOES 1-20,)
5)
)
)
6 Defendant(s).)
)
)

7 Plaintiff alleges:

8 **INTRODUCTION**

9 1.

10 This is a product liability action against the manufacturers, distributors, and sellers of
11 kratom, a non-prescription dietary supplement. Plaintiff brings this action on behalf of her
12 husband, the decedent, alleging claims of negligence, strict product liability, breach of implied
13 warranties, and negligent misrepresentation.

14 **PARTIES**

15 2.

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

20 3.

21 At all relevant times, defendant OPMS (a/k/a Optimized Plant Mediated Solutions,
22 O.P.M.S., OPMs Solutions, Inc., OPMS Solutions Group, LLC, OPMSolutions, OPMS
23 Wholesale, OPMs Tech 2, LLC, and/or Choice Organics) was and is a manufacturer, distributor,
24 and seller of kratom products throughout the United States, including Oregon. After due diligence,

1 plaintiff has been unable to locate defendant OPMS in Oregon because OPMS is absent from the
2 state and/or is intentionally and willfully concealing its entity status, principal place of business
3 and registered agent for service. Defendant OPMS’s product packaging and website presence does
4 not lead to reliable contact information for service, and there is no apparent corporate headquarters
5 or registration within the state of Oregon.

6 4.

7 At all relevant times, defendant Martian Sales, Inc. (hereinafter “Martian Sales”) was and
8 is an active Wyoming corporation and apparent owner of OPMS and/or its trademarks. On
9 information and belief, defendant Martian Sales is directly involved in the manufacture, marketing,
10 distribution, and sale of OPMS’s kratom products. Hereinafter, all references to OPMS incorporate
11 and include Martian Sales.

12 5.

13 At all relevant times, defendant South Sea Ventures (on information and belief doing
14 business as or under South Sea Ventures, LLC, MIT 45; Santino Novasio, and/or Crown Trading)
15 was and is a manufacturer, distributor, and seller of kratom, including the “MIT 45” kratom
16 products that are sold to Oregon consumers. After due diligence, plaintiff has been unable to locate
17 defendant South Sea Ventures in Oregon because South Sea Ventures is absent from the state
18 and/or is intentionally and willfully concealing its true identity and registered agent for service.
19 South Sea Ventures and its MIT 45 websites and product packaging do not provide reliable contact
20 information, and there is no apparent corporate headquarters or registration within the state of
21 Oregon.

22 6.

23 At all relevant times, defendant Christophe Novasio (also known as Santonio Christophe
24 Novasio, and Christopher David James Novasio) (hereafter “Novasio”) was identified as a

1 manager of South Sea Ventures, MIT 45, and Crown Trading. On information and belief,
2 defendant Novasio is a resident of the state of Utah. As an individual, Novasio has been personally
3 involved in the manufacture, marketing, and distribution of the highly concentrated and dangerous
4 MIT 45 product throughout the U.S., including in Oregon. Novasio has held out South Sea
5 Ventures and MIT 45 as legitimate entities operating in the U.S., even though it has concealed
6 from consumers accurate information regarding the identity and registered agent of the MIT 45
7 manufacturer and distributor. Hereinafter, all references to South Sea Ventures incorporate and
8 include Novasio.

9 7.

10 At all relevant times, defendant Weece's Market operated as an Oregon Limited Liability
11 Company, with its principal place of business in Multnomah County at 7310 SE Pleasant Home
12 Rd., Gresham, Oregon 97080. Weece's Market was a seller of kratom products manufactured and
13 distributed by the other named defendants.

14 8.

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

19 9.

20 Upon information and belief, defendants John Doe 1 through 20 are unknown individuals
21 and/or entities whose names and addresses of residence are unknown, but who have directly
22 participated in the wrongful manufacture, distribution, and sale of the kratom products, described
23 more fully below. These John Doe defendants include, but are not limited to, owners, managers,
24

1 agents, and/or affiliates involved in the kratom transactions at issue, and whose identities and roles
2 have remained undisclosed or hidden.

3 10.

4 Defendants OPMS; Martian Sales, Inc.; South Sea Ventures; Christopher Novasio; and
5 John Does 1-20 are collectively referred to as “Manufacturer Defendants.”

6 11.

