

**IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA**

DANA POPE individually as surviving Parent of
Ethan Pope, and as the Administrator of the
ESTATE OF ETHAN POPE, deceased, and JOHN
POPE, as surviving parent of Ethan Pope,

Plaintiffs,

v.

O.P.M.S. a/k/a OPTIMIZED PLANT
MEDIATED SOLUTIONS; OPMS SOLUTIONS,
INC.; OPMS SOLUTIONS GROUP LLC; OPMS
SOLUTIONS; OPMS WHOLESALE d/b/a
CHOICE ORGANICS; MARTIAN SALES, INC.;
MARK REILLY; DAVID L. WATSON;
BIOPHARMACEUTICAL TECHNOLOGY
SERVICES, INC.; AMERICAN KRATOM
ASSOCIATION; WORLD OF TOBACCO,
I.N.C.; AGHOSH CORPORATION; LGI
HOLDINGS, LLC; L.P. IND., LLC d/b/a
OLISTICA LIFE SCIENCES GROUP; PEYTON
SHEA PALAIO a/k/a PAYTON PALAIA, MARK
JENNINGS; AETHER, LLC; JOPEN, LLC, and
other unknown individuals and/or entities,

Defendants.

CIVIL ACTION
FILE NO.: 22-A-1536

**PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL**

For years, a group of people, companies, and industry-funded interest organizations have been collaborating to unlawfully import kratom (*Mitragyna Speciosa*) from Indonesia, create a market for their known-deadly concoctions, and prevent meaningful accountability with tactics ranging from bullying and threats, to paying key legislators as “consultants.” Their new market preys on some of our most vulnerable neighbors—those struggling with pain, addiction, and mental health—by peddling a high that is “safe” and “all-natural,” while leaving out that it’s also

addictive, harmful, and deadly. Kratom should be illegal, but for the tactics employed by the kratom industry, and the influence it has bought. That ends now. Kratom killed Ethan Pope. His death—and this case—are the beginning of the end for all of it.

PARTIES, JURISDICTION, AND VENUE

1. Ethan Wyatt Pope (“Ethan”) died on December 3, 2021, shortly after consuming O.P.M.S. Black Liquid Kratom. He was 23 years old.



- 1.1. According to the Floyd County Coroner and the Georgia Bureau of Investigation, Ethan’s cause of death was “Mitragynine Intoxication,” or death by kratom.
- 1.2. The kratom industry denies that kratom can kill you, despite knowing about many hundreds of serious injuries or deaths associated with kratom. In response, they developed a standard playbook for addressing these issues. No matter what the evidence is to the contrary, they deny everything, even the obvious.
- 1.3. When denying the obvious no longer works for the kratom industry, or no longer serves its ends, they hire purported medical professionals who—often using pseudoscience or half-truths—peddle doubt to the government, the public, and their customers. Tragically, some people buy into it. Then, relying on it, they buy more kratom.
- 1.4. Part of that playbook is to blame customers for their own deaths, claiming that they *actually* died from kratom interacting with another substance in the

decedent's body; interactions they fail to adequately warn about. They will try the same with Ethan.

- 1.5. But fortunately for Ethan and his family, and unfortunately for the kratom industry, the Georgia Bureau of Investigations ran and managed toxicology reports confirming that Ethan's body was clean of all illegal drugs and alcohol, and contained only hydroxyzine (an antihistamine), citalopram (an anti-depressant), and, of course, the mitragynine (kratom) that killed him.
2. Ethan was unmarried and had no children.
3. Plaintiff Dana Pope is the surviving mother of Ethan. Dana is a citizen and resident of Georgia. By bringing this action, Dana avails herself of the jurisdiction of this Court.
4. Plaintiff John Pope is the surviving father of Ethan. John is a citizen and resident of Georgia. By bringing this action, Pope avails himself of the jurisdiction of this Court.
5. Defendant O.P.M.S. (a/k/a Optimized Plant Mediated Solutions, O.P.M.S., O.P.M.S. Solutions, Inc., O.P.M.S. Solutions Group, LLC, OPMSolutions, O.P.M.S. Wholesale, and/or Choice Organics) (Hereafter collectively identified as "O.P.M.S.") was and is a manufacturer, distributor, and seller of kratom products throughout the United States, including Georgia.
 - 5.1. Venue is proper in this Court as to O.P.M.S.
 - 5.2. O.P.M.S. has been validly served with process.
6. This Court has general personal jurisdiction over O.P.M.S. because, on information and belief, O.P.M.S.'s principal place of business is in Georgia. In the alternative, this Court has personal jurisdiction over O.P.M.S. under Georgia's long-arm statute by virtue of O.P.M.S. doing business in Georgia, by contracting with Georgia residents pursuant to

contracts to be performed in part in Georgia, and/or by committing torts where one or more elements of the tort occurred in Georgia.

6.1. After a diligent search, O.P.M.S. does not maintain a registered agent in Georgia, or in any other state. Accordingly, O.P.M.S. may be served according to O.C.G.A. § 14-2-504(b).

6.2. Venue in this Court is proper because O.P.M.S. is a joint tortfeasor with one or more of the named defendants.

7. Defendant Martian Sales Inc., (“Martian Sales”) is a foreign corporation formed in the State of Wyoming, with its principal place of business located in Cobb County, Georgia. This Court has personal jurisdiction over Martian Sales because it is home in Georgia. Venue is proper in this Court because Martian Sales is a joint tortfeasor with one or more of the named defendants. Martian Sales was properly served with a copy of Plaintiffs’ Complaint and summons on June 3, 2022.

7.1. Martian Sales owns the trademark for O.P.M.S., in whole or in part.

7.2. Martian Sales owns the trademark for O.P.M.S. Kratom, in whole or in part.

7.3. Martian Sales owns the trademark for O.P.M.S. Optimized Plant Mediated Solutions, in whole or in part.

7.4. Martian Sales owns the trademark for O.P.M.S. Optimized Plant Mediated Solutions Silver, in whole or in part.

7.5. Martian Sales owns the trademark for O.P.M.S. Optimized Plant Mediated Solutions Gold, in whole or in part.

7.6. Martian Sales owns the distribution rights for O.P.M.S. products in the United States, in whole or in part.

- 7.7. Martian Sales owns the manufacturing rights for O.P.M.S. products in the United States, in whole or in part.
- 7.8. Martian Sales owns, manages, or controls Defendant O.P.M.S., in whole or in part.
- 7.9. Martian Sales owns, manages, or controls Defendant Optimized Plant Mediated Solutions, in whole or in part.
- 7.10. Martian Sales owns, manages, or controls Defendant O.P.M.S. Solutions, Inc., in whole or in part.
- 7.11. Martian Sales owns, manages, or controls Defendant O.P.M.S. Solutions Group, LLC, in whole or in part.
- 7.12. Martian Sales owns, manages, or controls Defendant O.P.M.S. Wholesale, in whole or in part.
- 7.13. Martian Sales owns, manages, or controls Defendant O.P.M.S. Choice Organics, in whole or in part.
- 7.14. Venue is proper in this Court as to Martian Sales.
- 7.15. Martian Sales has been validly served with process.
8. LGI Holdings LLC (“LGI”) is a foreign corporation incorporated in Wyoming with its principal place of business located at 245 Peachtree Center Ave, NE Suite 2400, Atlanta, GA 30303. This court has jurisdiction over LGI because it is at home in Georgia. Venue is proper in this Court as to LGI because it is a joint tortfeasor with one or more of the named defendants who are at home in Cobb County. LGI can be served through its registered agent David Watson at 245 Peachtree Center Ave., Suite 2400, Atlanta, Georgia 30303.
 - 8.1. LGI imports, designs, manufactures, and/or sells kratom and kratom products.

