

<p>DISTRICT COURT OF THE 19th JUDICIAL DISTRICT, COUNTY OF WELD, STATE OF COLORADO</p> <p>Court address: 901 9th Ave. Greeley, CO 80631</p> <p>Phone: (970) 475-2400</p>	<p>DATE FILED September 26, 2024 10:41 AM FILING ID: 4833E2CECAD77 CASE NUMBER: 2024CV30847</p>
<p>Plaintiffs:</p> <p>ERIKA SIMMONS, individually and as Personal Representative of the ESTATE OF ROBERT SIMMONS, deceased.</p> <p>v.</p> <p>Defendants:</p> <p>ONE LOVE INC. (D/B/A ONE LOVE SMOKE SHOP); JONAH VINCENT RICKE; JOPEN, LLC; MARTIAN SALES, INC.; JOHNSON FOODS, LLC; LP IND. INC.; OLISTICA LIFE SCIENCES GROUP; FMK GROUP, LLC (D/B/A JORDAN PROCESS); PNW HOLDING, LLC (D/B/A JORDAN PROCESS); PEYTON SHEA PALAIO; AND MARK JENNINGS</p>	<p>▲ Court Use Only ▲</p>
<p>Plaintiff's Attorney: Melanie R. Sulkin, Esq. #49944 KRIVIT LAW 44 Cook Street, Suite 100 Denver, CO 80206 Phone Number: (303) 800-1225 Facsimile Number: (720) 713-6378 E-Mail: melanie@krivitlaw.com</p> <p>Tamara J. Spires, Esq. (PHV motion forthcoming) Michael J. Cowgill, Esq. (PHV motion forthcoming) mctlaw 1515 Ringling Blvd., Suite 700 Sarasota, FL 34236 Phone: (888) 952-5242 E-mail: tspires@mctlaw.com E-mail: mcowgill@mctlaw.com E-mail: aeckersen@mctlaw.com</p>	<p>Case Number:</p> <p>Division:</p>

AMENDED CIVIL COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, Erika Simmons, individually and as Personal Representative of the Estate of Robert Simmons, deceased, by and through her undersigned counsel, Krivit Law and **mctlaw**, and submits this Civil Complaint and Jury Demand against Defendants, One Love, Inc. (d/b/a One Love Smoke Shop), Jonah Vincent Ricke, JOPEN, LLC; Martian Sales, Inc.; Johnson Foods; LP IND. Inc.; Olistica Life Sciences Group; FMK Group, LLC (d/b/a Jordan Process); PNW Holdings, LLC (d/b/a Jordan Process); Peyton Shea Palaiio; and Mark Jennings. In support thereof, Plaintiff allege as follows:

INTRODUCTION

1. This is a wrongful death case about Colorado resident, Robert Simmons, who died as a result of the O.P.M.S kratom brand product that was sold, distributed, and manufactured by Defendants.
2. Kratom is a tree that is native to Southeast Asia and is marketed in the United States as a safe supplement and a wellness wonder.
3. Kratom is often used as an all-natural over the counter treatment for conditions such as chronic pain, anxiety, and depression.
4. Kratom is not approved for any medical purpose, it is imported into the United States contrary to Food & Drug Administration (“FDA”) import alerts, and it is highly addictive.
5. The kratom product at issue in this case is O.P.M.S., one of America’s most addictive, popular, and profitable kratom brands that has also been linked to multiple deaths.
6. Those behind O.P.M.S. are involved in a deep web of deception, fraud, and secrecy, including the creation and management of shell companies meant to evade liability for harms caused by their products, such as the death of Robert Simmons.¹
7. Plaintiff asks this Court to summon a jury to hold each Defendant accountable for the tragic death of Robert Simmons and the damage caused to his wife and children, as a result of his wrongful death.

STATEMENT OF FACTS

8. At all times relevant to this action, Robert Simmons (“Robert”), deceased, was an individual who, prior to September 27, 2023, resided in Weld County, Colorado.

¹ See Tampa Bay Times, “Deadly Dose”, a three part investigation centered on kratom deaths and the OPMS brand: (<https://project.tampabay.com/investigations/deadly-dose/kratom-industry/>) (last visited September 10, 2024).