7 Defendants Weece’s Market and KS Food Market are collectively referred to as “Retailer
8 Defendants.” All defendants collectively referred to as “Defendants”.

9 **JURISDICTION AND VENUE**

10 12.

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

15 13.

16 Venue is proper in this court pursuant to ORS 14.080(1) and (2) because plaintiff and
17 defendants Weece’s Market, and KS Food Market are or were domiciled in Multnomah County,
18 Oregon. In addition, defendants are or were conducting regular sustained business activity in
19 Multnomah by manufacturing, marketing, distributing and/or selling kratom to decedent in
20 Multnomah County, contributing to his injuries and death here.

21 **FACTUAL ALLEGATIONS**

22 14.

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

1 15.

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

4 16.

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

9 17.

10 Decedent purchased kratom products from defendants Weece's Market and KS Food
11 Market in Multnomah County.

12 18.

13 Decedent used kratom products manufactured, distributed, and sold by Defendants to
14 manage his pain, nerve issues, muscular ailments, and anxiety related to such ailments.

15 19.

16 In the days preceding his death, decedent purchased OPMS and MIT 45 concentrated liquid
17 kratom products from Retailer Defendants.

18 20.

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

21 21.

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

1 22.

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

4 23.

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

6 24.

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

9 25.

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

12 26.

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

15 27.

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

17 28.

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

22 \$ 15,000.00 in past medical and funeral expenses; and

23 \$ 4,000,000.00 in lost future wages and earning capacity.

1 29.

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

5 **FACTUAL BACKGROUND:**
6 **DEFENDANTS’ DESIGN AND MARKETING OF KRATOM**

7 **I. Kratom is a dangerous and unregulated drug.**

8 30.

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

11 31.

12 Kratom is an unregulated substance in the United States, and there are no FDA-approved
13 uses for Kratom.

14 32.

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

20 33.

21 Kratom manufacturers and distributors have no reliable basis for specifying the variable
22 doses and potencies of kratom’s various psychoactive compounds in product packaging.
23
24

1 34.

2 Kratom's serious health risks include risks of abuse, dependence, addiction, overdose, and
3 death.¹ Scientific literature has documented serious concerns regarding the toxicity of kratom in
4 multiple organ systems. Consumption of kratom can lead to many adverse health impacts,
5 including respiratory depression, nervousness, agitation, aggression, sleeplessness, hallucinations,
6 delusions, tremors, loss of libido, constipation, skin hyperpigmentation, nausea, vomiting, and
7 severe withdrawal signs and systems.² Effective treatments for kratom addiction and overdose
8 have not been fully developed by the medical community.³

9 35.

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

12 36.

13 Kratom is already illegal in several states and cities, and it is not approved for medical
14 purposes. The FDA has issued numerous warnings against the use of products containing kratom
15 or its psychoactive compounds and has taken action against those who illegally sell the product
16 for pain treatment and other medical uses.⁴

17
18
19 ¹ See FDA News Release, FDA issues warnings to companies selling illegal, unapproved kratom
20 drug products (<https://www.fda.gov/news-events/press-announcements/fda-issues-warnings-companies-selling-illegal-unapproved-kratom-drug-products-marketed-opioid>) (last accessed
21 May 11, 2021); see also DOJ DEA Drug Fact Sheet – Kratom (https://www.dea.gov/sites/default/files/2020-06/Kratom-2020_0.pdf) (last accessed Aug. 3, 2021).

22 ² See FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html)
23 (last accessed Aug. 3, 2021).

24 ³ See FDA News Release, FDA and Kratom (<https://www.fda.gov/news-events/public-health-focus/fda-and-kratom>) (last accessed Aug. 3, 2021).

⁴ See FDA Statement, Statement from FDA Commissioner Scott Gottlieb, M.D. on FDA advisory
about deadly risks associated with kratom (<https://www.fda.gov/news-events/press->

1 37.

2 More research is needed to understand kratom's safety profile, including the potential
3 impact of kratom's various compounds on underlying medical conditions or their interactions with
4 other drugs. The FDA determined there is inadequate information to provide any reasonable
5 assurance that kratom does not present significant or unreasonable risk of illness or injury.⁵

6 38.