- 8.2. LGI manufactures products under the brand name O.P.M.S.
- 8.3. LGI has been validly served with process.
9. L.P. Ind., LLC d/b/a Olistica Life Sciences Group (“Olistica”) is a foreign corporation incorporated in Wyoming with its principal place of business located at a P.O. Box at a U.P.S. Store: 2550 Sandy Plains Rd., Suite 225, Box 319, Marietta, Georgia 30066. This court has jurisdiction over Olistica because it is at home in Georgia. Venue is proper in this Court as to Olistica because it is a joint tortfeasor with one or more of the named defendants who are at home in Cobb County. Olistica can be served through its registered agent David Watson at 245 Peachtree Center Ave., Suite 2400, Atlanta, Georgia 30303.
 - 9.1. Olistica imports, designs, manufactures, and/or sells kratom and kratom products.
 - 9.2. Olistica also imports, designs, manufactures, and/or sells synthetic marijuana and related products.
 - 9.3. Peyton Palaio, using the pseudonym Payton Palaia, holds himself out as the Chief Science Officer of Olistica.
 - 9.4. Mark Jennings is the C.E.O. of Olistica.
 - 9.5. Olistica was and/or is involved, in whole or in part, in the kratom industry, including engaging in transactions involving kratom that ultimately ended up in the state of Georgia or in generating funds that were ultimately used for the same.
 - 9.6. Venue is proper in this Court as to Olistica.
 - 9.7. Olistica has been validly served with process.
10. Defendant Mark Reilly (“Reilly”) is a citizen and resident of Georgia. This Court has personal jurisdiction over Reilly because he is a resident of Georgia. Venue is proper in this Court as to Reilly because he is a resident of Cobb County. Reilly acknowledged service through his attorney on July 18, 2022.

- 10.1. Venue is proper in this Court as to Reilly.
 - 10.2. Reilly has been validly served with process.
 - 10.3. Reilly owns, manages, or controls Martian Sales, in whole or in part.
11. Defendant David L. Watson (“Watson”) is a citizen and resident of Georgia. This Court has personal jurisdiction over Watson because he is a resident of Georgia. Venue is proper in this Court as to Watson because it is a because is a joint tortfeasor with one or more of the named defendants who are at home in Cobb County. Watson was properly served with summons and Plaintiffs’ Compliant on May 31, 2022. David Watson is an owner and shareholder of Gomel Davis & Watson, LLP, which is located at 245 Peachtree Center Ave., Suite 2400, Atlanta, Georgia 30303; an address that plays a central role in the kratom industry (“Watson’s Address”).
- 11.1. Venue is proper in this Court as to Watson.
 - 11.2. Watson has been validly served with process.
 - 11.3. Watson serves and/or has served as the Treasurer and/or Fiscal Agent for Martian Sales, and signed his name certifying the same.
 - 11.4. The Mailing Address for Martian Sales is and/or has been Watson’s Address.
 - 11.5. Watson lists and/or has listed his e-mail address as the primary means of e-mailing Martian Sales at its Principal Office.
 - 11.6. R.V.R. Holdings LLC (“R.V.R.”) was owned and/or controlled by Peyton Palaio before being administratively dissolved by the Wyoming Secretary of State in 2022. Palaio, through R.V.R. and other entities, attempted to start a marijuana processing and growing facility in Independence, Oregon. The address for R.V.R. was 1880 West Oak Parkway, Suite 214, Marietta, Georgia 30062, which is the same address used by a number of Palaio entities over the years, including Lunar

Labs, LLC which was sued in 2012 for designing, manufacturing, and selling a synthetic marijuana spice compound that killed 16-year-old Chase Burnett in Fayette County, Georgia.

- 11.7. Watson served as the Treasurer and/or Fiscal Agent for R.V.R., and signed his name certifying the same.
- 11.8. R.V.R. was and/or is involved, in whole or in part, in the kratom industry, including engaging in transactions involving kratom that ultimately ended up in the state of Georgia, or in generating funds that were ultimately used for the same.
- 11.9. Organic Investments LLC is an Oregon Limited Liability Company that is owned and/or controlled by Peyton Palaio, in whole or in part. Palaio, through Organic Investments and other entities, attempted to start a marijuana processing and growing facility in Independence, Oregon. The mailing address for Organic Investments is Watson's Address.
- 11.10. Watson serves and/or has served as the Authorized Agent for Organic Investments, and signed his name certifying the same.
- 11.11. The Mailing Address for Organic Investments is and/or has been Watson's Address.
- 11.12. Organic Investments was and/or is involved, in whole or in part, in the kratom industry, including engaging in transactions involving kratom that ultimately ended up in the state of Georgia, or in generating funds that were ultimately used for the same.
- 11.13. PFI LLC ("PFI") is a member of Organic Investments LLC. PFI is a Wyoming Limited Liability Company that is owned and/or controlled by Palaio, in whole or

in part. Palaio, through PFI and other entities, attempted to start a marijuana processing and growing facility in Independence, Oregon.

- 11.14. The Mailing Address for PFI is and/or has been Watson's Address.
 - 11.15. Watson serves and/or has served as the Treasurer and/or Fiscal Agent for PFI, and signed his name certifying the same.
 - 11.16. Watson lists and/or has listed his e-mail address as the primary means of e-mailing PFI at its Principal Office.
 - 11.17. PFI was and/or is involved, in whole or in part, in the kratom industry, including engaging in transactions involving kratom that ultimately ended up in the state of Georgia, or in generating funds that were ultimately used for the same.
 - 11.18. Watson serves and/or has served as the Treasurer and/or Fiscal Agent for LGI, and signed his name certifying the same.
 - 11.19. Watson lists and/or has listed his office as the Mailing Address for LGI.
 - 11.20. Watson lists and/or has listed his office as the Principal Record Address for LGI.
 - 11.21. Watson lists and/or has listed his e-mail address as the primary means of e-mailing LGI at its Principal Office.
 - 11.22. Watson serves and/or has served as the Treasurer and/or Fiscal Agent for Olistica, and signed his name certifying the same.
 - 11.23. Watson lists and/or has listed his office as the Mailing Address for Olistica.
 - 11.24. Watson lists and/or has listed his e-mail address as the primary means of e-mailing Olistica at its Principal Office.
12. Defendant Peyton Shea Palaio ("Palaio"), a/k/a Payton Palaia, is a citizen and resident of Georgia. This Court has personal jurisdiction over Palaio because he is a resident of Georgia. Venue is proper in this Court as to Palaio because he is a joint tortfeasor with

one or more of the named defendants who are at home in Cobb County. Palaio can be served at his home at 3955 Ryans Lake Terrace, Cumming, Georgia, 30040.

12.1. Palaio owns, manages, or controls LGI, in whole or in part, or has done so in the past.

12.2. Palaio owns, manages, or controls O.P.M.S. a/k/a Optimized Plant Mediated Solutions, in whole or in part, or has done so in the past.

12.3. Palaio owns, manages, or controls O.P.M.S. Solutions, Inc., in whole or in part, or has done so in the past.

12.4. Palaio owns, manages, or controls O.P.M.S. Solutions Group LLC, in whole or in part, or has done so in the past.

12.5. Palaio owns, manages, or controls O.P.M.S. Solutions, in whole or in part, or has done so in the past.

12.6. Palaio owns, manages, or controls O.P.M.S. Wholesale d/b/a Choice Organics, in whole or in part, or has done so in the past.

12.7. Palaio has a history of drug abuse and criminal drug charges.

12.8. On December 23, 2008, Palaio was arrested for possession of heroin. According to the Atlanta Police Department, Palaio asked the arresting officer if he could “still shoot up” before being taken to jail. Below is a picture of Palaio’s mugshot from that arrest.



12.9. On May 20, 2009, Palaio was arrested for a probation violation. Below is Palaio's mugshot for that booking.



12.10. Palaio has also been arrested on other charges relating to marijuana and methamphetamines.

12.11. Unfortunately, this is not Palaio's first foray into designing, manufacturing, selling, and/or marketing purportedly legal substances that are designed to get users high; or into these consumable products that can injure or kill their users. In August 2012, David and Yvette Burnett sued Palaio and his companies Omerta Labs LLC, W.G. Distribution, and Lunar Labs LLC, for the wrongful death of their 16-year-old, Chase Burnett, who died after smoking a synthetic cannabinoid labeled "Mojo Diamond Extreme 100x Potpourri," which Palaio and his entities sold to convenience stores for sale to consumers, and which the Georgia Bureau of Investigation determined contained AM-2201, a synthetic marijuana product "that can cause severe injury, altered mental and emotional states, illness and death."

12.12. Omerta Labs LLC, which was responsible for the death of Chase Burnett, was owned, managed, and/or controlled, in whole or in part, by Peyton Palaio and

Mark Reilly, and it maintained an office at 1521 Cave Road, Atlanta, Georgia, 30327, the same address as R.V.R. Holdings and Lunar Labs.