9. At all times relevant to this action, Plaintiff Erika Simmons (“Erika”) was and is a resident of Weld County, Colorado.
10. At all times relevant to this action, Erika Simmons was the spouse of Robert Simmons.
11. Plaintiff Erika Simmons is also the personal representative for the Estate of Robert Simmons. See Order, attached as Exhibit A.
12. Plaintiff Erika Simmons, as the surviving spouse of Robert Simmons, is authorized to claim wrongful death damages for the death of Robert Simmons, pursuant to C.R.S. § 13-21-202.
13. Pursuant to C.R.S. § 13-20-101, Plaintiff Erika Simmons, as personal representative for the Estate of Robert Simmons, is entitled to claim survivorship damages for Robert Simmons.
14. Upon information and belief, at all times relevant to this action, Defendant One Love, Inc. (d/b/a One Love Smoke Shop) (“One Love”) was and is a Colorado entity with its principal place of business located at 1600 W 1st Street, Loveland, Colorado 80537. Defendant One Love’s registered agent is Jonah Vincent Ricke, with an address of 2818 W Eisenhower Blvd., Loveland, Colorado 80537.
15. Upon information and belief, at all times relevant to this action, Defendant Jonah Vincent Ricke (“Ricke”) was and is a Colorado resident with an address of 2409 W 22nd Street, Loveland, Colorado 80538. Ricke is the owner and operator of One Love, Inc., which consists of various retail locations utilized for the sale of kratom. Ricke has a history of violating public health orders and failing to comply with municipal ordinances within the State of Colorado. Ricke is named herein due to his failure to comply with requirements to maintain the corporate form of One Love. One Love and Ricke are jointly referred to herein as the “One Love Defendants.”
16. Upon information and belief, at all times relevant to this action, Defendant JOPEN, LLC (doing business as A1 Wholesale; Alphabet Wholesale, Inc.; Party Nuts; Party Nuts Distributions; Uziel; Innovo Activas; and Evolutionary Organics) (“JOPEN”) was and is a Texas limited liability company. Plaintiff alleges that affiliates, members, and managers for JOPEN’s “OPMS” branded kratom activities include but are not limited to: Aether, LLC; Aghosh Corp.; CSA Managing, LLC, Eyal Gabbey, Peyton Palaio; Mark Jennings; and Mark Reilly. Upon further information and belief, Plaintiff alleges that JOPEN conducts its kratom activities as part of the larger Olistica-OPMS kratom enterprise, which operates through a secretive web of affiliates, individuals, shell companies, alter egos, business names, assumed names, and/or trade names, including but not limited to: LP, Ind., LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Lunar Labs LLC; Martian Sales, Inc.; Beeman Inc.; Uziel LLC; 1099 Industrial LLC; 1100 Alpha LLC; Engaged Investments LLC; FMK Group, LLC; PNW Holdings, LLC; Jordan Process; LIV Group, Inc.; LGI Holdings, LLC; Axis Holdings, LLC; Calibre Manufacturing, LLC; Savro Management, LLC; Advanced Nutrition, LLC; Admin Assist, LLC; Precision Biologics, Inc; Nuza LLC; Companion Agriculture; NP Biopharma; Della Terra Pharmaceutical; Aether LLC; Allied

Manufacturing Services, LLC; Johnson Foods, LLC; Peyton Shea Palaio; and Mark Jennings. Defendant JOPEN is subject to the jurisdiction of this court pursuant to the Colorado Long-Arm Statute, C.R.S. § 13-1-124, because JOPEN transacted business and committed a tort within this State.

17. Upon information and belief, at all times relevant to this action, Defendant MARTIAN SALES Inc. (d/b/a O.P.M.S. and Choice Organics) (“MARTIAN SALES”), is a foreign corporation incorporated in the State of Wyoming with its principal place of business in Cheyenne, Wyoming. Upon further information and belief, Plaintiff alleges that MARTIAN SALES conducts its kratom activities as part of the larger Olistica-OPMS kratom enterprise, which operates through a secretive web of affiliates, individuals, shell companies, alter egos, business names, assumed names, and/or trade names, including but not limited to: JOPEN, LLC; LP, Ind., LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Lunar Labs LLC; Martian Sales, Inc.; Beeman Inc.; Uziel LLC; 1099 Industrial LLC; 1100 Alpha LLC; Engaged Investments LLC; FMK Group, LLC; PNW Holdings, LLC; Jordan Process; LIV Group, Inc.; LGI Holdings, LLC; Axis Holdings, LLC; Calibre Manufacturing, LLC; Savro Management, LLC; Advanced Nutrition, LLC; Admin Assist, LLC; Precision Biologics, Inc; Nuza LLC; Companion Agriculture; NP Biopharma; Della Terra Pharmaceutical; Aether LLC; Allied Manufacturing Services, LLC; Johnson Foods, LLC; Peyton Shea Palaio; and Mark Jennings. Defendant MARTIAN SALES is subject to the jurisdiction of this court pursuant to the Colorado Long-Arm Statute, C.R.S. § 13-1-124, because MARTIAN SALES transacted business and committed a tort within this State.
18. Upon information and belief, at all times relevant to this action, Defendant JOHNSON FOODS, LLC (doing business as Olistica Life Sciences Group; Olistica Group; Olistica; OPMS; Companion Agriculture; Companion AG; Jordan Process; Cascade Naturals; Della Terra Pharmaceuticals; Cannopy Corp.; and Canopy Corp.), was and is a Wyoming limited liability company. On information and belief, JOHNSON FOODS conducts its kratom activities as part of the larger Olistica-OPMS kratom enterprise, which operates through a secretive web of affiliates, individuals, shell companies, alter egos, business names, assumed names, and/or trade names, including but not limited to: JOPEN, LLC; LP, Ind., LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Lunar Labs LLC; Martian Sales, Inc.; Beeman Inc.; Uziel LLC; 1099 Industrial LLC; 1100 Alpha LLC; Engaged Investments LLC; FMK Group, LLC; PNW Holdings, LLC; Jordan Process; LIV Group, Inc.; LGI Holdings, LLC; Axis Holdings, LLC; Calibre Manufacturing, LLC; Savro Management, LLC; Advanced Nutrition, LLC; Admin Assist, LLC; Precision Biologics, Inc; Nuza LLC; Companion Agriculture; NP Biopharma; Della Terra Pharmaceutical; Aether LLC; Allied Manufacturing Services, LLC; Peyton Shea Palaio; and Mark Jennings. Defendant is subject to the jurisdiction of this court pursuant to the Colorado Long-Arm Statute, C.R.S. § 13-1-124, because JOHNSON FOODS transacted business and committed a tort within this State.
19. Upon information and belief, at all times relevant to this action, Defendant LP IND. Inc. (doing business as Olistica Life Sciences Group; Olistica Group; Olistica; OPMS; Companion Agriculture; Companion AG; Jordan Process; Cascade Naturals; Della Terra