7 In recent years, certain kratom manufacturers have begun producing and marketing
8 concentrated forms of kratom. These manufacturers include Defendant Martian Sales, Inc.,
9 producing the OPMS liquid shot; and Defendant South Sea Ventures, producing the MIT 45 liquid
10 shot.

11 39.

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

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

17 40.

18 Despite the serious risks of kratom use, companies such as defendants continue to market
19 kratom products with unproven and deceptive claims about its safety and ability to cure, treat or
20 prevent medical conditions and diseases. The FDA's examples of illegal claims being made
21

22 [announcements/statement-fda-commissioner-scott-gottlieb-md-fda-advisory-about-deadly-risks-](#)
23 [associated-kratom](#)) (last accessed Aug. 3, 2021).

24 ⁵ See FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html)
(last accessed Aug. 3, 2021).

1 include statements that “many people use kratom to overcome opiate addiction,” and kratom is
2 frequently used “as a natural alternative” to treat various health conditions, replacing opiate
3 prescriptions.⁶

4 41.

5 Many kratom marketers attempt to sidestep responsibility for the illegal sale of dangerous
6 and unapproved medicinal products, by combining grandiose medicinal marketing statements with
7 contradictory disclaimers that the products are not for human consumption. For example, some
8 kratom manufacturers have attempted to avoid responsibility by notifying downstream resellers
9 that the products are offered for “legitimate research,” “incense,” and/or “ornamental purposes
10 only.”

11 42.

12 Kratom products are not safe for human consumption, and the deceptive marketing and
13 sale of these products has encouraged consumers and patients to experiment with mysterious and
14 dangerous compounds in lieu of seeking appropriate and approved medical treatments that can be
15 safely supervised by medical professionals.

16 43.

17 In short, defendants misrepresented and misled consumers about the risks and benefits of
18 kratom use to the tragic detriment of decedent and his estate. Serious risks include but are not
19 limited to: “kratom-associated withdrawal symptoms (KAWS) in adults, kratom-associated
20 neonatal abstinence syndrome (KANAS), hypothyroidism, hypogonadism, kratom-induced
21

22 ⁶ See FDA News Release, FDA issues warnings to companies selling illegal, unapproved kratom
23 drug products marketed for opioid cessation, pain treatment and other medical uses
24 (<https://www.fda.gov/news-events/press-announcements/fda-issues-warnings-companies-selling-illegal-unapproved-kratom-drug-products-marketed-opioid>) (last accessed Aug. 3, 2021).

1 hepatotoxicity (KIH), CNS effects causing seizure and coma or posterior reversible encephalopathy
2 syndrome (PRES), acute respiratory distress syndrome (ARDS), overdose toxidrome, and
3 fatalities.”⁷

4 **FIRST CLAIM FOR RELIEF**

5 **Negligence (Against Manufacturer Defendants)**

6 44.

7 Plaintiff realleges and incorporates by reference all previous paragraphs.

8 45.

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

15 46.

16 Long before plaintiff’s death in 2019, Manufacturer Defendants had at least constructive
17 knowledge that kratom could cause serious harm to consumers, including addiction, dependency,
18 tolerance, overdose, and death. As early as April 15, 2011, reports were being published of kratom
19 related deaths.⁸ Manufacturer Defendants’ actual or constructive knowledge of serious harm from
20 kratom has continuously grown, as reflected in a growing list of additional publications, including

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

24 ⁸ See [https://www.fda.gov/files/drugs/published/Adverse-event-reports-for-Kratom-involving-
death.pdf](https://www.fda.gov/files/drugs/published/Adverse-event-reports-for-Kratom-involving-death.pdf) (last accessed Aug. 3, 2021).

1 but not limited to news articles and television segments, FDA announcements, and industry
2 publications.

3 47.

4 After decedent began taking kratom, Manufacturer Defendants had actual or constructive
5 knowledge of the risks of addiction, overdose, and death associated to kratom consumption.
6 Manufacturer Defendants had an ongoing duty to stay apprised of these risks, and to update their
7 labeling and marketing communications to warn of these risks.

8 48.