- 12.13. Lunar Labs LLC, which was responsible for the death of Chase Burnett, was owned, managed, and/or controlled, in whole or in part, by Peyton Palaio and Mark Reilly, and maintained an office at 1880 West Oak Parkway, Suite 214, Marietta, Georgia 30062, the same address as R.V.R. Holdings and Omerta Labs.
- 12.14. From 2015-2022, Palaio attempted to start and run a marijuana Retailer in Eugene, Oregon, through River Valley Remedies LLC, an entity owned, managed, and/or controlled by Palaio.
- 12.15. On May 26, 2021, before the Administrative Hearing Division of the Oregon Liquor and Cannabis Commission for the Oregon Secretary of State, River Valley Remedies entered into a stipulated settlement agreement for various marijuana violations.
- 12.16. Before that hearing, River Valley Remedies was charged with the following:
“Licensee, a Retailer, was involved in an unapproved promotional event called Budfest, where product was transferred to an unlicensed location and used to promote their business and their brand at the event. The product was removed from licensee’s inventory by pre-arranged purchases by a license representative. These were not bona fide purchases by a consumer, but rather a way to circumvent the rules regarding how and to whom a retailer may transfer marijuana. At the event, representatives of the licensee gave marijuana items to attendees of the event. During the course of the investigation into the event and Licensee’s participation, a license representative instructed Licensee’s employees not to cooperate with the investigation or speak with the Inspector.” These

charges were labeled as aggravated “because there were three more violations within a two-year period and [two of the violations] were repeated.”

- 12.17. As a result of those charges, and in lieu of a hearing, River Valley Remedies surrendered its license to do business as a marijuana Retailer in the State of Oregon, and relinquished possession of all marijuana and related items that were not sold by the date of surrender.
- 12.18. River Valley Remedies was involved, in whole or in part, in the kratom industry, including engaging in transactions involving kratom that ultimately ended up in the state of Georgia, or in generating funds that were ultimately used for the same.
- 12.19. From 2018-2022, Palaio attempted to start and run a marijuana Processor in Eugene, Oregon, through IND LLC, an entity owned, managed, and/or controlled by Palaio and Mark Jennings.
- 12.20. IND LLC was charged with the same violations as River Valley Remedies noted above.
- 12.21. As a result of those charges, and in lieu of a hearing, IND LLC surrendered its license to do business as a marijuana Retailer in the State of Oregon, and relinquished possession of all marijuana and related items that were not sold by the date of surrender.
- 12.22. IND LLC was involved, in whole or in part, in the kratom industry, including engaging in transactions involving kratom that ultimately ended up in the state of Georgia, or in generating funds that were ultimately used for the same.
- 12.23. Palaio has been validly served with process.
13. Defendant Mark Jennings (“Jennings”) is a citizen and resident of Georgia. This Court has personal jurisdiction over Jennings because he is a resident of Georgia. Venue is

proper in this Court as to Jennings because he is a because is a joint tortfeasor with one or more of the named defendants who are at home in Cobb County. Jennings can be served at his home at 128 Brook Hollow Lake Trail, Cumming, Georgia 30028.

13.1. Jennings owns, manages, or controls LGI, in whole or in part.

13.2. Jennings manages and/or managed Organic Investments LLC

13.3. Jennings owned, managed, and/or controlled IND Group, LLC d/b/a Artifact Extracts, a marijuana processor company in Oregon, along with Peyton Palaio.

13.4. Jennings has been validly served with process.

14. Defendant Biopharmaceutical Technology Services, Inc. (“B.T.S.”) is a foreign corporation incorporated in Wyoming with its principal place of business located at 1621 Central Ave, Cheyenne, Wyoming 82001. This Court has personal jurisdiction over this B.T.S. Under Georgia’s Long-arm Statute because it has transacted business within the state, and committed tortious acts within the state. Venue is proper in this Court as to B.T.S. because it is a because is a joint tortfeasor with one or more of the named defendants who are at home in Cobb County. B.T.S. was properly served with summons and Plaintiffs’ complaint by leaving said documents with its registered agent Wyoming Registered Agent, located at 1621 Central Ave., Cheyenne, Wyoming 82001 on June 3, 2022.

15. Defendant American Kratom Association (“AKA”) is a Virginia corporation that, at the time of filing Plaintiffs Complaint, listed its principal place of business as a P.O. Box at a U.P.S. Store, located at 5501 Merchants View Sq #202, Haymarket, VA 20169.

15.1. Venue is proper in this Court as to AKA because it is a because is a joint tortfeasor with one or more of the named defendants who are at home in Cobb County. AKA was served on July 16, 2022, by leaving summons and Plaintiffs’

Complaint with Mac Haddow, who at the time of filing Plaintiffs' Complaint was AKA's Registered Agent.

- 15.2. At the time of filing Plaintiffs' Complaint, AKA only listed a P.O. Box as its principal place of business, however, a P.O. Box cannot be an organization's nerve center as the work of the organization cannot be done from within that box, or the U.P.S. Store in which is it located. AKA's Principal place of business, and nerve center, was, therefore, its location in Georgia, from which its former president and chairman worked from for three years.
- 15.3. This Court has personal jurisdiction over AKA under Georgia's Long-arm Statute because it:
 - 15.3.1. Maintained an office, if not its headquarters, in Georgia via its President and Chairman, Dave Herman, who worked in Georgia for AKA from at least May 2017 until at least April 2020;
 - 15.3.2. Engaged in business in Georgia;
 - 15.3.3. Employs Georgia citizens;
 - 15.3.4. Has employees who travel to Georgia for business purposes;
 - 15.3.5. Conducts business in Georgia;
 - 15.3.6. Has not only availed itself of the law of Georgia, but it actively sought to change it, and succeeded in doing so;
 - 15.3.7. Specifically targeted products and services to Georgia citizens or assisted others in doing so;
 - 15.3.8. Targets Georgia and its citizens for business transactions, including targeting donations from Georgia citizens;

- 15.3.9. Derives money from Georgia, including receiving donations from Georgia;
 - 15.3.10. Maintains an active lobbyist status with the Georgia General Assembly;
 - 15.3.11. Operates a consumer safety program with the intent of providing benefits to kratom consumers in Georgia, among other areas;
 - 15.3.12. Is a joint tortfeasor with one or more of the named Defendants; and
 - 15.3.13. Upon information and belief, is engaged in a joint venture with the other Defendants to sell O.P.M.S. branded kratom products in Georgia.
16. Defendant World of Tobacco, Inc. (“WoT”) is a domestic corporation with its principal place of business located at 1117 Crosstown Court, Peachtree City, Georgia, 30269. This court has personal jurisdiction over WoT because it is a Georgia domestic corporation. Venue is proper in this Court as to WoT because it is a joint tortfeasor with one or more of the named defendants who are at home in Cobb County. WoT was properly served on July 11, 2022, by leaving summons and Plaintiffs’ Complaint with their registered agent Moaiz Verani.
- 16.1. WoT purchases O.P.M.S. products, including the subject product, from <https://www.partynuts.com>.
 - 16.2. Ethan Pope purchased O.P.M.S. Black Liquid Kratom from WoT shortly before his death.
 - 16.3. Venue is proper in this Court as to WoT.
 - 16.4. WoT has been validly served with process.
17. Defendant Aghosh Corporation (“Aghosh”) is an entity that operates a Chevron gas station and market. Aghosh is a domestic corporation with its principal place of business located at 1080 Peachtree Steet NE, Unit 3412 Atlanta, Georgia 30309. Aghosh owns and

operates a Chevron station that sells kratom, among other things, located at 401 E 2nd Ave, Rome, Georgia 30161. This court has personal jurisdiction over Aghosh because it is a Georgia domestic corporation. Venue is proper in this Court as to Aghosh because it is a joint tortfeasor with one or more of the named defendants who are at home in Cobb County. Aghosh can be served via its registered agent Billal Javaid located at 1080 Peachtree Steet NE, Unit 3412 Atlanta, Georgia 30309

17.1. Ethan Pope purchased O.P.M.S. Black Liquid Kratom from Aghosh shortly before his death.

17.2. Venue is proper in this Court as to Aghosh.

17.3. Aghosh has been validly served with process.

18. Defendant Aether, LLC (“Aether”) is a foreign corporation with its principal place of business located at 1621 Central Ave, Cheyenne, Wyoming 82001. This Court has personal jurisdiction over Aether under Georgia’s Long-arm Statute because it transacts business within the state and committed tortious acts within the state. Venue is proper in this Court as to Aether because it is a joint tortfeasor with one or more of the named defendants who are at home in Cobb County. Aether can be served via its registered agent Wyoming Registered Agent, located at 1621 Central Ave., Cheyenne, Wyoming 82001.

