

109825
CAUSE NO. _____

DUSTI YOUNG, as Anticipated	§	IN THE DISTRICT COURT
Representative of the Estate of DUSTIN	§	
HERNANDEZ, Deceased, and BRENDA	§	
SANDOVAL,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	40TH
vs.	§	_____ JUDICIAL DISTRICT COURT
	§	
SHAMAN SUPPLIES, LLC; JACOB	§	
FLETCHER; “KONO LABS”; “WHOLE	§	
HERBS KRATOM”; PERFECTION IN	§	
PEACE, LLC; and CHANEY’S TOBACCO	§	
STATION, INC.,	§	
	§	
<i>Defendants.</i>	§	OF ELLIS COUNTY, TEXAS

PLAINTIFFS’ ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, DUSTI HERNANDEZ, as Anticipated Representative of the Estate of DUSTIN HERNANDEZ, Deceased, and BRENDA SANDOVAL, complaining of and about SHAMAN SUPPLIES, LLC; JACOB FLETCHER; “KONO LABS”; “WHOLE HERBS KRATOM”; PERFECTION IN PEACE, LLC; and CHANEY’S TOBACCO STATION, INC. (hereinafter sometimes referred to by name or collectively as “Defendants”), and for cause of action respectfully show the following:

I. Discovery Level

1.01 Plaintiffs intend to pursue this as a Level 3 case. Plaintiffs affirmatively plead that discovery should be conducted under Level 3 of Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE. Plaintiffs respectfully request that the Court enter a Level 3 Discovery Order setting forth: (i) a date for trial or for a conference to determine a trial setting; (ii) a discovery

period during which either all discovery must be conducted or all discovery requests must be sent, for the entire case or an appropriate phase of it; (iii) appropriate limits on the amount of discovery; (iv) deadlines for joining additional parties, amending or supplementing pleadings, designating expert witnesses; and (v) deadlines for filing affidavits pursuant to CPRC § 18.001.

II. Parties

2.01 Plaintiff DUSTI YOUNG, as Anticipated Representative of the Estate of DUSTIN HERNANDEZ, Deceased, is an individual who at all relevant times to this complaint, resided in Texas. Plaintiff DUSTI YOUNG, as Anticipated Representative of the Estate of DUSTIN HERNANDEZ, Deceased, is the surviving sister of DUSTIN HERNANDEZ, Deceased. Pursuant to CPRC § 30.014, the last three digits of Plaintiff's driver's license number are 618, and the last three digits of her social security number are XXX.

2.02 Plaintiff BRENDA SANDOVAL is an individual residing in Texas. Plaintiff BRENDA SANDOVAL is the biological mother of DUSTIN HERNANDEZ, Deceased. Pursuant to CPRC § 30.014, the last three digits of Plaintiff's driver's license number are 473, and the last three digits of her social security number are XXX.

2.03 Defendant SHAMAN SUPPLIES LLC is a foreign limited liability company organized under the laws of Missouri by its member, JACOB FLETCHER. Based upon information and belief, Defendant SHAMAN SUPPLIES LLC does interstate and internet business under the business names, assumed names, and/or trade names, KONO LABS, WHOLE HERBS KRATOM, SHAMAN SUPPLIES KRATOM, SHAMAN BOTANICALS KRATOM, SHAMAN SUPPLIES, SHAMAN SUPPLIES INC., and BOTANICAL PROS, including distribution of WHOLE HERBS KRATOM products, throughout the United States and into Texas.

Defendant SHAMAN SUPPLIES LLC does not maintain a registered agent in the state of Texas. Therefore, Defendant SHAMAN SUPPLIES LLC may be served with process pursuant to the **Texas Long-Arm Statute**, *TEXAS CIVIL PRACTICE AND REMEDIES CODE Sec. 17.041, et seq*, by serving the Secretary of State for the State of Texas via certified mail, return receipt requested, or by personal service. The Secretary of State for the State of Texas shall forward a copy of the citation and pleadings to Defendant, as follows: SHAMAN SUPPLIES LLC, c/o its organizer, member, and registered agent, JACOB FLETCHER, 3817 PINE FOREST LANE, ST. CHARLES, MO 63304. CITATION IS REQUESTED.