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

- 11 A. In producing kratom products with concentrated alkaloids with knowledge that these
12 concentrated products were far more likely to lead to overdose and death.
- 13 B. In failing to properly label and package their product in order to make Plaintiff and
14 consumers aware of the risks associated to Kratom.
- 15 C. In failing to properly label and package their product in order to provide effective
16 guidance for product use and consumption.
- 17 D. In failing to properly test each batch of kratom for purity and potency.
- 18 a. Specifically, Manufacturer Defendants failed to properly test for heavy metals,
19 bacterial contaminants, and other contaminants that may increase the risks
20 associated to kratom consumption.
- 21 b. Manufacturer Defendants also failed to properly test the potency of each batch of
22 kratom produced to ensure that the alkaloid content level of mitragynine and 7-
23 hydroxymitragynine were within safe levels for human consumption.
- 24

1 E. In failing to conform their manufacturing processes to ensure consistency of potency
2 so that packaged products did not contain hot spots of concentrated alkaloids, which
3 hot spots may result in dangerous doses.

4 F. Additionally, Manufacturer Defendant's failure to conform their manufacturing
5 processes to ensure consistency of potency means that each packaged product
6 purchased by Plaintiff contained different levels of alkaloid content thereby rendering
7 it impossible for Plaintiff to consume a consistent dose, which increases the risk of
8 overdose.

9 49.

10 In addition to breaching the duties described above in paragraphs 45 through 48, defendant
11 OPMS was negligent in one or more of the following particulars:

12 A. OPMS produced and marketed kratom products with highly concentrated alkaloids
13 with knowledge that these concentrated products were far more likely to lead to
14 overdose and death than kratom products with alkaloid levels that were already
15 known to be dangerous and subject to abuse.

16 B. OPMS' website "About" page explains that kratom is known "to remedy
17 everything, from morning sickness and drowsiness to pain and inflammation,"⁹
18 thereby representing OPMS kratom as a product that can alleviate pain.

19 C. OPMS also states that kratom "does not show up" on drug tests, indicating OPMS
20 kratom may be a pain-relieving agent that can be used to subvert drug testing by
21 those who are inclined to abuse drugs. OPMS also notes on its website that
22
23

24 ¹⁰ Id.

1 “Nicotine and kratom should NOT be mixed,” but this warning does not appear on
2 its product packaging.¹⁰

3 D. Despite knowingly selling its concentrated OPMS products for human
4 consumption, OPMS publishes inconsistent information on its website, including a
5 warning that OPMS products are “only for use as a botanical specimen.
6 Mitragynine speciosa is an unapproved dietary ingredient.”¹¹

7 E. OPMS advertises its kratom formula as “stronger” for the pain relieving, anxiety
8 relieving, and mood improving aspects of kratom. For instance, OPMS markets its
9 OPMS Silver product as “stronger and more effective than other Kratom brands....
10 It entails Mitragynine which is responsible for improving mood, calming anxiety,
11 pain relief and so much more.”¹²

12 F. OPMS also claims that its products can enhance mental clarity, improve
13 concentration, boost brain function, act as an antidepressant, help with anxiety and
14 stress, improve energy, induce euphoria, and relieve pain. “It is a pain reliever and
15 is beneficial in pain management by acting as a sedative to place you to sleep in
16 order that you don’t awaken thanks to pain.”¹³

17 G. Finally, OPMS explains that it has developed its own alkaloid standards “for many
18 of the alkaloids in kratom which do not have standards by no one else,”¹⁴ and that
19

20
21 ¹⁰ Id.

22 ¹¹ Id.

23 ¹² See <https://opmswholesale.com/all-products> (last accessed Aug. 3, 2021).

24 ¹³ See <https://opmswholesale.com/opms-gold> (last accessed Aug. 3, 2021).

¹⁴ See <https://opmswholesale.com/opms-silver> (last accessed Aug. 3, 2021).

1 its manufacturing process “focuses on extracting mostly 7-hydroxymitragynine,”
2 an alkaloid that “makes the kratom a powerful painkiller.”¹⁵

3 50.

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

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

10 B. Holding out its MIT 45 product as the “gold standard”,¹⁶ with a name derived from
11 the high potency of the product which contains a 45% mitragynine isolate.¹⁷ Yet,
12 notwithstanding the purported product potency, MIT 45 fails to issue any sort of
13 warning related to MIT45 on its website or on its product packaging.¹⁸ MIT 45’s
14 wholesale website notes only that a product sold for human consumption is in fact
15 not FDA approved for human consumption.¹⁹

16 51.