18.1. Aether owns <https://www.partynuts.com>, a kratom distributor.

18.2. Aether has been validly served with process.

19. Defendant Jopen, LLC (“Jopen”) is a foreign corporation with its principal place of business located at 11700 Preston Rd, Suite 660-666, Dallas, Texas 75230. This Court has personal jurisdiction over Jopen Under Georgia’s Long-arm Statute because it has transacted business within the state and committed tortious acts within the state. Venue is

proper in this Court as to Jopen because it is a because joint tortfeasor with one or more of the named defendants who are at home in Cobb County. Jopen can be served via its Registered Agents, Inc located at 5900 Blacones Drive, Suite 100, Austin, Texas 78731.

19.1. Jopen owns <https://www.partynuts.com>, a kratom distributor.

19.2. Jopen has been validly served with process.

20. Defendants individually and jointly designed, specified, manufactured, mixed, assembled, inspected, tested, marketed, placed into the stream of commerce, and/or sold the subject product.

21. Plaintiffs have not stated any causes of action implicating any federal questions. As both Plaintiffs and some of the Defendants in this action are citizens of Georgia permissively joined under O.C.G.A. § 9-11-20, this civil action is not removable to federal court under 28 U.S.C. § 1441(b)(2). Plaintiffs note that the improper removal of this case should be remedied by a remand with an award of all costs, expenses, and fees including, but not limited to, attorneys' fees under 28 U.S.C. § 1447(c).

OPERATIVE FACTS

22. Ethan Pope died after consuming O.P.M.S. Black Liquid Kratom.

23. Kratom, also known as "mitragynine," is derived from the Mitragyna Speciosa tree, which is native to Southeast Asia.

24. Kratom contains dozens of psychoactive compounds or alkaloids, including mitragynine and 7-hydroxymitragynine. These two alkaloids affect the brain in a manner similar to heroin. Like other opiates, these compounds can lead to analgesia (release of pain),

euphoria, and sedation. Also, like other opiates, kratom use can lead to addiction, sickness, and death¹

25. Kratom is unsafe for human consumption.
26. Scientific literature has documented serious health threats regarding the toxicity of kratom. Kratom consumption can lead to many adverse health impacts, including respiratory depression, nervousness, agitation, aggression, sleeplessness, hallucinations, delusions, tremors, loss of libido, constipation, skin hyperpigmentation, nausea, vomiting, and severe withdrawal signs and systems.²
27. Products containing kratom are adulterated, and the F.D.A. banned the import of kratom-containing supplements in February 2014.³
28. Any state law authorizing the sale and use of kratom is preempted by federal adulteration laws, including 21 U.S.C. § 342.
29. To the extent any state law is not preempted, the Defendants in this action have failed to comply with applicable state law in the manufacture, marketing, and/or sale of the products at issue.
30. Despite being criminalized in many foreign countries with punishments of up to 70 years or more⁴ and a prohibition on sale by the U.S. F.D.A., kratom manufacturers have

¹ Commission on Narcotic Drugs, Summary of assessments, findings and recommendations of the 44th World Health Organization's (WHO) Expert Committee on Drug Dependence (ECDD), 11–15 October 2021 (https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_64Reconvened/ECN72021_CRP12_V2108992.pdf); 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>); *see also* DOJ DEA Drug Fact Sheet – Kratom (https://www.dea.gov/sites/default/files/2020-06/Kratom-2020_0.pdf).

² *See* FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html) (last accessed October 18, 2022).

³ Kratom Import Alert 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html).

⁴ Denmark, Latvia, Lithuania, Poland, Romania, Sweden, Myanmar, Malaysia, Australia, and New Zealand have banned Kratom. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). 2015. (<http://www.emcdda.europa.eu/publications/drug-profiles/kratom>).

continued to distribute kratom around the world and shifted their efforts to the United States where trade organizations seek to prevent enforcement of existing drug, food, and supplement laws prohibiting the import and sale of kratom.

31. Defendants unlawfully import kratom from Indonesia by purchasing from companies, including Indobotanical Trading Company.
32. Defendants knowingly misclassify kratom as an agricultural product to facilitate the unlawful importation of kratom.
33. Worse, certain kratom manufacturers have begun producing, marketing, and selling concentrated forms of kratom. These manufacturers include each Defendant identified in this case.
34. O.P.M.S. Kratom liquid shots are particularly dangerous because they are intended to provide consumers with higher concentrations of mitragynine, substantially increasing the risk of overdose and death.
35. In the days leading up to his death, Ethan went to WoT's store located at 1117 Crosstown Court, Peachtree City, Georgia, 30269, and purchased one or more bottles of O.P.M.S. Kratom. He did the same at Chevron, located at 401 E 2nd Ave, Rome, Georgia 30161.
36. Before his death, Ethan consumed O.P.M.S. Liquid Kratom.
37. The kratom product Ethan consumed was manufactured, distributed, and sold by Defendants.
38. An autopsy was conducted on Ethan's body, and the Medical Examiner determined Ethan died as a result of cardiac arrest due to mitragynine intoxication.

OPINION:

This 23-year-old, White male, ETHAN POPE, died of MITRAGYNINE INTOXICATION. Per report, he was found unresponsive in his secure residence by friends; emergency medical services responded to the scene and he was subsequently pronounced deceased. Autopsy examination revealed no evidence of significant recent injury. Postmortem toxicology testing was positive for the above-listed substance and negative for alcohol and other non-therapeutic drugs (see separate toxicology reports). Based on information available at this time, the manner of death is certified as ACCIDENT.

39. Mitragynine intoxication occurs as a result of ingesting kratom.
40. Ethan ingested kratom and died as a result.

COUNT 1: NEGLIGENCE
(All Defendants)

41. As manufacturers, marketers, distributors, promoters, inspectors, and sellers of kratom, the Defendants had a duty to prevent foreseeable injuries arising from the use of their products.
42. Included in that duty, is a duty to make timely and truthful disclosures about kratom's risks and side effects; properly testing each batch of kratom for purity and potency; and conforming manufacturing practices to the standards necessary to produce a consistently pure and evenly potent product, prior to the time of sale, up to the time of Plaintiff's injury and death.
43. Long before Ethan's death in 2021, Defendants had actual and/or constructive knowledge that kratom could cause serious harm to consumers, including addiction, dependency, tolerance, overdose, and death.
44. Defendants' actual or constructive knowledge of serious harm from kratom has continuously grown, as reflected in a growing list of additional publications, including,

but not limited to, news articles and television segments, F.D.A. announcements, and industry publications

45. After Ethan began taking kratom, Defendants had actual or constructive knowledge of the risks of addiction, overdose, and death associated with kratom consumption.
46. Defendants had an ongoing duty to stay apprised of these risks, and to update their labeling and marketing communications to warn of these risks.
47. As to AKA, one of its primary functions is lobbying states to pass its Kratom Consumer Protection Act.
48. AKA lobbied in Georgia and successfully passed the Kratom Consumer Protection Act in Georgia.
49. O.C.G.A. §16-13-120 through 122 deals with kratom.
50. O.C.G.A. §16-13-120 defines what kratom is.
51. O.C.G.A. §16-13-121 makes it a crime to sell kratom to anyone under 18.
52. O.C.G.A. §16-13-122 requires that kratom packaging bear a label with the following information:
 - (1) Clearly labeled ingredients;
 - (2) That the sale or transfer possession of Kratom to another person under 18 years of age is prohibited;
 - (3) The amount of mitragynine and 7-hydroxymitragynine contained in such product;
 - (4) The amount of mitragynine and 7-hydroxymitragynine contained in the packaging for such product;
 - (5) The common or usual name of each ingredient used in the manufacture of such product, listed in descending order of predominance;
 - (6) The name and the principal mailing address of the manufacturer or the person responsible for distributing such product;
 - (7) Clear and adequate directions for the consumption and safe and effective use of such product; and
 - (8) Any precautionary statements as to the safety and effectiveness of such product.

