

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

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

SYBIL COYNE, individually and as Personal
Representative of the Estate of PATRICK
COYNE, deceased;

Plaintiffs,

vs.

WENDIANNE ROOK and JEFF ROOK,
husband and wife; SOCIETY BOTANICALS,
LLC, a for profit Oregon limited liability
company (d/b/a KRATOM DIVINE); CHIN 2
CORP., a for profit Washington corporation
(d/b/a C&C SPEEDY MART); JSC USA,
LLC, a for profit Oregon limited liability
company (d/b/a MINIT MART QUICK SHOP
and PDX FOOD MART); and JOHN & JANE
DOES 1THROUGH 4.

Defendants.

NO. 20-2-00874-08

**COMPLAINT FOR
WRONGFUL DEATH**

19
20
21
22
23
24
25

I. INTRODUCTION

COMES NOW the above-named plaintiff, by and through her attorneys of record, Talis
Abolins and Michael Cowgill of Maglio, Christopher, and Toale PA Law Firm; and alleges the
following in support of her claims:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

II. PARTIES

1. ESTATE OF PATRICK COYNE (“Patrick”). The Estate of Patrick Coyne has been opened in a probate action by the Cowlitz County Superior Court. Patrick Coyne was a husband to Sybil Coyne and a father to three children who, until the time of his death, resided in Cowlitz County, Washington. Before his death he was a great husband, father, and friend who worked hard to provide for his family.

2. SYBIL COYNE is Patrick’s surviving spouse and the duly appointed Personal Representative of his Estate. She was and is a resident of Cowlitz County, State of Washington. She brings claims on behalf of the Estate and its beneficiaries, including herself and Patrick’s surviving minor children. The children in the Coyne household include Lacie Coyne and Patrick Coyne; and Tyler Hettinger, Sybil’s nephew over whom the Coynes had accepted custody and were raising as one of their children.

3. At all times relevant to this Complaint, Defendant SOCIETY BOTANICALS, LLC) (hereinafter referred to as “KRATOM DIVINE”) was and is an Oregon-based limited liability corporation doing business as KRATOM DIVINE, with its corporate headquarters in Springfield, Oregon.

4. At all times relevant to this Complaint, Defendants WENDIANNE ROOK and JEFF ROOK have been husband and wife, residing in Lane County, Oregon (hereinafter referred to as the “ROOKS”); they are the principals of KRATOM DIVINE and they and their marital community have profited from the importation, distribution, marketing, and sale of Kratom Divine.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

IV. STATEMENT OF FACTS

A. Kratom is a dangerous and deadly drug that is unregulated in the United States.

10. Kratom, also known as Mitragynine, is derived from the *Mitragyna Speciosa* tree native to Southeast Asia.

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

12. Although not formally classified as an opiate, kratom contains dozens of psychoactive compounds or alkaloids. While research is ongoing, 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.

13. There are no regulations requiring consistency in kratom’s quality, purity and dosage. Kratom distributors have no reliable basis for specifying the variable doses and potencies of kratom’s various psychoactive compounds in product packaging.

14. Kratom’s serious health risks include risks of abuse, dependence, addiction, overdose and death.¹ Scientific literature has documented serious concerns regarding the toxicity of kratom in multiple organ systems. Consumption of kratom can lead to many adverse health impacts, including respiratory depression, nervousness, agitation, aggression, sleeplessness, hallucinations, delusions, tremors, loss of libido, constipation, skin

¹ See FDA News Release, FDA issues warnings to companies selling illegal, unapproved kratom drug products (<https://www.fda.gov/news-events/press-announcements/fda-issues-warnings-companies-selling-illegal-unapproved-kratom-drug-products-marketed-opioid>) (last accessed Dec. 28, 2020); see also DOJ DEA Drug Fact Sheet – Kratom (https://www.dea.gov/sites/default/files/2020-06/Kratom-2020_0.pdf) (last accessed Dec. 28, 2020).

1 hyperpigmentation, nausea, vomiting, and severe withdrawal signs and systems.² Effective
2 treatments for kratom addiction and overdose have not been developed by the medical
3 community.³

4 15. Over the past ten years, reports of kratom poisonings and overdose deaths have
5 risen dramatically throughout the country.