Pharmaceuticals; Cannopy Corp.; and Canopy Corp.) (“LP”), was and is a Wyoming limited liability company with operations in Colorado. Upon further information and belief, LP conducts its kratom activities as part of the larger Olistica-OPMS kratom enterprise, which operates through a secretive web of affiliates, individuals, shell companies, alter egos, business names, assumed names, and/or trade names, including but not limited to: JOPEN, LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Lunar Labs LLC; Martian Sales, Inc.; Beeman Inc.; Uziel LLC; 1099 Industrial LLC; 1100 Alpha LLC; Engaged Investments LLC; FMK Group, LLC; PNW Holdings, LLC; Jordan Process; LIV Group, Inc.; LGI Holdings, LLC; Axis Holdings, LLC; Calibre Manufacturing, LLC; Savro Management, LLC; Advanced Nutrition, LLC; Admin Assist, LLC; Precision Biologics, Inc; Nuza LLC; Companion Agriculture; NP Biopharma; Della Terra Pharmaceutical; Aether LLC; Allied Manufacturing Services, LLC; Johnson Foods, LLC; Peyton Shea Palaio; and Mark Jennings. Defendant is subject to the jurisdiction of this court pursuant to the Colorado Long-Arm Statute, C.R.S. § 13-1-124, because LP IND. Inc., transacted business and committed a tort within this State.

20. Upon information and belief, at all times relevant to this action, Defendant OLISTICA LIFE SCIENCES GROUP (“OLISTICA”) (also doing business as Centralized Services; Olistica; Olistica Group; Interactive Earth Sciences Corp.; Liv Group Inc.; Cascade Naturals; Della Terra Pharmaceuticals (“Della Terra”); NP Pharma Holdings, LLC; OPMS; Choice Organics; LP IND., Inc.; Jordan Process (“Jordan”); Precision Biologics; Cannopy Corporation; Innovo Activas; and Evolutionary Organics) (“OLISTICA”) is an unincorporated association of kratom business interests that operates through a secretive web of affiliates, individuals, shell companies, alter egos, business names, assumed names, and/or trade names, including but not limited to: JOPEN, LLC; LP, Ind., LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Lunar Labs LLC; Martian Sales, Inc.; Beeman Inc.; Uziel LLC; 1099 Industrial LLC; 1100 Alpha LLC; Engaged Investments LLC; FMK Group, LLC; PNW Holdings, LLC; Jordan Process; LIV Group, Inc.; LGI Holdings, LLC; Axis Holdings, LLC; Calibre Manufacturing, LLC; Savro Management, LLC; Advanced Nutrition, LLC; Admin Assist, LLC; Precision Biologics, Inc; Nuza LLC; Companion Agriculture; NP Biopharma; Della Terra Pharmaceutical; Aether LLC; Allied Manufacturing Services, LLC; Johnson Foods, LLC; Hush Worldwide, LLC; Peyton Shea Palaio; and Mark Jennings. Defendant is subject to the jurisdiction of this court pursuant to the Colorado Long-Arm Statute, C.R.S. § 13-1-124, because OLISTICA LIFE SCIENCES GROUP transacted business and committed a tort within this State.
21. Upon information and belief, at all times relevant to this action, Defendant FMK GROUP, LLC (also doing business as Jordan Process; Centralized Services; Olistica; Olistica Group; Interactive Earth Sciences Corp.; Liv Group Inc.; Cascade Naturals; Della Terra Pharmaceuticals; NP Pharma Holdings, LLC; OPMS; Choice Organics; Precision Biologics; Cannopy Corporation; Innovo Activas; and Evolutionary Organics) (“FMK”) is an association of kratom business interests that operates through a secretive web of affiliates, individuals, shell companies, alter egos, business names, assumed names, and/or trade names, including but not limited to: JOPEN, LLC; LP, Ind., LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Lunar Labs LLC; Martian Sales, Inc.; Beeman Inc.; Uziel LLC; 1099 Industrial LLC; 1100 Alpha LLC; Engaged Investments LLC; PNW Holdings, LLC;

Jordan Process; LIV Group, Inc.; LGI Holdings, LLC; Axis Holdings, LLC; Calibre Manufacturing, LLC; Savro Management, LLC; Advanced Nutrition, LLC; Admin Assist, LLC; Precision Biologics, Inc; Nuza LLC; Companion Agribulture; NP Biopharma; Della Terra Pharmaceutical; Aether LLC; Allied Manufacturing Services, LLC; Johnson Foods, LLC; Peyton Shea Palaio; and Mark Jennings. Defendant is subject to the jurisdiction of this court pursuant to the Colorado Long-Arm Statute, C.R.S. § 13-1-124, because FMK transacted business and committed a tort within this State.

22. Upon information and belief, at all times relevant to this action, Defendant PNW Holdings, LLC (also doing business as Jordan Process; Centralized Services; Olistica; Olistica Group; Interactive Earth Sciences Corp.; Liv Group Inc.; Cascade Naturals; Della Terra Pharmaceuticals; NP Pharma Holdings, LLC; OPMS; Choice Organics; Precision Biologics; Cannopy Corporation; Innovo Activas; and Evolutionary Organics) (“PNW”) is an association of kratom business interests that operates through a secretive web of affiliates, individuals, shell companies, alter egos, business names, assumed names, and/or trade names, including but not limited to: JOPEN, LLC; LP, Ind., LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Lunar Labs LLC; Martian Sales, Inc.; Beeman Inc.; Uziel LLC; 1099 Industrial LLC; 1100 Alpha LLC; Engaged Investments LLC; FMK Group, LLC; Jordan Process; LIV Group, Inc.; LGI Holdings, LLC; Axis Holdings, LLC; Calibre Manufacturing, LLC; Savro Management, LLC; Advanced Nutrition, LLC; Admin Assist, LLC; Precision Biologics, Inc; Nuza LLC; Companion Agribulture; NP Biopharma; Della Terra Pharmaceutical; Aether LLC; Allied Manufacturing Services, LLC; Johnson Foods, LLC; Peyton Shea Palaio; and Mark Jennings. Defendant is subject to the jurisdiction of this court pursuant to the Colorado Long-Arm Statute, C.R.S. § 13-1-124, because PNW transacted business and committed a tort within this State.
23. Upon information and belief, Defendant Peyton Shea Palaio (“Palaio”) is an individual who is associated with multiple entities involved in the kratom business. Palaio is a citizen of Georgia residing at 11287 Bowen Rd., Roswell, GA 30075. He is also the ringleader and mastermind behind several Defendant entities, including JOPEN, Martian Sales, Inc.; Johnson Foods, LLC; LP IND. Inc.; FMK Group LLC; Jordan Process; PNW Holdings, LLC; and CAG Holdings, LLC. Palaio is heavily involved in the operations of the Olistica-OPMS kratom enterprise, which operates through a clandestine, secretive, and purposely opaque web of affiliates, shell companies, alter egos, business names, assumed names, and/or trade names. This Court has personal jurisdiction over Palaio because he transacts business within this state, has committed tortious acts within this state, and/or owns, uses, or possesses real property situated in this state.
24. Upon information and belief, Defendant Mark Jennings (“Jennings”) is an individual who is closely associated and involved with the kratom business operations of Olistica Life Sciences Group and the O.P.M.S. brand. Jennings is the chief executive officer of Olistica Life Sciences Group. Jennings is implicated in managing and maintaining the secrecy of the supply chain and distribution practices of Olistica and its network of associated entities. Upon further information and belief, Jennings is a citizen of Georgia residing at 128 Brook Hollow Lake Trail, Cummings, Georgia 30028. This Court has personal jurisdiction over