53. The purpose of the Kratom Consumer Protection Act was to protect consumers like Ethan from dangerous kratom and to allow them to make informed discussions.
54. All Defendants denied Ethan the opportunity to make an informed decision on the use of kratom
55. All Defendants owed a duty to Plaintiffs to ensure its products complied with Georgia law.
56. Defendants' products failed to comply with O.C.G.A. §16-13-122 because the labeling:
 - 56.1. Failed to name the principal mailing address of the manufacturer or the person responsible for distributing the product;
 - 56.2. Failed to have clear and adequate directions for the consumption and safe and effective use of such product; and
 - 56.3. Failed to have readable or adequate precautionary statements as to the safety and effectiveness of such products
57. Defendants are negligent *per se* and are liable to Plaintiffs for their damages from selling a product not in compliance with O.C.G.A. §16-13-122.
58. Plaintiffs' injuries are the type of injuries O.C.G.A. §16-13-122 was designed to prevent.
59. Defendants breached their duties of care toward Plaintiffs in one or more of the following ways:
 - 59.1. In producing kratom products with concentrated alkaloids with knowledge that these concentrated products were far more likely to lead to overdose and death;
 - 59.2. In failing to properly label and package their product to make Plaintiffs and consumers aware of the risks associated to kratom;

- 59.3. In failing to properly label and package their product to provide effective guidance for product use and consumption;
- 59.4. In failing to comply with O.C.G.A. §16-13-122 which constitutes negligent *per se*; and
- 59.5. In selling a product they knew or should have known was adulterated as defined by 21 USC 342.
60. In violation of O.C.G.A. § 51-1-23, Defendants knowingly or negligently sold unwholesome provisions to others, including Ethan, who lacked knowledge of the defect that caused damages, including Ethan's death, which constitutes negligence *per se*.
61. Each Defendant's negligence was a substantial contributing factor in causing Ethan's death.
62. Defendants' negligence was the direct and proximate cause of Ethan's death.
63. Defendants' actions showed willful misconduct, malice, fraud, wantonness, oppression, and/or that entire want of care which would raise the presumption of conscious indifference to consequences, including Ethan's death.
64. As a direct and proximate result of Defendants, negligence, Plaintiffs incurred the following damages for which they are entitled to recover from Defendants: (1) wrongful death and injury, and (2) past pain and suffering.
65. As the proximate result of Defendants' negligence, Plaintiffs suffered general damages with an exact amount to be determined by the enlightened conscience of a fair and impartial jury based upon the evidence presented at a trial for this matter.

COUNT 2: NEGLIGENCE
(World of Tobacco and Aghosh)

66. As retail sellers of kratom, Defendants WoT and Aghosh had a duty to reasonably investigate and inspect these products before selling them to ensure they were safe for public consumption.
67. Defendants WoT and Aghosh also have a duty to ensure the products they sell are not adulterated or misbranded, and a duty to ensure the products they sell do not contain false representations of material facts.
68. When Defendants WoT and Aghosh sold kratom products to Ethan, Defendants WoT and Aghosh knew or should have known that kratom was not approved and unreasonably dangerous for human consumption, especially for medicinal uses, such as the alleviation of chronic pain. Knowledge of kratom's dangers was readily available from news articles and news segments, medical literature, and the F.D.A.
69. Defendants WoT and Aghosh breached their duties of care in selling kratom products in one or more of the following ways:
 - 69.1. Defendants WoT and Aghosh knew or should have known of kratom's potential to cause serious side effects, including tolerance, addiction, overdose, and death;
 - 69.2. Defendants WoT and Aghosh knew or should have known that they were unlawfully selling the products to customers for medical purposes, even though the unreasonable health risks of such use were not properly understood, identified, disclosed, approved, or regulated;
 - 69.3. Defendants WoT and Aghosh knew or should have known the subject product was adulterated as defined by 21 USC 342;

- 69.4. Defendants WoT and Aghosh knew or should have known that defendants' disclaimers were a sham attempt to avoid responsibility for products that were not safe for human consumption;
- 69.5. Defendants WoT and Aghosh negligently passed on to consumers (including Ethan) representations about the products, including representations that kratom was safe; and
- 69.6. Selling a product that is not in compliance with O.C.G.A. §16-13-122.
70. Defendants' actions showed willful misconduct, malice, fraud, wantonness, oppression, and/or that entire want of care which would raise the presumption of conscious indifference to consequences, including Ethan's death.
71. Defendants' negligence was the direct and proximate cause of Ethan's death.
72. As a direct and proximate result of Defendants' negligence, Plaintiffs incurred the following damages for which they are entitled to recover from Defendants: (1) wrongful death and injury, and (2) past pain and suffering.
73. As the proximate result of Defendants' negligence, Plaintiffs suffered general damages with an exact amount to be determined by the enlightened conscience of a fair and impartial jury based upon the evidence presented at a trial for this matter.

COUNT 3: NEGLIGENCE
(AKA)

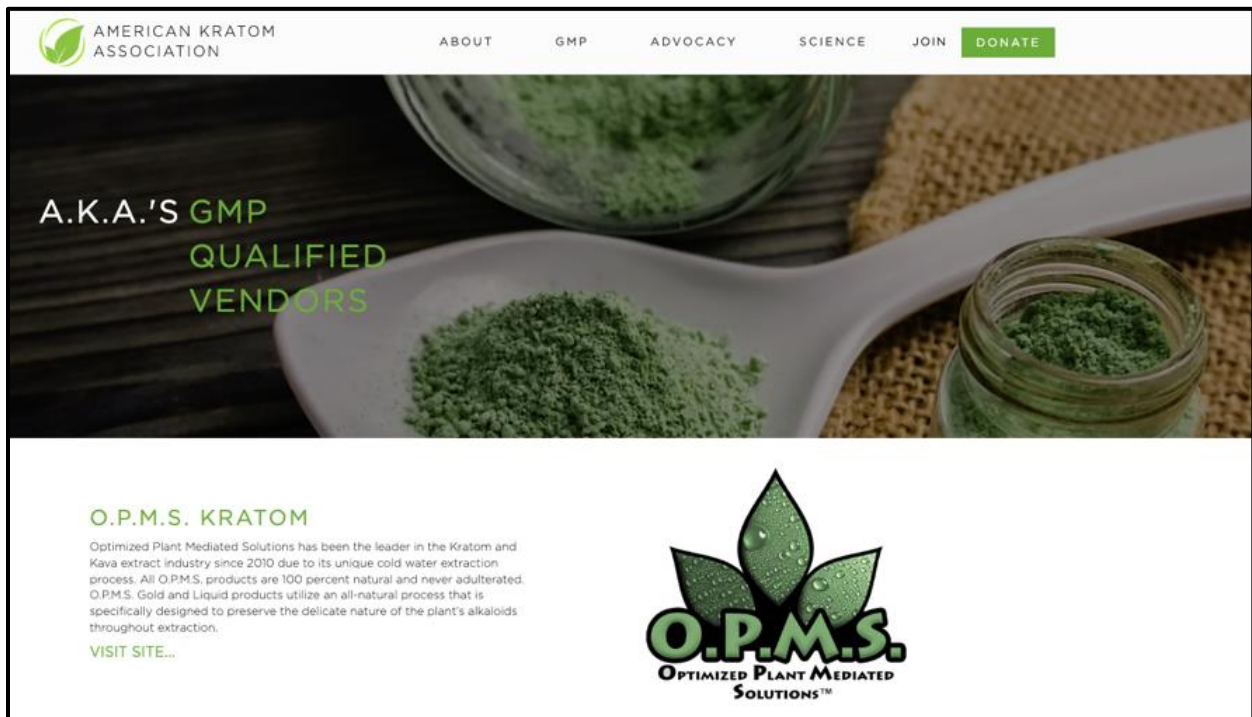
74. AKA is a trade organization that is funded, in whole or in part, by the kratom industry.
75. AKA (a) advocates for favorable market conditions for kratom, (b) asserts medical claims concerning the use of kratom, and (c) facilitates the illegal import and sale of kratom products throughout the United States.
76. AKA invites consumers like Ethan to rely on the false, misleading, and materially incomplete medical claims asserted by AKA concerning kratom.