2.04 Defendant JACOB FLETCHER is an individual who all relevant times resided at 3817 Pine Forest Ln, St Charles, MO 63304. Upon information and belief, Defendant JACOB FLETCHER is a personal participant in the distribution of kratom and does interstate and internet business under the business names, assumed names, and/or trade names, KONO LABS, WHOLE HERBS KRATOM, SHAMAN SUPPLIES KRATOM, SHAMAN BOTANICALS KRATOM, SHAMAN SUPPLIES, SHAMAN SUPPLIES INC., BOTANICAL PROS, and OPMS WHOLESALE, including distribution of WHOLE HERBS KRATOM products, throughout the United States and into Texas. Defendant JACOB FLETCHER may be served with process pursuant to the **Texas Long-Arm Statute**, *TEXAS CIVIL PRACTICE AND REMEDIES CODE Sec. 17.041, et seq*, by serving the Secretary of State for the State of Texas via certified mail, return receipt requested, or by personal service. The Secretary of State for the State of Texas shall forward a copy of the citation and pleadings to Defendant, as follows: JACOB FLETCHER, 3817 PINE FOREST LN, ST CHARLES, MO 63304. CITATION IS REQUESTED.

2.05 Defendant “KONO LABS” is the business name, assumed name, trade name, fictitious name, and/or d/b/a name under which Defendant SHAMAN SUPPLIES LLC and/or

Defendant JACOB FLETCHER and/or another affiliated partnership, unincorporated association, private corporation, or individual was doing business in the State of Texas, through agents and/or employees, for the purpose of monetary profit, distributing WHOLE HERBS KRATOM products over the internet and through interstate commerce, throughout the United States and into Texas. Suit is filed against the actual, assumed, and/or trade name “KONO LABS” and the correct entity name (pursuant to TRCP Rule 28), if needed, will be substituted as discovery progresses, and defendants properly identify the correct legal entity as alleged herein. Defendant “KONO LABS” may be served with process by serving Defendant JACOB FLETCHER pursuant to the **Texas Long-Arm Statute**, *TEXAS CIVIL PRACTICE AND REMEDIES CODE Sec. 17.041, et seq*, via certified mail, return receipt requested, or by personal service. The Secretary of State for the State of Texas shall forward a copy of the citation and pleadings to Defendant, as follows: “KONO LABS” via JACOB FLETCHER, 3817 PINE FOREST LN, ST CHARLES, MO 63304. CITATION IS REQUESTED.

2.06 Defendant “WHOLE HERBS KRATOM” is the business name, assumed name, trade name, fictitious name, and/or d/b/a name under which Defendant SHAMAN SUPPLIES LLC and/or Defendant JACOB FLETCHER and/or another affiliated partnership, unincorporated association, private corporation, or individual was doing business in the State of Texas, through agents and/or employees, for the purpose of monetary profit, distributing of WHOLE HERBS KRATOM products over the internet and through interstate commerce, throughout the United States and into Texas. Suit is filed against the actual, assumed, and/or trade name “WHOLE HERBS KRATOM” and the correct entity name (pursuant to TRCP Rule 28), if needed, will be substituted as discovery progresses, and defendants properly identify the correct legal entity as alleged herein. Defendant “WHOLE

HERBS KRATOM” may be served with process by serving Defendant JACOB FLETCHER pursuant to the **Texas Long-Arm Statute**, *TEXAS CIVIL PRACTICE AND REMEDIES CODE Sec. 17.041, et seq*, via certified mail, return receipt requested, or by personal service. The Secretary of State for the State of Texas shall forward a copy of the citation and pleadings to Defendant, as follows: “WHOLE HERBS KRATOM” via JACOB FLETCHER, 3817 PINE FOREST LN, ST CHARLES, MO 63304. CITATION IS REQUESTED.