Jennings because he transacts business within this state, has committed tortious acts within this state, and/or owns, uses, or possesses real property situated in this state.

25. All Defendants named in paragraphs 16-24 are alter egos of one another and operate as a secretive web of affiliates, individuals, shell companies, alter egos, business names, assumed names, and/or trade names, including but not limited to: Aether, LLC; Aghosh Corp.; Martian Sales, Inc.; Highway 160 Way, LLC; PFI, LLC; Nuza; Nuza Logistics; Olistic Life Sciences Group; Olistica; Olistica Group; Interactive Earth Sciences Corp.; Liv Group, Inc.; Cascade Naturals; Della Terra Pharmaceuticals; NP Pharma Holdings, LLC; OPMS; Choice Organics; Erik Process; Precision Biologics; FMK Group, LLC; PNW Holdings, LLC; Jordan Process; JOPEN, LLC; LP, Ind., LLC; CAG Holdings, LLC; RMH Holdings, Inc.; Lunar Labs LLC; Martian Sales, Inc.; Beeman Inc.; Uziel LLC; 1099 Industrial LLC; 1100 Alpha LLC; Engaged Investments LLC; LIV Group, Inc.; LGI Holdings, LLC; Axis Holdings, LLC; Calibre Manufacturing, LLC; Savro Management, LLC; Advanced Nutrition, LLC; Admin Assist, LLC; Precision Biologics, Inc; Nuza LLC; Companion Agribulture; NP Biopharma; Della Terra Pharmaceutical; Aether LLC; Allied Manufacturing Services, LLC; Johnson Foods, LLC; Peyton Shea Palaio; and Mark Jennings.
26. All Defendants named in paragraphs 16-24 are referred to jointly as the “OPMS Defendants.”
27. This case arises out of the wrongful death of Robert Simmons that occurred as a direct and proximate result of kratom, a highly dangerous and deadly product that is imported, manufactured, distributed, and sold by Defendants to consumers, including decedent, Robert Simmons.
28. This case arises out of the injuries, losses, and damages suffered by Plaintiff Erika Simmons and Robert Simmons’ four minor children.
29. The instant case is brought, in part, pursuant to Colorado’s Wrongful Death Act: C.R.S. § 13-21-202, *et seq.*
30. The instant case is brought, in part, pursuant to Colorado’s Survival Statute: C.R.S. § 13-20-101.
31. Venue is proper in the District Court of Weld County, Colorado, pursuant to C.R.C.P. 98(c) as Decedent was a resident of Weld County and the incident occurred in Weld County.

FACTUAL ALLEGATIONS

32. Plaintiff re-alleges and incorporates by reference the paragraphs above as if fully stated herein.

33. On September 27, 2023, Robert Simmons (34), a loving husband and father, unexpectedly died as a result of ingesting O.P.M.S. Silver Super Green Borneo kratom powder (“Kratom Product”), pictured below.



- 34. Robert purchased the Kratom Product directly from retailer Defendant, ONE LOVE SMOKE SHOP, in Greeley, Colorado.
- 35. On the day he passed away, Robert was at work near his truck when he suddenly fell to the ground and began displaying seizure like activity.
- 36. Upon witnessing Robert on the ground, a co-worker immediately called for help.
- 37. When emergency services arrived, Robert was transported to the hospital and not long after, he was pronounced dead.
- 38. The Weld County Coroner performed an autopsy to determine the cause of Robert’s death.
- 39. The toxicology report revealed that there was 3,500 ng/mL of mitragynine (kratom) in Robert’s blood.
- 40. The coroner determined the cause of death: “acute mitragynine (kratom) toxicity.”
- 41. Robert regularly purchased and consumed Rapper Kush kratom, which he would purchase online and at One Love Smoke Shop.
- 42. On the day he passed and during the days preceding his death, Robert consumed exclusively O.P.M.S. brand kratom products that he purchased from Defendant, One Love Smoke Shop.