77. Ethan relied on the statements of AKA concerning the health and safety of kratom.
78. To aid consumers in finding quality products, AKA created a certification program called the Good Manufacturing Practices (“G.M.P.”) program.
79. AKA’s tells consumers, including Ethan, that a company listed on its website as a qualified G.M.P. vendor has complied with the “high G.M.P. Standards,” and that AKA verifies compliance through an annual independent third-party audit.
80. AKA requires any auditor who inspects G.M.P. vendors be screened and approved by the AKA prior to conducting G.M.P. vendor audits.
81. AKA tells consumers that it maintains a “truth in labeling program” and that it regularly surveys the kratom marketplace for violators.
82. AKA states that it is committed to safe product manufacturing and marketing to protect consumers.
83. No one knows better than the AKA that “without standards in place to hold vendors accountable every consumer is put at risk by an unregulated and wild west market place” and that without kratom companies meeting these standards “the worst case scenarios play out every day. . . .”⁵
84. Under AKA’s G.M.P. program, for a brand to be listed on their website as a qualified vendor they must comply with all state and federal laws that concern kratom and food.
85. AKA tells consumers that brands who fail to keep up with its standards will be removed from their G.M.P. qualified vendor list and may even be reported to the F.D.A.
86. Some of the standards AKA claims to enforce in its G.M.P. program include:

⁵ <https://www.amerikankratom.org/truth-in-labeling> Video at 1:58

- 86.1. “Each finished product label must include a batch or lot number and a use by date.”
- 86.2. “All labels, labeling, or advertising should include the following statement: ‘This product is not intended to diagnose, treat, cure, or prevent any disease or condition.’”
- 86.3. “All vendors much comply with local and state labeling and advertising requirements (ex. California’s Proposition 65).”
- 86.4. “Vendors must be compliant with any prevailing state regulatory rules promulgated by the Kratom Consumer Protection Act (K.C.P.A.) in the any state where kratom products are marketed.”

87. O.P.M.S. is one of the qualified vendors on AKA’s G.M.P. list.



88. O.P.M.S. is listed at the top of the G.M.P. qualified vendor pages and is AKA’s premier brand.

89. AKA claims that “Optimized Plant Mediated Solutions has been the leader in the kratom and Kava extract industry since 2010.”⁶
90. On AKA’s complete list of qualified vendors, O.P.M.S. is placed first in that list.
91. AKA’s qualified vendor page directs users to <https://opmkratom.com> through a link, which is O.P.M.S.’s online store.
92. This section of AKA’s website is accessible in numerous ways, including by clicking on a subpage devoted to the question of “WHERE CAN I BUY **SAFE KRATOM**”?⁷ (emphasis added) After clicking on that teaser, consumers are taken to a page about “A.K.A.’S GMP QUALIFIED VENDORS.”
93. On that same page, AKA represents that “[a]ll O.P.M.S. products are **100 percent natural and never adulterated.**” (emphasis added).
94. The O.P.M.S. logo is found throughout AKA’s website, as are links that take consumers to O.P.M.S. webpages so that they can purchase its “safe,” and “never adulterated” kratom.
95. The O.P.M.S. website, to which AKA links consumers, represents O.P.M.S. Kratom products, including the O.P.M.S. Kratom Black Liquid that killed Ethan Pope, as “safe.”⁸
96. As a result of AKA’s representations, statements, and overall efforts, kratom has been sold in the State of Georgia, including the kratom that killed Ethan Pope.
97. Other than its G.M.P. program, AKA’s major function is the lobbying of states to pass its Kratom Consumer Protection Act
98. As stated above, O.P.M.S. products are not in compliance with that law.

⁶ <https://www.americankratom.org/gmp-qualified-vendors>

⁷ <https://www.americankratom.org/gmp-qualified-vendors>

⁸ <https://opmkratom.com/authenticity-guide/o-p-m-s-kratom-black-liquid/>

99. Besides not following state law, O.P.M.S. has failed to comply with AKA's G.M.P. program by:
- 99.1. Failing to have a "use by" date on its labels;
 - 99.2. Failing to provide "adequate labeling directions necessary for safe and effective use by consumers;
 - 99.3. Failing to include a recommended serving size;
 - 99.4. Failing to comply with state law and its own Kratom Consumer Protection Act;
 - 99.5. Failing to have a statement on the label that informs pregnant women they should consult a physician before use; and
 - 99.6. Failing to have the statement "This product is not intended to diagnose, treat, cure, or prevent any disease or condition" on the label.
100. AKA has voluntarily undertaken the task of reviewing, inspecting, and ensuring compliance with a program that is designed to protect third parties, including Ethan.
101. AKA has also voluntarily undertaken the task of informing consumers about brands they list as safe and warning consumers about brands who later fail those safety inspections.
102. AKA recognizes that "without standards in place to hold vendors accountable every consumer is put at risk by an unregulated and wild west marketplace."⁹
103. AKA had a duty, and is subject to liability to consumers, including Ethan for physical harm resulting from its failure to exercise reasonable care to protect Ethan by:
- 103.1. Failing to exercise reasonable care in operating the G.M.P. program, which increased the risk of such harm to consumers, including Ethan; and/or

⁹ <https://www.amerikratom.org/truth-in-labeling> Video at 1:58

- 103.2. Causing the harm suffered by Ethan as a direct result of his reliance on AKA's statements and G.M.P. program.
104. AKA breached its duty to the Plaintiffs to operate the G.M.P. program in a non-negligent manner and is liable for one or more of the following negligent acts:
- 104.1. Failing to ensure O.P.M.S. complied with its G.M.P. Program;
- 104.2. Failing to ensure O.P.M.S. complied with state law;
- 104.3. Continuing to hold O.P.M.S. out as compliant with their safety program;
- 104.4. Failing to remove O.P.M.S. from its website of brands that are safe to use;
- 104.5. Failing to demand O.P.M.S. remove its products from the marketplace;
- 104.6. Failing to supervise the auditors its selects and approves to review G.M.P. participants;
- 104.7. Failing to warn consumers, including Ethan that O.P.M.S. was not complying with its G.M.P. program nor state law; and
- 104.8. Failing to warn Ethan about the dangers of the subject product.
105. AKA's negligence was a substantial contributing factor causing Plaintiff's injuries.
106. AKA's actions showed willful misconduct, malice, fraud, wantonness, oppression, and/or that entire want of care which would raise the presumption of conscious indifference to consequences, including Ethan's death.
107. As a direct and proximate result of Defendants, negligence, Plaintiffs incurred the following damages for which they are entitled to recover from Defendants: (1) wrongful death and injury, and (2) past pain and suffering.
108. As the proximate result of Defendants' negligence, Plaintiffs suffered general damages with an exact amount to be determined by the enlightened conscience of a fair and impartial jury based upon the evidence presented at a trial for this matter.

COUNT 4: STRICT LIABILITY – WARNINGS DEFECT

(All Defendants)

109. Defendants were engaged in the business of manufacturing, promoting, distributing, and selling the kratom product that killed Ethan.
110. The kratom products Ethan purchased and ingested were expected to and did, in fact, reach Ethan without substantial change in the condition they were in at the time they left Defendants' hands.
111. Ethan used Defendants' kratom products for its intended purpose.
112. At the time they left Defendants' hands, the kratom products were defectively labeled.
113. Defendants did not provide adequate warnings and instructions that an ordinary consumer would expect, and the inadequate warnings made the kratom products more dangerous than an ordinary consumer would expect. Specifically, the information accompanying Defendants' kratom products, including the packaging, promotional materials, website information, and directions for use, were inadequate in one or more of the following ways:
 - 113.1. Defendants failed to warn of the risks of abuse, dependence, addiction, overdose, and death.
 - 113.2. Defendants failed to provide specific guidance regarding product use, including recommended levels of dosage and daily consumption limits.
 - 113.3. Defendants failed to provide information regarding product purity and potency on product packaging.
 - 113.4. O.P.M.S.'s liquid shots do not include any instructions for use;
 - 113.5. O.P.M.S.'s liquid shots include a warning that does not mention the known risks of addiction, overdose, and death; and

- 113.6. O.P.M.S.'s label is unreadable, and any warnings it may have included cannot be seen by the consumer.
114. O.C.G.A. § 16-13-122 requires that kratom packaging bear a label with the following information:
- (1) Clearly labeled ingredients;
 - (2) That the sale or transfer possession of kratom to another person under 18 years of age is prohibited;
 - (3) The amount of mitragynine and 7-hydroxymitragynine contained in such product;
 - (4) The amount of mitragynine and 7-hydroxymitragynine contained in the packaging for such product;
 - (5) The common or usual name of each ingredient used in the manufacture of such product, listed in descending order of predominance;
 - (6) The name and the principal mailing address of the manufacturer or the person responsible for distributing such product;
 - (7) Clear and adequate directions for the consumption and safe and effective use of such product; and
 - (8) Any precautionary statements as to the safety and effectiveness of such product.
115. All Defendants owed a duty to Plaintiffs to ensure its products complied with Georgia law.
116. Defendants breached their duties of care toward Plaintiffs in one or more of the following ways:
- 116.1. In producing kratom products with concentrated alkaloids with knowledge that these concentrated products were far more likely to lead to overdose and death;
 - 116.2. In failing to properly label and package their product in order to make Plaintiff and consumers aware of the risks associated to kratom; and
 - 116.3. In failing to properly label and package their product in order to provide effective guidance for product use and consumption.