2.07 Defendant PERFECTION IN PEACE, LLC is a domestic limited liability company doing business in the state of Texas under the business name, assumed name, and/or trade name, A PERFECT PEACE (hereinafter sometimes “A PERFECT PEACE”). One or more of Defendant’s current managers, directors, owners, and/or members are residents and citizens of Texas. Defendant may be served with process by serving its registered agent as follows: PERFECTION IN PEACE, LLC, via its registered agent, FRIEDMAN & FEIGER, LLP, 5301 SPRING VALLEY ROAD, SUITE 200, DALLAS, TX 75254. CITATION IS REQUESTED.

2.08 Defendant CHANEY’S TOBACCO STATION, INC. is a domestic company doing business in the state of Texas under its business name, an assumed name, and/or a trade name, including “CHANEY’S VAPE STATION” (hereinafter sometimes “CHANEY’S”). Defendant may be served with process by serving its registered agent as follows: CHANEY’S TOBACCO STATION, INC., via its registered agent, MICHAEL TREY CHANEY, 1601 LIVE OAK, COMMERCE, TX 75428. CITATION IS REQUESTED.

III. Misnomer, Alter-Ego, and Assumed Name

3.01 In the event any parties are misnamed or not included herein, it is Plaintiffs’ contention that such was a “misnomer” and/or such parties are/were “alter egos” of parties named herein. Plaintiffs rely upon Vernon’s Texas Revised Civil Statutes Annotated, Art

6133, et seq., and Rule 28 of the Texas Rules of Civil Procedure in order to properly identify Defendants herein.

IV. Jurisdiction and Venue

4.01 This Court has subject matter jurisdiction because Defendants committed a tort in whole or in part in this state and within Ellis County, and the amount in controversy exceeds the minimum jurisdictional limits of this Court. The subject matter in controversy is within the jurisdictional limits of this court.

4.02 As required by Rule 47(c), Texas Rules of Civil Procedure, Plaintiffs' counsel states that Plaintiffs seek monetary relief over \$1,000,000, and Plaintiffs demand judgment for all other relief to which they are deemed justly entitled. The amount of monetary relief awarded, however, will ultimately be determined by a jury. Plaintiffs also seeks pre-judgment and post-judgment interest at the highest legal rate and as allowed by law.

4.03 Upon information and belief, this court has jurisdiction over Defendants SHAMAN SUPPLIES, LLC, JACOB FLETCHER, "KONO LABS," and "WHOLE HERBS KRATOM" because said Defendants, through the actions of their agents or employees over the internet and through interstate commerce, purposefully availed themselves of the privilege of conducting business in the state of Texas and established minimum contacts sufficient to confer jurisdiction over said Defendants, and the assumption of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

4.04 Upon information and belief, Defendants SHAMAN SUPPLIES, LLC, JACOB FLETCHER, "KONO LABS," and "WHOLE HERBS KRATOM" have derived substantial revenue from goods and products sold and used in the state of Texas.

4.05 Defendant PERFECTION IN PEACE, LLC (hereafter sometimes “A PERFECT PEACE”) and Defendant CHANEY'S TOBACCO STATION, INC. (hereafter sometimes “CHANEY'S”) are domestic entities formed under the laws of the State of Texas.

4.06 Venue in Ellis County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events giving rise to this lawsuit occurred in Ellis County.

V. Introduction

5.01. Kratom, or *Mitragyna speciosa*, is a plant which is grown in Southeast Asia.

5.02. The nature and extent of Kratom's impact upon human physiology remains largely unknown. Although not formally classified as an opiate, kratom contains dozens of psychoactive compounds or alkaloids, many of which are not understood. 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.

5.03. Kratom's serious health risks include risks of abuse, dependence, addiction, overdose, and death. 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 hyperpigmentation, nausea, vomiting, severe withdrawal, seizures, psychosis, and lung damage.

5.04. It is illegal to introduce or sell products containing kratom in the United States without a premarket verification that there is a reasonable expectation of safety for those

who consume the product.

5.05. The FDA issued and continues to issue numerous warnings to companies importing and selling kratom. Federal officials have also pursued enforcement actions against those illegally importing and selling the adulterated and misbranded products. In addition, several states and cities have enacted laws declaring Kratom illegal.