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

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

15 18. Despite the serious risks of kratom use, profit-seeking companies are continuing
16 to market kratom products with unproven and deceptive claims about its safety and ability to
17 cure, treat or prevent medical conditions and diseases. The FDA's examples of illegal claims
18

19
20
21 ² See FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html) (last accessed Dec 28, 2020).

22 ³ See FDA News Release, FDA and Kratom (<https://www.fda.gov/news-events/public-health-focus/fda-and-kratom>) (last accessed Dec. 28, 2020).

23 ⁴ See FDA Statement, Statement from FDA Commissioner Scott Gottlieb, M.D. on FDA advisory about deadly risks associated with kratom (<https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-fda-advisory-about-deadly-risks-associated-kratom>) (last accessed Dec. 28, 2020).

24 ⁵ See FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html) (last accessed Dec 28, 2020).

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

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

10 20. The kratom fraudsters are a serious threat to public health and safety. The kratom
11 products are not safe for human consumption, and the deceptive marketing and sale of these
12 products has encouraged consumers and patients to experiment with mysterious and dangerous
13 compounds in lieu of seeking appropriate and approved medical treatments that can be safely
14 supervised by medical professionals.

15
16 **B. KRATOM DIVINE and the ROOKS fraudulently marketed kratom as a**
17 **miraculous cure-all with “absolutely” no negative health effects, and no risk of overdose.**

18 21. The ROOKS and KRATOM DIVINE distribute and sell their kratom products to
19 residents in Washington, Oregon and California pursuant to a false and misleading marketing
20 campaign.⁷

22 ⁶ See FDA News Release, FDA issues warnings to companies selling illegal, unapproved kratom drug products
23 marketed for opioid cessation, pain treatment and other medical uses ([https://www.fda.gov/news-events/press-
announcements/fda-issues-warnings-companies-selling-illegal-unapproved-kratom-drug-products-marketed-opioid](https://www.fda.gov/news-events/press-announcements/fda-issues-warnings-companies-selling-illegal-unapproved-kratom-drug-products-marketed-opioid))
24 (last accessed Dec. 28, 2020).

25 ⁷ See generally Kratom Divine, Kratom Divine website (<https://kratomdivine.com/>) (last accessed Dec. 28, 2020)

1 22. KRATOM DIVINE’s representations about the safety and efficacy of its products
2 are contradicted by numerous warnings from regulators, researchers and poison control centers
3 that kratom is not safe for human consumption and presents many serious risks to human
4 health.⁸

5 23. For example, KRATOM DIVINE assures consumers that every batch of its
6 product is lab tested for purity and safety: “In light of the recent unfortunate event happening
7 with a local competitors kratom we want you to know **ALL of our Kratom is LAB TESTED**
8 **PURE AND SAFE – YOUR SAFETY IS OUR PRIORITY!**”⁹

9 24. KRATOM DIVINE also implores consumers to “GET EDUCATED!” with a
10 “FREE E-BOOK” authored by WENDI ROOK, entitled “KRATOM: A COMPREHENSIVE
11 GUIDE TO UNDERSTANDING THE EFFECTS AND BENEFITS OF THIS AMAZING
12 PLANT.”¹⁰ Rather than disclose the serious risks and unknowns of kratom documented by
13 regulators and researchers, the KRATOM DIVINE E-Book is full of misrepresentations about
14 the safety and efficacy of kratom including:
15

- 16 • On overdose risk: “If the quantity consumed is too much for the body to handle,
17 the kratom will let you know by causing nausea or vomiting. You may have
18 heard some of the highly biased stories in the media of how kratom caused
19 someone's untimely death, however, what the media doesn't reveal in these
20

21 ⁸ See Kratom Divine Blog Post, Studies Show Pure Kratom is Safe (<https://kratomdivine.com/are-kratom-divine-products-safe/>) (last accessed Dec. 28, 2020).

22 ⁹ See Kratom Divine Blog Post, Why do we lab test out Kratom? (<https://kratomdivine.com/why-do-we-lab-test-our-kratom/>) (emphasis in original) (last accessed Dec. 28, 2020); see also product photo; see also Kratom Divine Blog Post, Kratom Divine kratom lab tested for safety? (<https://kratomdivine.com/kratom-divine-kratom-lab-tested-for-safety/>) (last accessed Dec. 28, 2020).