43. Robert consumed kratom to help with chronic pain, under the belief that kratom was all natural and safe.
44. Kratom is the name given to botanical products derived from the leaves of the *Mitragyna Speciosa* tree which grows natively in Southeast Asia.
45. Medical and scientific research confirms that powdered kratom sold in the United States is far more dangerous than other natural products sold over the counter.
46. Kratom contains dozens of psychoactive compounds or alkaloids. The two most-studied alkaloids are mitragynine and 7-hydroxymitragynine. These two alkaloids bind to the same opioid brain receptors as morphine. Like opiates, these compounds can lead to analgesia (release of pain), euphoria, and sedation.
47. Kratom was not marketed as a dietary ingredient in the United States before October 15, 1994, and is therefore a “new dietary ingredient” under applicable regulatory standards. As a new dietary ingredient, kratom must not be marketed or sold for human consumption without premarket verification that it is safe for that purpose.
48. None of the named Defendants have ever satisfied the basic industry standard for establishing that kratom is safe for human consumption.
49. The most recent attempt by the kratom industry to legitimize its dangerous kratom products occurred on October 21, 2022. On that date, Defendant JOHNSON FOODS, LLC, submitted its “New Dietary Ingredient Notification for NPI-001, a Dried Leaf Powder.”
50. When this notification was submitted, Defendant JOHNSON FOODS, LLC and other OPMS Defendants knew that no such notification had ever satisfied the premarket safety standards required to lawfully distribute and sell kratom under federal law.
51. Like premarket notifications before it, the JOHNSON FOODS, LLC New Dietary Ingredient Notification for the kratom powder was inadequate, incomplete, and incompetent to satisfy the important standards of premarket safety necessary for the safe marketing, distribution and sale of over-the-counter kratom.
52. A growing body of independent scientific and medical research and literature confirms that no form of psychoactive kratom will ever satisfy the basic standard of premarket safety when it comes to over-the-counter sale of kratom for human consumption.
53. Rather than safe, kratom is known to cause a wide range of adverse events, including nervousness, agitation, aggression, sleeplessness, hallucinations, delusions, tremors, loss of libido, constipation, skin hyperpigmentation, nausea, vomiting, addiction, severe withdrawal, heart arrhythmias, respiratory depression, seizures, drug-drug interactions, overdose, and death.
54. According to recent research, kratom is sixty-three (63) times more deadly than other natural products that are sold to American consumers.

55. Unable to verify kratom's safety, the kratom industry has instead been built upon clandestine and fraudulent business activities, including the unlawful importation of kratom as "plant food," "incense," "cosmetic" powders, and other legal items.
56. All Defendants were aware that kratom was not cleared by the FDA for human consumption nevertheless, each Defendant sold kratom and represented it as being available for human consumption by marketing and distributing it as an all-natural and safe supplement.
57. All Defendants knew or should have known that kratom was unsafe and did not take the steps to warn consumers, including Robert Simmons, of its dangers.
58. All OPMS Defendants knew that the consumption of kratom caused addiction and death.
59. Various OPMS Defendants are parties to a wrongful death action in Denver County, Colorado, filed by Plaintiffs, Roberta and Ronald Walter, alleging that their daughter died after consuming OPMS Liquid Gold Kratom Extracts.²
60. Various OPMS Defendants are parties to a wrongful death action in the Eastern District of Louisiana, filed by Plaintiff, Kathleen Moller, alleging that her daughter died after consuming OPMS Kratom.³
61. Various OPMS Defendants are parties to a wrongful death action in Dallas County, Texas, filed by Plaintiff, Dusti Young, alleging that her brother died after consuming Whole Herbs Kratom, another kratom brand that is imported, packaged, distributed, and sold by OPMS Defendants.⁴
62. Various OPMS Defendants are parties to a wrongful death lawsuit in Cowlitz County, Washington, filed by Plaintiff, Rachel McKibban, alleging that her son died after consuming Whole Herbs Kratom, another kratom brand that is imported, packaged, distributed, and sold by OPMS Defendants.⁵
63. OPMS Defendants are named parties in several other wrongful death actions filed in the United States, where plaintiffs have alleged that the Defendants' kratom products resulted in the sudden death of their loved one.
64. Defendant, Olistica Life Sciences Group ("Olistica"), is prominent in the kratom industry, as it is behind some of the most popular kratom brands on the market.

² See Roberta and Ronald Walter, as Personal Representatives of the Estate of Julie Walter v. 1100 Alpha, LLC et. al., case no.: 2024CV32566, filed in the District Court, County of Denver, State of Colorado.

³ See Kathleen Moller v. Martian Sales, Inc. et. al., case no.: 2:24-cv-002228, filed in the United States District Court Eastern District of Louisiana.

⁴ See Dusti Young as Anticipated Representative of the Estate of Dustin Hernandez, deceased and Brenda Sandoval v. "OPMS Wholesale" et. al., case no.: CC-23-01707-C, filed in the County Court of Dallas County, Texas.

⁵ See Rachel McKibban, individually and as Personal Representative of the Estate of Jordan McKibban v. JoPen, LLC et. al., case no.: 23-01183-08, filed in the Superior Court of the State Washington in and for Cowlitz County.