117. All Defendants breached their duties of care, are negligent *per se* and are liable to Plaintiffs for their damages from selling a product not in compliance with O.C.G.A. § 16-13-122.
118. Defendants' labels made the kratom products unreasonably dangerous and defective, beyond what an ordinary consumer would expect.
119. Even worse than failing to adequately warn about the dangers of kratom, Defendants actively sought to promote that kratom—and specifically their kratom products—are safe for consumers to use, including their customers. They did so in numerous ways including purchasing “scientific” studies, making the statements themselves, hiring advocates to do it on their behalf, and creating information campaigns designed to convince the public generally that kratom is safe for ordinary use, and that it is not dangerous.
120. But while shouting from the rooftops about the purported “safety” of kratom, the kratom industry hired lawyers to write C.Y.A. disclaimers that they bury on their websites. O.P.M.S., for example, takes more than three pages to disclaim nearly everything about its kratom products at <https://opmkratom.com/disclaimer/>. But the flim-flam artistry doesn't stop there. It then uses its disclaimer to set up a byzantine maze of requirements that a user must meet before consuming its kratom products; requirements that it knows no one (including its users) meets, and that no one can reasonably meet. For example, O.P.M.S. purports to require the following of each of its users:
- 120.1. “Consult with a licensed healthcare provider . . . to determine if this product is right for you, and if so, how to use it safely. . . . [and also] about potential interactions or other possible complications.”

- 120.2. When consulting with their doctor, they must tell them “about all the medicines, vitamins, nicotine, herbal supplements, drugs, and any other substance including any other kratom that [they] take or have taken.”
- 120.3. They must also “[i]nform [their] doctor of the alkaloid content, labeled on the package, and [about the alkaloid content] of any other kratom product [they] may have taken in the past.”
- 120.4. They cannot “have a serious medical condition.”
- 120.5. They cannot “use prescription medications.”
- 120.6. They cannot be taking “any medications, including prescription and over-the-counter medications.”
- 120.7. They cannot be taking “vitamins, herbal supplements, drugs, nicotine or any other substance.”
- 120.8. They cannot be taking “any other Kratom product.”
- 120.9. They must have “taken non extract kratom multiple times in the past with no adverse affects.”
- 120.10.They should not use it long term.
- 120.11.They should not use it daily.
- 120.12.They must not use it “for multiple days consecutively, [including] in combination with other kratom products.”
- 120.13.They must not “take more than 1/2 a bottle or 1 extract capsule per 24 hour period, [and must] not take any other kratom product or any medications, vitamins, nicotine, herbal supplements, drugs, or any other substance within 24 hours before and after of taking [the kratom] product.”

- 120.14.They must accept full responsibility for the use of the product, including but not limited to any adverse events or health complications that may arise from use.
- 120.15.They must “proceed with enhanced caution” because “[t]he mitragynine and other alkaloid content . . . is multiple times greater than that of kratom raw leaf, resulting in an increased potency
- 120.16.They must not be “pregnant, plan[ning] to become pregnant, or . . . breastfeeding.”
- 120.17.They must not “have any type of blood disorder, liver or kidney disorder, high blood pressure, heart disease, central nervous system disorder, or any other medical condition.”
- 120.18.They must not “operat[e] motor vehicles or heavy machinery.
- 120.19.They must “[c]ontact [their] healthcare provider immediately or seek emergent care if [they] experience any adverse effects.”
121. Had Defendants’ kratom products been sold with adequate warnings and instructions regarding their risks, Ethan would not have taken Defendants’ kratom products.
122. The unreasonably dangerous and defective labeling of each defendant’s kratom products was a substantial factor contributing to Ethan’s death.
123. Defendants’ actions showed willful misconduct, malice, fraud, wantonness, oppression, and/or that entire want of care which would raise the presumption of conscious indifference to consequences, including Ethan’s death.
124. As a direct and proximate result of Defendants’ negligence, Plaintiffs incurred the following damages for which they are entitled to recover from Defendants: (1) wrongful death and injury, and (2) past pain and suffering.

125. As the proximate result of Defendants' negligence, Plaintiffs suffered general damages with an exact amount to be determined by the enlightened conscience of a fair and impartial jury based upon the evidence presented at a trial for this matter.

COUNT 5: STRICT LIABILITY – DESIGN DEFECT

(All Defendants)

126. Defendants were engaged in the business of manufacturing, designing, distributing, inspecting and selling the kratom product that killed Ethan.

127. The kratom products Ethan purchased and ingested were expected to and did, in fact, reach Ethan without substantial change in the condition they were in at the time they left Defendants' hands.

128. Ethan ingested Defendants' kratom products, which is the very purpose for which Defendants designed, manufactured, distributed, and sold these products.

129. When Defendants manufactured, distributed, and sold their product they were defectively manufactured and/or designed because it was adulterated.

130. As designed, Defendants' kratom products could not be made reasonably safe for human consumption because Defendants cannot conform their manufacturing process to ensure consistent potency or purity.

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

132. O.P.M.S. liquid shots claim to contain a concentration of kratom alkaloids such as mitragynine and 7-hydroxymitragynine that is unreasonable dangerous and defective, beyond what an ordinary consumer would expect.

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

134. Had Defendants' kratom products been adequately tested and designed, Ethan would not have suffered injury and death.
135. Defendants' products are not safe for human consumption and are adulterated.
136. The unreasonably dangerous and defective design of defendants' kratom products was a substantial factor contributing to Ethan's injury and death.
137. Defendants' actions showed willful misconduct, malice, fraud, wantonness, oppression, and/or that entire want of care which would raise the presumption of conscious indifference to consequences, including Ethan's death.
138. As a direct and proximate result of Defendants' negligence, Plaintiffs incurred the following damages for which they are entitled to recover from Defendants: (1) wrongful death and injury, and (2) past pain and suffering.
139. As the proximate result of Defendants' negligence, Plaintiffs suffered general damages with an exact amount to be determined by the enlightened conscience of a fair and impartial jury based upon the evidence presented at a trial for this matter.

COUNT 6: NEGLIGENT MISREPRESENTATION

(All Defendants)

140. In the course of their business as manufacturers, and/or distributors, and sellers of kratom products, Defendants made misrepresentations of material facts and intentionally concealed information about their products from Ethan during the time Ethan bought and used these products.
141. Defendants intended these misrepresentations and false information to serve as guidance for consumers in deciding whether to purchase the kratom products and how to use them.
142. Defendants' misrepresentations in general included one or more of the following:
143. Statements that their kratom products are safe for human consumption.
144. Statements that they had conducted adequate clinical safety testing of their products.

145. The information above was false at the time it was supplied.
146. Defendants possessed superior knowledge about the lack of clinical testing and safety of their products, including the lack of reliable support for representations about the asserted clinical and medicinal safety of kratom and the absence of deaths caused by kratom products.
147. In misrepresenting the safety of their kratom products, Defendants also failed in their duty to disclose known material facts to Ethan regarding kratom products, including but not limited to:
 - 147.1. The health risks associated with regular consumption of kratom.
 - 147.2. The addictiveness of kratom
 - 147.3. Information regarding adverse events associated with kratom.
 - 147.4. The risk of overdose and death associated with kratom.
148. The above representations and omissions were material, and Defendants made them with the intent to persuade and induce Ethan to choose and regularly use kratom products.
149. Defendants made the above representations or omissions knowing the misrepresentations were false or were ignorant of the truth of the assertions.
150. The above representations and omissions are reflected in Defendants' system for marketing their kratom product(s) through their local distributors, including WoT and Aghosh.
151. Defendants had a duty not to make misrepresentations or provide false information about its kratom products.
152. Defendants breached that duty.
153. Together, all Defendants unlawfully promoted and sold these unreasonably dangerous products for consumers, including Ethan.