23 ¹⁰ See Kratom Divine, Got Questions? Get our Free-Book (<https://kratomdivine.com/>) (“get our free e-book!”—last
24 accessed Dec. 28, 2020).

1 stories is the list of other potentially lethal substances found in the dead person's
2 blood. **Keep in mind that there is no scientifically confirmed recorded fact of**
3 **kratom ever causing a single death, so there is no need to be nervous about**
4 **trying it.**” (E-Book, pp. 12-13) (emphasis supplied).

- 5 • On the “great secret”: “*you don’t have to use expensive pharmaceuticals to treat*
6 *your pain, alleviate depression and anxiety, or for a whole plethora of other*
7 *conditions.*” (E-Book, p. 4).
- 8 • “Kratom (scientific name "Mitragyna Speciosa") is known to provide a wide
9 range of health benefits. Some of the benefits include: achieving true pain relief,
10 providing energy, reducing anxiety and depression, assisting in treating
11 addictions and relieving the effects of withdrawal from opiates, and it's an anti-
12 viral, anti-inflammatory, and mood booster- it simply makes you feel good, and
13 who doesn't want to feel good?” (E-Book, p. 5).
- 14 • Kratom is “a safer alternative than using prescription drugs ...” (E-Book, p. 5)
- 15 • **“Is Kratom Bad for Your Health? Absolutely Not! Kratom is an all natural**
16 **organic substance”** (E-Book, p. 6).
- 17 • **“What does “Maeng Da” mean?** Maeng Da is translated to mean ‘pimp grade’
18 and is a variant of Thai kratom. It is known as the general ‘go to’ kratom among
19 early kratom connoisseurs. Much like Pabst Blue Ribbon beer is known as the
20 ‘garage beer’ of beers - it's cheap and easy to come by just like Maeng Da kratom.
21 It's also said to have a high alkaloid content and is therefore very effective.” (E-
22 Book, p. 12).
- 23
- 24
- 25

- 1 • On “physical” addiction: “Kratom has not been shown to be a physically
2 addictive substance.” (E-Book, p. 17).
- 3 • On “mental” addiction: “Kratom, like anything else can be the source of a mental
4 addiction. **Before you think of that in a negative way, consider this: ask**
5 **yourself this question- would you want to be mentally addicted to something**
6 **natural that makes you gives you energy, kills your pain, and overall makes**
7 **you feel good, or physically addicted to man made chemicals that have been**
8 **proven to kill you? That's a no-brainer isn't it?”** (E-Book, p. 17) (emphasis
9 supplied).
- 10 • On adverse effects: “So to summarize, the major side effects from kratom
11 consumption are nausea, vomiting, sleepiness and constipation. **Pretty mild,**
12 **huh?”** (E-Book, p. 18) (emphasis supplied).
- 13 • On the kratom miracle: “It may seem to be a miracle to be released from the
14 habitual worry about the past, which we can't change -- and to be free to busy
15 ourselves with creating a better future, which we can envision in our kratom-
16 fueled optimism.” (E-Book, p. 18).

17
18 25. In short KRATOM DIVINE’s marketing purports that its products are derived
19 from a “miraculous plant”, and any concerns about serious adverse risks (such as the risk of
20 overdose and death) can be disregarded as unfounded “controversies” manufactured by “Big
21 Pharma.” (E-Book, pp. 16 and 18-19).

22
23 26. Yet, on the very same website, KRATOM DIVINE plays a ridiculous charade by
24 attempting to advise its distributors that “all Kratom Divine products are offered for herbarium
25

1 specimen, collection, legitimate research, plant propagation, incense, educational and/or
2 ornamental purposes only. Kratom Divine’s products have not been evaluated by the FDA and
3 are not meant to treat, prevent, cure or diagnose any illness or health condition.”¹¹
4

5 **C. KRATOM DIVINE aggressively expanded its distribution network to sell its**
6 **dangerous product throughout the United States, including through small retail outlets**
7 **located throughout Washington and Oregon.**

8 27. Over the past several years, KRATOM DIVINE has experienced tremendous
9 growth. The ROOKS invested thousands of dollars in physical plant upgrades, equipment and
10 staff training to support the increased distribution and sale of the KRATOM DIVINE product
11 to consumers in Washington, Oregon, California, and throughout the United States.