65. Olistica is involved with the following kratom brands: OPMS (the product at issue), Whole Herbs, and Remarkable Herbs.
66. Those behind Olistica, including the OPMS Defendants, are named parties in multiple lawsuits across the country for the harm caused by their misconduct and their kratom products.
67. Olistica and the OPMS Defendants rely on an evolving web of undercapitalized shell entities and fictitious business names to avoid responsibility for deaths and injury caused by their kratom products.
68. One key player in Olistica's corporate structure is Peyton Shea Palaio ("Mr. Palaio").
69. Mr. Palaio was the CEO of Defendant Olistica and considered the "ringleader of the OPMS brand."⁶
70. Mark Jennings and Mark Reilly, President of Martian Sales, Inc., are known to work in conjunction with Mr. Palaio in the importation, manufacturing, marketing, testing, distribution, and sale of kratom products to consumers, including Robert Simmons.
71. For years, federal agencies (and courts) have attempted to protect the public by seizing kratom and taking other enforcement actions against kratom importers, distributors, and those who illegally sell kratom as an unapproved treatment for medical conditions such as chronic pain, anxiety, addiction, or opioid withdrawals.
72. Despite these efforts, the industry, including the OPMS Defendants, is successfully smuggling billions of dollars' worth of kratom across the U.S. border. Once it gets past customs and border officials, the kratom is quickly channeled into chains of distribution managed by individuals and entities, including Defendants, generating huge profits from millions of consumers. Despite the serious risks of kratom use, profit-seeking companies continue to market kratom products with unproven and deceptive claims about its safety and ability to cure, treat, or prevent medical conditions.
73. Because kratom is adulterated, many kratom businesses, including the OPMS Defendants, conceal their identities and activities behind mysterious and evolving shell companies, and misleading labels.
74. All Defendants have profited from unfair and deceptive business practices by importing, manufacturing, promoting, distributing, and/or selling dangerous kratom products to Colorado residents, including Robert Simmons.

FIRST CLAIM FOR RELIEF

(Negligence Resulting in the Wrongful Death of Robert Simmons – Against All Defendants)

⁶ See Footnote 2.

75. Plaintiff re-alleges and incorporates by reference the paragraphs above as if fully stated herein.
76. Each Defendant imported, designed, manufactured, tested, marketed, distributed, and/or sold the Kratom Products that killed Robert Simmons.
77. Defendants were negligent and careless regarding the importation, design, manufacturing, testing, marketing, distribution, and/or sale of Kratom Products.
78. Defendants had a duty to exercise reasonable care in the importation, design, manufacturing, testing, marketing, distribution, and/or sale of Kratom Products.
79. Defendants failed to exercise reasonable care in the importation, design, manufacturing, testing, marketing, distribution, and/or sale of Kratom Products.
80. Defendants were further negligent in that their Kratom Products failed to provide proper warnings and instructions for use.
81. Defendants knew or should have known that the improperly imported Kratom Products were unreasonably dangerous for human consumption and especially for medicinal uses, including the alleviation of chronic pain.
82. Defendants knew that they were unlawfully selling the products to customers for medicinal purposes, even though the products had unreasonable health risks that were not properly understood, identified, disclosed, approved, or regulated.
83. Defendants knew or should have known that consumers, like Robert Simmons, would suffer foreseeable injury, including death, as a result of Defendants' failure to exercise ordinary care as set forth above.
84. Defendants' conduct constitutes a felonious killing.
85. As a direct and proximate result of Defendants' negligence and failure to fulfill their duties, Plaintiff Erica Simmons, Robert's other wrongful death beneficiaries, and the Estate of Robert Simmons, suffered and will continue to suffer past and future economic and non-economic injuries, damages, and losses.

SECOND CLAIM FOR RELIEF

(Negligence - Post-Sale Duty to Warn - Resulting in the Death of Robert Simmons – Against All Defendants)

86. Plaintiff re-alleges and incorporates by reference the paragraphs above as if fully stated herein.
87. Each Defendant imported, designed, manufactured, tested, marketed, distributed, and/or sold the Kratom Products that killed Robert Simmons.

88. Defendants had a continuing duty to warn those who consumed their Kratom Products of the dangers that they knew or should have known, regarding kratom.
89. Defendants breached their continuing duty to warn by failing to inform those who consumed their Kratom Products of kratom's dangers.
90. Defendants knew or should have known the hazards associated with consuming kratom and should have used reasonable methods to inform its consumers of the dangers associated with consuming kratom, including but not limited to addiction and death.
91. Defendants knew or should have known that kratom had unreasonable health risks that were not properly understood, identified, disclosed, approved, or regulated.
92. Defendants knew or should have known that consumers, like Robert Simmons, would suffer foreseeable injury, including death, as a result of Defendants' failure to warn as set forth above.
93. As a direct and proximate result of Defendants actions, Plaintiff, Erika Simmons, Robert's other wrongful death beneficiaries, and the Estate of Robert Simmons suffered and will continue to suffer economic and non-economic injuries, damages, and losses.

THIRD CLAIM FOR RELIEF

(Strict Liability - Warnings and Instructions - Resulting in the Death of Robert Simmons – Against OPMS Defendants)

94. Plaintiff re-alleges and incorporates by reference the paragraphs above as if fully stated herein.
95. Each named Defendant imported, designed, manufactured, tested, marketed, distributed, and/or sold the Kratom Products that killed Robert Simmons.
96. The Kratom Products was expected to and did reach Robert Simmons without substantial change in its condition when it left Defendants' hands.
97. At the time the Kratom Products were sold by Defendants, they were in a defective condition because of their unsafe and improper design, unsafe levels of Mitragynine, and/or lack of proper warnings.
98. The Defendants' Kratom Products were continuously sold without adequate warnings or adequate instructions regarding the products serious health risks, including the risks of abuse, dependence, addiction, overdose, and death.
99. An ordinary consumer would reasonably conclude that Defendants' Kratom Products are not reasonably safe when sold without adequate warnings or instructions about the serious adverse health risks, including the risk of overdose and death suffered by Robert Simmons.

100. In addition, at the time of manufacturing, the likelihood that Defendants' Kratom Products would cause and contribute to the serious harms inflicted on Robert Simmons (including toxicity and death) rendered Defendants' kratom warnings and instructions completely inadequate, even though reasonable instructions and warnings about the risk of those serious harms could easily have been provided.
101. At the times and on the occasions in question, Robert Simmons was using the Defendants' Kratom Products for the very purposes intended and promoted by the Defendants, including: (a) human consumption and (b) relief from pain.
102. Without adequate warnings and instructions, the Kratom Products were unreasonably dangerous, unfit for its intended use, and defective.
103. If the Kratom Products had been sold with adequate warnings and instructions regarding its health risks, including but not limited to adequate disclosure of the major risks of overdose and death, then Robert Simmons' overdose and death from the Kratom Products would not have occurred.
104. Defendants are liable for all damages caused by their failures to provide adequate warnings and instructions that would have prevented the death caused by their defective and unreasonably dangerous nature of their Products.
105. As a direct and proximate result of the lack of reasonable and adequate instructions or warnings regarding the defects in kratom, Plaintiff, Erika Simmons, Robert's other wrongful death beneficiaries, and the Estate of Robert Simmons suffered and will continue to suffer economic and non-economic injuries, damages, and losses.