154. It was reasonable for consumers, including Ethan, to rely on the misinformation provided by Defendants when deciding whether and how to use their kratom products.
155. As manufacturers, and/or distributors, and sellers of dietary supplements, defendants had superior knowledge of kratom, its history, and its safety and risk profile that was unavailable to ordinary consumers.
156. Ethan relied upon and was induced to act in reliance on Defendants' misrepresentations and omissions when he purchased the kratom product(s).
157. Each Defendant's misrepresentations were a substantial contributing factor causing Plaintiff's injuries.
158. Defendants' actions showed willful misconduct, malice, fraud, wantonness, oppression, and/or that entire want of care which would raise the presumption of conscious indifference to consequences, including Ethan's death.
159. As a direct and proximate result of Defendants, negligence, Plaintiffs incurred the following damages for which they are entitled to recover from Defendants: (1) wrongful death and injury, and (2) past pain and suffering.
160. As the proximate result of Defendants' negligence, Plaintiffs suffered general damages with an exact amount to be determined by the enlightened conscience of a fair and impartial jury based upon the evidence presented at a trial for this matter.

COUNT 7: CIVIL CONSPIRACY
(All Defendants)

161. All Defendants acted in concert, combined, and conspired to profit from the unlawful importation and unlawful sale of improperly labeled, dangerous, adulterated, defective kratom products which were unsafe for human consumption—including the subject kratom—based on false, misleading, and incomplete marketing materials and fabricated junk science that they knew endangered the public (“the Conspiracy”). As such, all

Defendants may be held jointly and severally liable for the damages caused by each of their conduct in furtherance of the conspiracy.

162. Defendant O.P.M.S. arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by manufacturing, distributing, and selling kratom in furtherance of the Conspiracy.
163. Defendant Martian Sales arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by managing O.P.M.S. and its intellectual property, as well as importing, manufacturing, distributing, and selling kratom in furtherance of the Conspiracy.
164. Defendant LGI arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by manufacturing kratom for importation, importing, distribution, and sale under the O.P.M.S. brand in furtherance of the Conspiracy.
165. Defendant Reilly arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by owning, operating, and controlling one or more of the corporate Defendants and directing them in their activities in furtherance of the Conspiracy.
166. Defendant Watson arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by serving as the treasurer or fiscal agent of Defendant Martian Sales, the registered agent of Defendant LGI, and managing the principal office, corporate formalities, and registrations for one or more Defendants to facilitate their activities in furtherance of the Conspiracy.
167. Defendant Palaio arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by owning, operating, and controlling Defendant LGI and directing it in its activities in furtherance of the Conspiracy.

168. Defendant Jennings arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by owning, operating, and controlling Defendant LGI and directing it in its activities in furtherance of the Conspiracy.
169. Defendant B.T.S. arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by manufacturing, importing, distributing, and selling kratom in furtherance of the Conspiracy.
170. Defendant AKA arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by knowingly disseminating false and misleading information about the safety of kratom for human consumption, by knowingly and recklessly running a sham standards program to cloak kratom manufacturers in a false appearance of legitimacy, by knowingly false and misleading advertising and marketing of kratom manufactured by other Defendants, by working to create a market for kratom by knowingly propagating false, pseudoscientific claims about the safety and usefulness of kratom and intentionally “debunking” true information about the harmfulness, addictiveness, and lethality of kratom with false and misleading information, and by operating a joint venture with one or more Defendants to promote and profit from the unlawful importation, manufacturing, distribution, and sale of kratom, all in furtherance of the Conspiracy.
171. Defendants W.O.T. and Aghosh arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by retail sale of kratom in furtherance of the Conspiracy.
172. Defendant Aether arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by distribution and sale of kratom in furtherance of the Conspiracy.

173. Defendant Jopen arrived at a mutual understanding with Defendants to enter into, and participate in, the Conspiracy by distribution and sale of kratom in furtherance of the Conspiracy.

PRAYER FOR RELIEF

Plaintiffs pray for the following relief:

174. That they recover all legally compensable damages that were inflicted by Defendants, including the full value of the life of Ethan Pope, as viewed through Ethan's eyes;
175. That they recover damages in an amount sufficient to fully and fairly compensate the Estate of Ethan Pope for his physical and emotional injuries, his medical bills and funeral expenses, and all of his general and special damages;
176. That punitive damages be awarded against Defendants in an amount sufficient to punish them for the harm caused by their conscious indifference to vast suffering caused by their actions, and to deter them from similar future misconduct;
177. That they recover pre-judgment and post-judgment interest as allowed by applicable law;
178. That they recover their costs of suit;
179. That Defendants pay Plaintiffs' attorneys' fees and expenses of litigation under O.C.G.A. § 13-6-11;
180. That they have a trial by jury; and
181. For such other and further relief as the Court deems just and proper.

Respectfully submitted this 25th day of October, 2022.

WETHERINGTON LAW FIRM, P.C.

1800 Peachtree St., NW
Suite 370
Atlanta, Georgia 30309
P/F: (404) 888-4444
matt@wfirm.com
eli@wfirm.com

/s/ Matthew Q. Wetherington

Matthew Q. Wetherington
Georgia Bar No. 339639
Eli J. Cohen
Georgia Bar No. 862571

ASHBY | THELEN | LOWRY

445 Franklin Gateway SE
Marietta, Georgia 30067
Main: (404) 777-7771
Fax: (404) 777-7772
drew@atllaw.com
max@atllaw.com
seth@atllaw.com

/s/ Drew Ashby

Andrew S. Ashby
Georgia Bar No. 455020
Maxwell K. Thelen
Georgia Bar No. 311404
Seth A. Lowry
Georgia Bar No. 867568

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the following document upon all parties to this matter by sending an electronic copy via e-mail to counsel of record as follows:

<p style="text-align: center;">Wayne D. McGrew, III Samuel E. Britt, III McGrew Miller Bomar & Bagley, LLC 50 Hurt Plaza SE, Suite 1200 Atlanta, Georgia 30303 dmcgrew@mmbblaw.com sbritt@mmbblaw.com <i>Counsel for Defendant Watson</i></p>	<p style="text-align: center;">Steven M. Kushner Michael C. Gretchen Fellows Labriola L.L.P. Peachtree Center, Harris Tower, Suite 2400 233 Peachtree St., N.E. Atlanta, Georgia 30303 skushner@fellab.com mgretchen@fellab.com <i>Counsel for Defendants Martian Sales & Reilly</i></p>
<p style="text-align: center;">James D. McGuire McGuire / Bullard Law Firm 1800 Peachtree St., N.W., Suite 514 Atlanta, Georgia 30309 jmcguire@mcklaw.org <i>Counsel for Defendant World of Tobacco</i></p>	<p style="text-align: center;">Timothy L. Cook Cook Law Firm 1800 Peachtree St., N.W., Suite 514 Atlanta, Georgia 30309 TimCook@CookLawAtlanta.com <i>Counsel for Defendant World of Tobacco</i></p>
<p style="text-align: center;">Daniel L. Delnero Squire Patton Boggs (U.S.) LLP 1230 Peachtree Street NE, Suite 1700 Atlanta, Georgia 30309 daniel.delnero@squirepb.com <i>Counsel for Defendant AKA</i></p>	<p style="text-align: center;">Drew Ashby Max Thelen Seth Lowry Ashby Thelen Lowry 445 Franklin Gateway SE Marietta, Georgia 30067 drew@atllaw.com max@atllaw.com seth@atllaw.com</p>

This 25th day of October, 2022.

WETHERINGTON LAW FIRM, P.C.

/s/ Matthew Q. Wetherington

Matthew Q. Wetherington
Georgia Bar No. 339639
Eli J. Cohen
Georgia Bar No. 862571

1800 Peachtree St., NW, Suite 370
Atlanta, Georgia 30309
P/F: (404) 888-4444
matt@wfirm.com
eli@wfirm.com