12 28. The Defendants’ continue to profit from KRATOM DIVINE’s increasing
13 marketing and sale of kratom to Washington residents. The Defendants’ profits are based on
14 pervasive misrepresentations that kratom is a safe and miraculous drug that can and should be
15 used to in place of medically regulated and supervised therapies and procedures.
16

17 29. In addition to unfounded and false representations about kratom’s safety,
18 KRATOM DIVINE and the ROOKS are profiting from their failures to disclose and warn
19 downstream distributors, retailers and consumers about the serious risks of kratom, including
20 the risk of death by overdose.

21 30. KRATOM DIVINE’s aggressive campaign to increase its distribution and sale of
22 its kratom product through deceptive and misleading representations has convinced small retail
23

24 ¹¹ See Kratom Divine, “CONDITIONS OF SALE” (<https://kratomdivine.com/terms-and-conditions/>) (last accessed
25 Dec. 28, 2020).

1 outlets to purchase and sell KRATOM DIVINE's products in their local communities. These
2 down-stream retailers include C&C SPEEDY MART in Castle Rock, and PDX FOOD MART
3 in Portland, Oregon.

4 31. The agents and representatives of C&C SPEEDY MART and PDX FOOD
5 MART relied upon KRATOM DIVINE's representations about its products to carry and sell
6 those products in their stores, and have shared KRATOM DIVINE's representations about its
7 kratom product with consumers, including but not limited to representations that KRATOM
8 DIVINE's kratom is safe and appropriate for the treatment of pain.

9 32. KRATOM DIVINE's ongoing campaign to distribute and sell its dangerous and
10 unregulated kratom product throughout the Pacific Northwest is an ongoing public nuisance
11 that presents an unreasonable and unlawful threat to the rights of public health and safety
12 possessed in common by all Washington residents.
13

14 **D. PATRICK COYNE was a family man who suffered an untimely and preventable**
15 **death caused by Kratom Divine.**

16 33. Until his untimely death, PATRICK COYNE resided in Castle Rock with his wife
17 SYBIL COYNE; three children: Lacy Coyne (13), Patrick Coyne (10), and Tyler Hettinger
18 (10); and his parents, Kathy and Paul Griffin. He was a devoted husband and father for whom
19 family meant everything.

20 34. PATRICK COYNE also enjoyed a successful career at Clemens Marina in
21 Portland, Oregon, where he supported his family by working as the chief boat mechanic.

22 35. For many years Patrick suffered from chronic pain, particularly back pain. About
23 two years before his death, Patrick began using the KRATOM DIVINE product known as
24
25

1 “MAENG DA” (hereinafter “the product”).

2 KRATOM DIVINE promoted its product as a safe
3 alternative to opiates.

4 36. Patrick regularly purchased
5 KRATOM DIVINE’s “MAENG DA” product from
6 Defendant C&C SPEEDY MART near his home in
7 Castle Rock, and also from PDX FOOD MART
8 near his workplace in Portland, Oregon.

9 37. Patrick regularly utilized KRATOM
10 DIVINE’s “MAENG DA” product to manage his

11 pain. With regular use, Patrick’s dependence upon the product increased, as did his rate of
12 daily consumption. By June of 2020, Patrick was using the kratom product several times a day,
13 at work and at home.

14 38. On June 21, 2020, Patrick was excited to receive a 650 Honda Dual Sport
15 Motorcycle as a Father’s Day gift from his family. Patrick and Sybil made plans for a trip to
16 Portland on June 28, 2020, to purchase a new helmet so he could ride his motorcycle to work.

17 39. On June 27, 2020, the day before their trip to Portland, Patrick came home from
18 work to enjoy a normal Saturday evening with his family at their Castle Rock home. As Sybil
19 was preparing for bed, Patrick gave her a big hug and kiss, and told her he loved her. Then
20 Patrick settled into a recliner in the family living room, to watch some television. He was 39
21 years old.
22

23 40. The next morning, June 28, 2020, Sybil awoke to find Patrick unconscious on the
24
25



1 living room recliner. She assumed he was sleeping.

2 41. As Sybil returned from letting the family dog outside, she looked again at Patrick.
3 She expressed concern to Patrick's father, Paul: "He's not breathing ...". Sybil frantically tried
4 to wake Patrick, but could not. Sybil screamed "Call 911!" to Patrick's mother, Kathy.