FOURTH CLAIM FOR RELIEF

(Strict Liability – Design and Manufacturing Defect – Resulting in the Death of Robert Simmons – Against OPMS Defendants)

106. Plaintiff re-allege and incorporate by reference the paragraphs above as if fully stated herein.
107. At the time Defendants imported or manufactured the products sold to and consumed by Robert Simmons, the products were not reasonably safe as designed.
108. The Kratom Products were and are far more dangerous than the ordinary consumer would reasonably expect, considering relevant factors, such as the product's intrinsic nature, relative cost, severity of potential harm (including death), the industry standards governing natural products, and the cost and feasibility of minimizing such risk.
109. The Defendants are unable to adequately assure that the manufacturing process for their Kratom Products can achieve a product that is reasonably safe for human consumption.

110. The products sold to Robert Simmons were unreasonably dangerous beyond the expectations of the ordinary consumer and were unfit for their intended use.
111. At the time and on the occasions in question, Robert Simmons was using the Defendants' products for the foreseeable purposes that Defendants knew of and intended, and were in this respect defective, unsafe and unreasonably dangerous.
112. The defective, unsafe, and unreasonably dangerous condition of the Kratom Products resulted in the death of Robert Simmons.
113. As a direct and proximate result of the defects in the Defendants' products, Plaintiff, Erika Simmons, Robert's other wrongful death beneficiaries, and the Estate of Robert Simmons suffered and will continue to suffer economic and non-economic injuries, damages, and losses.

FIFTH CLAIM FOR RELIEF

(Breach of Express Warranty Under U.C.C. Resulting in the Death of Robert Simmons – OPMS Defendants)

114. Plaintiff re-alleges and incorporates by reference the paragraphs above as if fully stated herein.
115. Defendants imported, manufactured, tested, marketed, distributed and/or sold into the stream of commerce OPMS Kratom Products.
116. Defendants expressly warranted that their Products were reasonably fit for their intended purposes of human consumption as an all-natural, safe, and effective product.
117. The Kratom Products were not as warranted by Defendants.
118. Robert Simmons was an individual who was reasonably expected to use, consume, and/or be affected by the Kratom Products.
119. Within a reasonable time after Plaintiff discovered or should have discovered the breach of warranty, Plaintiff notified Defendants of the breach.
120. As a direct and proximate result of Defendants' breach of express warranties regarding the effectiveness and safety of Kratom Products, Plaintiff, Erika Simmons, Robert's other wrongful death beneficiaries, and the Estate of Robert Simmons suffered and will continue to suffer economic and non-economic injuries, damages, and losses.

SIXTH CLAIM FOR RELIEF

(Breach of Implied Warranty Resulting in the Death of Robert Simmons – All Defendants)

121. Plaintiff re-alleges and incorporates by reference the paragraphs above as if fully stated herein.

122. Defendants imported, manufactured, tested, marketed, distributed and/or sold into the stream of commerce OPMS Kratom Products.
123. By placing Kratom Products into the stream of commerce, Defendants impliedly warranted that their Products were reasonably fit for their intended purposes of human consumption, improving health and wellbeing, and as a safe and effective product for medical purposes such as pain relief.
124. Robert Simmons was an individual who was reasonably expected to use, consume, and/or be affected by the Kratom Products.
125. All Defendants were merchants with respect to the OPMS Kratom Product that killed Robert Simmons.
126. The Kratom Products placed into the stream of commerce by Defendants were defective and accordingly, not fit, safe, or merchantable for their intended use.
127. Within a reasonable time after Plaintiff discovered or should have discovered the breach of warranty, Plaintiff notified Defendants of the breach.
128. As a direct and proximate result of Defendants' breach, Plaintiff, Erika Simmons, Robert's other wrongful death beneficiaries, and the Estate of Robert Simmons suffered and will continue to suffer economic and non-economic injuries, damages, and losses.

SEVENTH CLAIM FOR RELIEF

(Strict Liability - Misrepresentation Resulting in the Death of Robert Simmons – OPMS Defendants)

129. Plaintiff re-allege and incorporate by reference the paragraphs above as if fully stated herein.
130. Defendants made misrepresentations of material facts about the Kratom Product and concealed information about the product to the public, including Robert Simmons.
131. Defendants possessed superior knowledge about the lack of clinical testing and safety of its products, including the lack of reliable support for representations about the asserted clinical and medicinal safety of the product, and the absence of deaths caused by Kratom Products.
132. Defendants failed in their duty to disclose known material facts to Plaintiff regarding their products, including but not limited to:
 - a. The health risks associated with regular consumption of kratom products.
 - b. Information regarding adverse events associated with kratom products.
 - c. The risk of overdose and death associated with kratom products.
133. Additional misrepresentations and concealment included, but were not limited to:
 - a. Falsely representing that the product will not cause death.