17 Had Manufacturing Defendants disclosed the above risks and defects to decedent, he would
18 have avoided taking kratom for his chronic pain, or he would have discontinued taking it, thus

19 _____
20 ¹⁵ Id.; see also, Papsun, Donna M., *The Trouble With Kratom: Analytical and Interpretive Issues*
21 *Involving Mitragynine*, Journal of Analytical Toxicology, 1015 (2019), stating, “...and clinical
22 research suggests that 7-hydroxymitragynine...is four times more potent in its central nervous
23 system (CNS) stimulant and depressant effects that mitragynine.”).

24 ¹⁶ See <https://southseaventures.com/mit45/> (last accessed Aug. 3, 2021).

¹⁷ See <https://headquest.com/behind-the-scenes/south-sea-ventures/> (last accessed Aug. 3, 2021).

¹⁸ See <https://southseaventures.com/mit45/> (last accessed Aug. 3, 2021).

¹⁹ See <https://mit45.com/buy-mit-45-gold-extract-wholesale/> (last accessed Aug. 3, 2021).

1 avoiding dependency, overdose, and death. Likewise, had defendants not negligently made the
2 above noted misrepresentations, decedent would not have started consuming Kratom products,
3 thus avoiding dependency, overdose, and death.

4 52.

5 Each Manufacturer Defendant's negligence was a substantial contributing factor in causing
6 decedent's death and damages to his estate.

7 **SECOND CLAIM FOR RELIEF**

8 **NEGLIGENCE (Against Retailer Defendants)**

9 53.

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

11 54.

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

17 55.

18 When the Retailer Defendants sold kratom products to decedent, Retailer Defendants knew
19 or should have known that kratom was not approved and unreasonably dangerous for human
20 consumption, especially for medicinal uses, such as the alleviation of chronic pain. Knowledge of
21 kratom's dangers was readily available from news articles and news segments, medical literature,
22
23
24

1 FDA, and the American Kratom Association which advises its members not advertise Kratom as
2 effective for pain relief.²⁰

3 56.

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

- 6 A. Retailer Defendants knew or should have known of kratom’s potential to cause
7 serious side effects, including tolerance, addiction, overdose, and death.
- 8 B. Retailer Defendants knew or should have known that they were unlawfully selling
9 the products to customers for medical purposes, even though the unreasonable health
10 risks of such use were not properly understood, identified, disclosed, approved, or
11 regulated.
- 12 C. Retailer Defendants knew or should have known that defendants’ disclaimers were a
13 sham attempt to avoid responsibility for products that were not safe for human
14 consumption.
- 15 D. Retailer Defendants negligently passed on to consumers (including decedent)
16 representations about the products, including representations that kratom was safe
17 and appropriate for pain relief, and was an acceptable alternative to medically
18 approved and regulated treatments for pain management.

19
20
21

²⁰ See e.g. <https://www.amerikankratom.org/mediak/news/kratom-truth-in-labeling-policy-brief.html> (last accessed Aug. 3, 2021); https://www.eastoregonian.com/news/local/pendleton-police-arrest-man-they-say-was-driven-to-psychosis-by-the-substance-kratom/article_40954120-5aa9-11eb-9d3c-7b3d883733f8.html (last accessed Aug. 3, 2021); <https://www.kgw.com/article/news/health/coroners-report-leaves-questions-about-kratom-unanswered/283-71572311> (last
22 accessed Aug. 3, 2021).
23
24

1 57.

2 Each Retailer Defendant's negligence was a substantial contributing factor in causing
3 plaintiff's damages.

4 **THIRD CLAIM FOR RELIEF**

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

7 58.

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

9 59.

10 Manufacturer Defendants were engaged in the business of manufacturing, promoting,
11 distributing, and selling the kratom product that killed decedent, and Retailer Defendants were
12 engaged in the business of promoting, distributing, and selling the kratom product that killed
13 decedent.

14 60.

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

18 61.

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

21 62.