5 42. Sybil and Paul spent the next 15 minutes attempting CPR on Patrick until a deputy
6 sheriff arrived. Then, the family watched in shock and agony as the deputy sheriff and then
7 medics took their turns attempting to revive an unresponsive Patrick. Ultimately, Patrick was
8 pronounced dead.

9 43. After careful investigation, the Cowlitz County Coroner issued its case report for
10 Patrick Coyne. The Coroner confirmed that Patrick died from the "Toxic Effects of
11 Mitragynine (Kratom)".

12 44. The Coroner's report documented that "One bag 'Kratom Divine'" was found in
13 a black bag next to Patrick's body.
14

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

16 45. PATRICK COYNE suffered an untimely death as a direct and proximate result
17 of the product that was manufactured, marketed, distributed and sold by KRATOM DIVINE.

18 46. The ESTATE OF PATRICK COYNE and its beneficiaries have incurred and will
19 continue to incur enormous general and special damages in an amount to be determined by the
20 jury at the close of trial.

21 47. The Defendants are jointly and severally liable for the damages caused to the
22 ESTATE OF PATRICK COYNE and its beneficiaries.
23

1
2 **COUNT ONE – KRATOM DIVINE & THE ROOKS – FAILURE TO WARN**
3 **[Wash. Rev. Code Section 7.72.010(4) and .030(1)]**

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

6 49. KRATOM DIVINE and the ROOKS promoted, distributed, and sold the kratom
7 product that killed PATRICK COYNE.

8 50. The KRATOM DIVINE product was continuously sold without adequate
9 warnings or instructions regarding the serious health risks of the product, including the risks
10 of abuse, dependence, addiction, overdose, and death.

11 51. An ordinary consumer would reasonably conclude that KRATOM DIVINE's
12 products are reasonably safe when sold without warnings or instructions about the serious
13 adverse health risks, including the risk of overdose and death suffered by PATRICK COYNE.

14 52. In addition, at the time of manufacture, the likelihood that KRATOM DIVINE's
15 products would cause the serious harms inflicted on PATRICK COYNE (including death)
16 rendered KRATOM DIVINE's warnings and instructions completely inadequate, even though
17 reasonable instructions and warnings about the risk of those serious harms could easily have
18 been provided.

19 53. At the time and on the occasions in question, PATRICK COYNE was using the
20 KRATOM DIVINE product for the very purposes intended and promoted by the Defendants.

21 54. Without proper warnings and instructions, the product was unreasonably
22 dangerous, unfit for its intended use, and defective.

23 55. If the product had been sold with appropriate warnings and instructions regarding
24
25

1 its health risks, including but not limited to the risks of overdose and death, then PATRICK
2 COYNE's overdose and death from the product would not have occurred.

3 56. KRATOM DIVINE and the ROOKS are strictly liable for all damages caused by
4 their failures to provide adequate warnings and instructions that would have prevented the
5 death caused by their defective and unreasonably dangerous nature of their product.

6 57. KRATOM DIVINE and the ROOKS also had a continuing, post-sale duty to warn
7 regarding the unreasonable risk of harm associated with the product after the product had been
8 distributed to PATRICK COYNE.

9 58. After PATRICK COYNE began purchasing and ingesting the product,
10 KRATOM DIVINE and the ROOKS received increasing actual and constructive notice about
11 the specific risks and dangers associated with the product, including the risk of death.

12 59. After PATRICK COYNE, began purchasing and ingesting the product,
13 KRATOM DIVINE and the ROOKS breached their duty to issue adequate post-sale
14 instructions and warnings to reduce and prevent the foreseeable risk of harm and death to
15 PATRICK COYNE from the KRATOM DIVINE product.

16 60. KRATOM DIVINE and the ROOKS failed to exercise reasonable care to provide
17 adequate post-sale instructions and warnings to PATRICK COYNE and other Washington
18 residents about the serious health risks and dangers of the product, including the risk and
19 danger of death.
20

21 61. As a direct and proximate result of the lack of reasonable and adequate post-sale
22 instructions or warnings regarding the defects in Kratom Divine, Plaintiffs suffered the injuries
23 described above.
24
25

**COUNT TWO – KRATOM DIVINE & THE ROOKS –
DESIGN AND MANUFACTURING DEFECT
[Wash. Rev. Code Section 7.72.010(2), (4), and .030]**

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

5 63. At the time KRATOM DIVINE and the ROOKS manufactured the product sold
6 to and consumed by PATRICK COYNE, the product was not reasonably safe as designed.