- b. Falsely representing that the product is safe and appropriate for regular human consumption.
 - c. Falsely representing that every batch of kratom product was lab tested for quality and purity.
 - d. Falsely representing that the product is never adulterated.
 - e. Falsely representing that the product has no serious adverse health effects.
134. The above representations and omissions were material and were made with the intent to persuade and induce Robert Simmons to choose and regularly use the OPMS Kratom Products.
135. Defendants made the above representations or omissions knowing the misrepresentations were false or were ignorant of the truth of the assertions.
136. The above representations and omissions are reflected in Defendants' system for marketing their products. Together, all these Defendants unlawfully promoted and held out for sale the unreasonably dangerous product for medicinal purposes to Colorado residents.
137. Defendants made the above misrepresentations or omissions with the intention and knowledge that Colorado consumers would select the product for regular consumption for the purposes identified in their marketing.
138. Robert Simmons relied upon and was induced to act in reliance on these Defendants' misrepresentations and omissions when he in fact purchased the product to achieve relief from chronic pain.
139. As a direct and proximate result of the breach of the warranties, Plaintiff, Erika Simmons, Robert's other wrongful death beneficiaries, and the Estate of Robert Simmons suffered and will continue to suffer economic and non-economic injuries, damages, and losses.

EIGHTH CLAIM FOR RELIEF

**(Deceptive and Unfair Practices Resulting in the Death of Robert Simmons –
All Defendants)**

140. Plaintiff re-alleges and incorporates by reference the paragraphs above as if fully stated herein.
141. The acts by Defendants in this cause of action include, but are not limited to, the following deceptive and unfair acts:
- a. Failing to disclose adequate information about the safety and efficacy of the Kratom Products, either before or after Decedent's purchase.
 - b. Failing to provide adequate warnings, labels or instructions about the Kratom Products dangerous propensities.
 - c. Knowingly selling the product for human consumption and the alleviation of chronic pain, despite sham reseller conditions that the product should only be sold for "research", "incense", "ornamental" or similar purposes that do not involve human consumption.

- d. Representing that the Kratom Products are appropriately used for medicinal benefits.
- e. Representing that the Kratom Products possess many therapeutic effects.

142. Such acts occurred in the course of trade or commerce in the State of Colorado.

143. Such acts affected, and still affect, the public as actual or potential consumers of Defendants' Kratom Products in the State of Colorado.

144. Robert Simmons, deceased, was an actual consumer of Defendants' Kratom Products.

145. As a direct and proximate result of Defendants deceptive and unfair practices, Plaintiff, Erika Simmons, Robert's other wrongful death beneficiaries, and the Estate of Robert Simmons suffered and will continue to suffer economic and non-economic injuries, damages, and losses.

NINTH CLAIM FOR RELIEF

(Civil Conspiracy Resulting in the Death of Robert Simmons – OPMS Defendants)

146. Plaintiff re-alleges and incorporates by reference the paragraphs above as if fully stated herein.

147. The OPMS Defendants, had a meeting of the minds and knowingly and willfully conspired and agreed to fraudulently create each entity behind the OPMS brand for the purpose of smuggling kratom products across the U.S. border to be sold for human consumption, concealing their misconduct through documentation that falsely identified kratom products as, "florafood," "soil container," "neem leaf," and/or other products labeled as "not for human consumption".

148. The Defendants further conspired to sell their kratom products to consumers without any adequate warnings regarding kratom's dangers.

149. The Defendants conspired to illegally import, distribute, market, and sell their kratom products to consumers with one goal in mind, financial gain.

150. Defendants committed and caused to be committed the overt and unlawful acts in furtherance of the conspiracy, including but not limited to the actions described above.

151. As a direct and proximate result of the Defendants conspiracy, Plaintiff, Erika Simmons, Robert's other wrongful death beneficiaries, and the Estate of Robert Simmons suffered and will continue to suffer economic and non-economic injuries, damages, and losses.

TENTH CLAIM FOR RELIEF

(Loss of Consortium Resulting in the Death of Robert Simmons – All Defendants)

152. Plaintiff re-alleges and incorporates by reference the paragraphs above as if fully stated herein.

153. Each Defendant was negligent in the manufacturing, importation, distribution, marketing, and sale of its kratom products as described above in paragraphs 62 through 73.

154. As a result of each Defendants' negligence, Robert Simmons died on September 27, 2023.

155. Erika Simmons and Robert Simmons were married at the time of Robert's passing.

156. As a result of Robert's death, Erika Simmons also had a loss of her rights of consortium.

157. As a direct and proximate result of Defendants actions, Plaintiff, Erika Simmons, suffered and will continue to suffer economic and non-economic injuries and damages, including but not limited to the loss of affection, moral support, sexual relations, and companionship.

JURY DEMAND

Plaintiff demands trial to a jury of six (6) on all issues so triable.

WHEREFORE, Erika Simmons, individually, and Erika Simmons, as Personal Representative and on behalf of all beneficiaries seeks past and future economic and non-economic damages, including but not limited to: grief, loss of companionship, loss of consortium, impairment of quality of life, pain and suffering, inconvenience, emotional distress, fear and anxiety, past and future lost wages, loss of services, funeral and burial expenses, and other financial losses, against One Love Inc. (d/b/a One Love Smoke Shop), JOPEN, LLC; Martian Sales, Inc.; Johnson Foods; LP IND. Inc.; Olistica Life Sciences Group; FMK Group, LLC; Jordan Process, LLC; Peyton Shea Palaio; and Mark Jennings. Plaintiff further seeks a finding that the acts causing death constitute a felonious killing. Plaintiff seeks judgment in an amount to be determined at trial, pre- and post-judgment interest as permitted by law, costs, expert witness fees, and for such other and further relief as the Court may deem just and proper.

DATED this 26th day of September 2024.

Respectfully submitted,

KRIVIT LAW

s/ Melanie Sulkin
Melanie Sulkin, # 49944

Tamara J. Spires, Esq.
(PHV motion forthcoming)
Michael J. Cowgill, Esq.
(PHV motion forthcoming)
mctlaw

Attorneys for Plaintiff