22 At the time they left defendants' hands, the kratom products were defectively labeled.
23 They did not provide adequate warnings and instructions that an ordinary consumer would expect,
24 and the inadequate warnings made the kratom products more dangerous than an ordinary consumer

1 would expect. Specifically, the information accompanying Defendants' kratom products,
2 including the packaging, promotional materials, website information, and directions for use, were
3 inadequate in one or more of the following ways:

- 4 A. Defendants failed to warn of the risks of abuse, dependence, addiction, overdose, and
5 death. *See* paragraphs 49 and 50 above.
- 6 B. Defendants failed to provide specific guidance regarding product use, including
7 recommended levels of dosage and daily consumption limits. *See* paragraphs 49 and
8 50 above.
- 9 C. Defendants failed to provide information regarding product purity and potency on
10 product packaging. *See* paragraphs 49 and 50 above.
- 11 D. Defendants promoted Kratom as a safe and effective alternative to prescription
12 anxiety and/or pain medication. *See* paragraphs 49 and 50 above.
- 13 E. Defendants promoted Kratom as a safe stimulant similar to coffee.
- 14 F. Defendants promoted Kratom as an all-natural and safe medicinal as proven by its
15 use as an ancient herb in southeast Asia.

16 63.

17 In addition to the defects identified in paragraph 62 above, defendant OPMS' label was
18 also inadequate in one or more of the following particulars:

- 19 A. OPMS' liquid shots do not include any instructions for use.
- 20 B. OPMS' liquid shots include a warning that does not mention the known risks of
21 addiction, overdose, and death.

22 64.

23 In addition to the defects identified in paragraph 62 above, defendant South Sea Ventures'
24 label was also inadequate in one or more of the following particulars:

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

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

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

6 65.

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

9 66.

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

13 67.

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

16 **FOURTH CLAIM FOR RELIEF**

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

19 68.

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

21 69.

22 Manufacturer Defendants were engaged in the business of manufacturing, designing,
23 distributing, and selling the kratom product that killed decedent, and Retailer Defendants were
24

1 engaged in the business of promoting, distributing, and selling the kratom product that killed
2 decedent.

3 70.

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

7 71.

8 Decedent used defendants' kratom products for chronic pain – the very purposes for which
9 Manufacturer Defendants designed, manufactured, distributed, and sold these products, and
10 Retailer Defendants promoted, distributed, and sold these products. At the time Manufacturer
11 Defendants manufactured, distributed, and sold, and Retailer Defendants distributed and sold, their
12 kratom products to decedent, they were defectively manufactured and/or designed in one or more
13 of the following ways:

- 14 A. The products were adulterated in that they were contaminated with heavy metals,
15 bacterial contaminants, fungal contaminants, and other contaminants including but
16 not limited to lead, arsenic, and salmonella.
- 17 B. The products did not conform to defendants' design specifications and purity
18 standards in that the product contained higher or lower alkaloid content levels that
19 designed, and/or the product contained the aforementioned contaminants.
- 20 C. As designed, defendants' kratom products could not be made reasonably safe for
21 human consumption because Manufacturer Defendants cannot conform their
22 manufacturing process to ensure consistent potency or purity.
- 23
24

1 D. From the standpoint of a reasonable consumer, the known risks of addiction,
2 overdose, and death and the lack of consistent and reliable safety testing make the
3 risks of kratom use outweigh the utility.

4 72.

5 Both OPMS and MIT 45 liquid shots claim to contain a concentration of kratom alkaloids
6 such as mitragynine and 7-hydroxymitragynine that is unreasonable dangerous and defective,
7 beyond what an ordinary consumer would expect. *See e.g.*, paragraphs 49 and 50 above.

8 73.

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

11 74.

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

14 75.

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

17 **FIFTH CLAIM FOR RELIEF**

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

20 76.

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

22 77.

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

1 78.

2 Defendants impliedly warranted that their kratom product(s) were reasonably fit for its
3 intended purpose of improving health and well-being, and as a safe pain relief supplement.
4 Defendants' warranties included, without limitation, the representations specified on their websites
5 (as described above in paragraphs 49, 50, 62 through 64 and 71 through 72, including
6 representations that the kratom product(s):

- 7 a. Are of superior quality and safer than other forms of kratom on the market.
- 8 b. Are always lab tested for safety and quality control.
- 9 c. Are unadulterated.
- 10 d. Do not have the potential to cause death.
- 11 e. Are a superior alternative to opiates and other medical treatments prescribed under
the supervision of a doctor.