7 64. Under a Risk-Utility analysis, the likelihood that the product would cause
8 PATRICK COYNE’s harm or similar harms, and the seriousness of those harms (including
9 death), outweighed the Defendants’ burden to design a product that would have prevented
10 those harms and the adverse effect that an alternative design that was practical and feasible
11 would have on the usefulness of the product.

12 65. Under a Consumer Expectation analysis, the product was more dangerous than
13 the ordinary consumer would reasonably expect, considering relevant factors, such as the
14 product’s intrinsic nature, relative cost, severity of potential harm (including death), and the
15 cost and feasibility of minimizing such risk.

16 66. The KRATOM DIVINE product sold to and consumed by PARTICK COYNE
17 also contained manufacturing defects. The product manufactured by KRATOM DIVINE and
18 the ROOKS departed from its intended design in that the product was adulterated and/or did
19 not conform to the safe design and purity standards required and specified by the Defendants.
20

21 67. KRATOM DIVINE and the ROOKS were aware that they were unable to
22 adequately conform the manufacturing process to achieve a product that was reasonably safe
23 for human consumption.
24
25

1 68. The product sold to PATRICK COYNE was unreasonably dangerous beyond the
2 expectations of the ordinary consumer and was unfit for its intended use.

3 69. At the time and on the occasions in question, the KRATOM DIVINE product was
4 being used by PATRICK COYNE for the purpose for which it was marketed and intended,
5 and was in this respect defective, unsafe and unreasonably dangerous.

6 70. As a direct and proximate result of the defects in the KRATOM DIVINE product,
7 Plaintiffs suffered the injuries as described above.

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

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

12 72. Defendants expressly and impliedly warranted that KRATOM DIVINE's product
13 was reasonably fit for its intended purpose of improving health and well-being, and as a safe
14 pain relief supplement. KRATOM DIVINE's warranties included, without limitation, the
15 representations specified on its website and E-Book (detailed above), including representations
16 that the KRATOM DIVINE product:

- 17 a. is of superior quality and safer than other forms of kratom on the market.
18 b. is always lab tested for safety and quality control.
19 c. is unadulterated.
20 d. is not physically addictive.
21 e. has absolutely no serious adverse effects.
22 f. does not have the potential to cause death.
23 g. is a superior alternative to opiates and other medical treatments prescribed
24 under the supervision of a doctor.

25 73. KRATOM DIVINE and the ROOKS issued these warranties to develop and
promote the sale of its product through its distribution chain, including the sales to PATRICK

1 COYNE by the C&C SPEEDY MART and PDX FOOD MART

2 74. As a Washington resident and an Oregon employee, PATRICK COYNE was a
3 reasonably foreseeable end user of the product, and was a third-party beneficiary of all
4 warranties made by KRATOM DIVINE and the ROOKS, and passed along by C&C SPEEDY
5 MART and PDX FOOD MART.

6 75. The Defendants' warranties related to material facts regarding the safety and
7 efficacy of Kratom Divine

8 76. The Defendants' warranties, including the warranty that KRATOM DIVINE
9 products were safe and would not kill you, were part of the basis of the bargain for PATRICK
10 COYNE's purchase of the product.

11 77. The Defendants' warranties were untrue; the Defendants' products did not
12 conform to the representations that were made.

13 78. As a direct and proximate result of the breach of the Defendants' warranties
14 regarding the KRATOM DIVINE product, Plaintiffs suffered the injuries and death described
15 above.
16

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

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

21 80. As stated above, Defendants made misrepresentations of material facts about the
22 KRATOM DIVINE product and intentionally concealed information about the product from
23 Plaintiffs during the time PATRICK COYNE bought and used the product.

24 81. Defendants possessed superior knowledge about the lack of clinical testing and
25

1 safety of its products, including the lack of reliable support for representations about the
2 asserted clinical and medicinal safety of the product, and the absence of deaths caused by
3 kratom products.

4 82. Defendants failed in their duty to disclose known material facts to Plaintiffs
5 regarding KRATOM DIVINE products, including but not limited to:

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

9 83. Additional misrepresentations and concealment included, but were not limited to:

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

17 84. The above representations and omissions were material and were made with the
18 intent to persuade and induce PATRICK COYNE to choose and regularly use the product.

19 85. Defendants made the above representations or omissions knowing the
20 misrepresentations were false or were ignorant of the truth of the assertions.

21 86. The above representations and omissions are reflected in KRATOM DIVINE's
22 system for marketing its product through its local distributors, including C&C SPEEDY
23 MART and PDX FOOD MART. Together, all these defendants unlawfully promoted and sold
24 the unreasonably dangerous product for medicinal purposes to Washington Residents.

25 87. Defendants made the above misrepresentations or omissions with the intention
and knowledge that Washington consumers would select the product for regular consumption

1 for the purposes identified in their marketing.

2 88. PATRICK COYNE relied upon and was induced to act in reliance on these
3 Defendants' misrepresentations and omissions when he in fact purchased the product to
4 achieve relief from chronic pain.

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

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

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

11 91. KRATOM DIVINE and the ROOKS were negligent and careless in the design,
12 manufacture, testing, marketing, distribution, and sale of Kratom Divine product.

13 92. Defendants C&C SPEEDY MART and PDX FOOD MART, as product sellers,
14 were negligent in the distribution, promotion and sale of KRATOM DIVINE product.

15 93. C&C SPEEDY MART and PDX FOOD MART knew or should have known that
16 the unregulated KRATOM DIVINE product was unreasonably dangerous for human
17 consumption and especially for medical uses, such as the alleviation of chronic pain.

18 94. C&C SPEEDY MART and PDX FOOD MART knew that they were unlawfully
19 selling the product to customers for medical purposes, even though the unreasonable health
20 risks of such use were not properly understood, identified, disclosed, approved or regulated.

21 95. C&C SPEEDY MART and PDX FOOD MART knew or should have known that
22 KRATOM DIVINE's directive that resellers should only sell the product for "research,"
23 "incense," "ornamental" or similar purposes was a sham attempt by KRATOM DIVINE to
24

1 avoid responsibility for a product that was not safe for human consumption.

2 96. C&C SPEEDY MART and PDX FOOD MART negligently passed on KRATOM
3 DIVINE's representations about the product, including representations that the product was
4 safe and appropriate for pain relief, and was an acceptable alternative to medically approved
5 and regulated treatments for pain management.

6 97. Defendants' failures to discharge their duties were a direct and proximate cause
7 of Plaintiffs' injuries as described above.

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

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

12 99. The acts by Defendants in this cause of action include, but are not limited to, the
13 following deceptive and unfair acts:

- 14 a. Representing that Kratom Divine products do not kill you.
15 b. Representing Kratom Divine products are proven to be safe and effective,
16 with absolutely no serious adverse health effects.
17 c. Representing Kratom Divine products as a "miracle" drug for many health
18 conditions and limitations, safer and superior to medical care provided under
19 the supervision of medical professionals.
20 d. Representing Kratom Divine's product was lab tested for safety and purity.
21 e. Failing to disclose adequate information about the safety and efficacy of the
22 Kratom Divine, either before or after Plaintiffs' purchase.
23 f. Failing to provide adequate warnings, labels or instructions about the
24 product's dangerous propensities.
25 g. 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.

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

101. Such acts affected, and still affect, the public interest of all the citizens of the

1 State of Washington.

2 102. Such acts caused injury to PATRICK COYNE, his ESTATE, and the
3 beneficiaries as described above.

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

5 WHEREFORE, the ESTATE OF PATRICK COYNE, by and through Patrick's widow,
6 SYBIL COYNE, and on behalf of all its beneficiaries, respectfully requests a jury be impaneled
7 to hear this case, and for judgment against the Defendants:

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

16 DATED this 29th day of December, 2020.

17 ATTORNEYS FOR PLAINTIFFS

18 

19 **Talis M. Abolins** WSBA No. 21222
20 **Michael J. Cowgill** WSBA No. 55303
21 **MAGLIO CHRISTOPHER & TOALE**
22 1325 4th Ave. # 1730
23 Seattle, WA 98101
24 Phone: (888) 952-5242
25 Email: tabolins@mctlawyers.com
Email: mcowgill@mctlawyers.com