12 79.

13 Defendants issued these warranties to develop and promote the sale of their product(s)
14 through their distribution chain, including the sales to decedent by Retailer Defendants Weece's
15 Market and KS Food Market.

16 80.

17 Decedent purchased the kratom products at Weece's Market and KS Food Market and was
18 therefore in privity with Defendants.

19 81.

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

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82.

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

83.

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

84.

In addition to the warranties described in paragraph 78 above, defendant OPMS made the following specific warranties about the safety and efficacy of its kratom products:

- A. That each batch is lab tested for safety.
- B. That OPMS products provide safe pain relief.
- C. That OPMS products help with anxiety.
- D. And the allegations described in paragraphs 49, 62, and 63.

85.

In addition to the warranties described in paragraph 78 above, defendant South Sea Ventures made the following specific warranties about the safety and efficacy of its kratom products:

- A. That each batch is lab tested for safety.
- B. And the allegations described paragraphs 50, 62, and 64.

86.

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

1 87.

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

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

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

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

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

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

13 88.

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

15 89.

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

18 **SIXTH CLAIM FOR RELIEF**

19 **NEGLIGENT MISREPRESENTATION**
20 **(Against All Defendants)**

21 90.

22 Plaintiffs re-allege and incorporate by reference all previous paragraphs.
23
24

1 91.

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

6 92.

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

9 93.

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

- 11 A. Statements that their kratom products are safe for human consumption.
- 12 B. Statements that their kratom products help with pain relief and inflammation.
- 13 C. Statements that their kratom products can help with depression and anxiety.
- 14 D. Statements that they had conducted adequate clinical safety testing of their products.

15 94.

16 In addition to the misrepresentations alleged in paragraph 93 above, defendant OPMS made
17 the specific misrepresentations to consumers, including decedent identified in paragraphs 49, 62,
18 78, and 84.

19 95.

20 In addition to the misrepresentations alleged in paragraph 93 above, defendant South Sea
21 Ventures made the following specific misrepresentations to consumers, including decedent
22 identified in paragraph 50, 62, 78, and 85.

23 96.

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

1 97.

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

5 98.

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

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

12 99.

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

15 100.

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

18 101.

19 The above representations and omissions are reflected in defendants' system for marketing
20 their kratom product(s) through their local distributors, including Weece's Market and KS Food
21 Market. Together, all defendants unlawfully promoted and sold these unreasonably dangerous
22 products for medicinal purposes to Oregon consumers, including decedent.

1 102.

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

7 103.

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

10 104.

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

13 **PRAYER**

14 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as
15 follows:

- 16 1. For economic damages for past medical expenses, future lost earnings or earning
17 capacity, and any other economic injuries suffered by decedent and his estate as a
18 result of defendants' actions, in an amount to be determined by the jury but not to
19 exceed \$ 4,000,000.00, subject to future amendment;
 - 20 2. For noneconomic damages in an amount to be determined by the jury but not to
21 exceed \$ 5,000,000.00, subject to future amendment;
 - 22 3. Pre- and post-judgment interest as allowed by law;
 - 23 4. For plaintiff's costs and disbursements incurred herein;
- 24

1 5. For other relief the Court deems just and equitable; and

2 6. Plaintiff demands a trial by jury.

3 DATED: August 19, 2021.

JOHNSON JOHNSON LUCAS & MIDDLETON, P.C.

4 s/ Leslie W. O'Leary

5 Leslie W. O'Leary, OSB 990908

lolarity@justicelawyers.com

6 975 Oak St., Suite 1050

Eugene, OR 97401-3124

7 Telephone: (541) 484-2434

Facsimile: (541) 484-088

8 Michael Cowgill, OSB 153277

mcowgill@mctlaw.com

9 Michele Stephan, FL BN 96628

To be admitted *Pro Hac Vice*

10 mstephan@mctlaw.com

Talis M. Abolins, WA SBN 21222

To be admitted *Pro Hac Vice*

11 tabolins@mctlaw.com

Maglio Christopher & Toale, P.A.

12 1605 Main St., Ste 710

13 Sarasota, FL 34236

14 Telephone: (888) 952-5242

Facsimile: (941) 952-5042

15 Attorneys for Plaintiff