5.06. Nonetheless, products containing Kratom are sold on-line and at numerous retail outlets throughout the country, including gas stations, vape shops, and "head shops."

5.07. Upon information and belief, the named Defendants produce, import, distribute, and/or sell Kratom, and promote Kratom as an all-natural supplement that is safe for human consumption and legal to sell in the United States for that purpose.

5.08. By sidestepping regulatory protections, the Kratom industry has grown dramatically in the American economy. This profitable black-market industry has generated enough ill-gotten gains to fund the development of trade organizations like the American Kratom Association, and has mobilized lobbyists, a network of Kratom advocates, and industry backed researchers to try and legitimize the ongoing profiteering of those in the kratom business, despite their ongoing failure and refusal to comply with the clear and mandatory standards for establishing safety and efficacy of dietary ingredients and supplements before they are sold to the public.

5.09. With the proliferation of Kratom products, American consumers are paying a heavy price, including a growing number of deaths caused by Kratom.

5.10. Defendants have imported, distributed, and/or sold their Kratom products in Texas, where it is reaching and harming Texas consumers, including Dustin Hernandez.

5.11. Defendants SHAMAN SUPPLIES, LLC; JACOB FLETCHER; "KONO LABS";

“WHOLE HERBS KRATOM” (with their respective a/k/a’s, d/b/a’s, and/or alter egos described above) are hereafter collectively referred to as the “WHOLE HERBS Defendants”.

5.12. All Defendants identified above are collectively referred to as “Defendants”.

VI. Factual Background

6.01 Plaintiffs reallege and incorporate the facts and allegations that are set forth above as if same were set forth at length herein.

6.02 Dustin Hernandez purchased Defendants’ Kratom products from A PERFECT PEACE and CHANEY’S in Ellis County, Texas.

6.03 On March 25, 2021, Dustin Hernandez died after consuming the Kratom imported, distributed, and/or sold by Defendants.

6.04 The Kratom distributed and sold by the Defendants is a new dietary ingredient that was unlawfully imported and distributed through interstate commerce for human consumption, without a premarket verification of safety. This was a violation of the industry and regulatory standards of care that govern dietary ingredients and supplements in the United States, as established under 21 U.S.C. 350b(d) of the United States Dietary Supplement Health and Education Act (“DSHEA”).

6.05 The Defendants distributed and sold their Kratom for the purpose of treating and mitigating diseases, to affect the structure and function of the human body, and for the treatment of conditions for which Kratom is not generally recognized as safe and effective. This was a violation of the industry and regulatory standards of care that govern drugs, dietary ingredients, and supplements in the United States, as established under 21 U.S.C. 321(g), (p); 21 U.S.C. 331(a); 21 U.S.C. 352(a), (f); and 21 U.S.C. 355 of the DSHEA.

6.06 Defendants' representations and implications that their Kratom was cleared as a safe coffee-like supplement for human consumption was false.

6.07 In the years preceding Dustin's death, Defendants manufactured and sold their Kratom products, representing to consumers that the products were healthy and safe.

6.08 Defendants knew that their Kratom products contained multiple powerful alkaloids that bind to the opiate receptors of the human brain, presenting serious risks of serious adverse events, including death.

6.09 Defendants also knew that their Kratom products were not legally cleared for sale in the United States, and that it had packaged these products without the premarket notice and verification of safety that is an industry standard in the supplement industry, and a requirement of federal law.

6.10 Despite knowledge of the powerful and dangerous nature of their unapproved products, Defendants continued to sell its Kratom and took absolutely no steps to provide its unsuspecting customers with adequate information or warnings about the serious risks and dangers associated with human consumption of kratom products, including the risk of deaths.

6.11 Defendants also failed to provide consumers with instructions for use or other guidance alerting them to precautions needed to minimize the risks of serious adverse events from kratom use, including the risk of death.

6.12 Defendants' deliberate decision to sell Kratom products without the lawful clearance to do so was made for purely economic reasons and placed profits over safety.

6.13 Defendants' deliberate decision to deprive their customers of warnings, information, and instructions for use necessary to protect themselves from the dangerous

effects of Kratom was made for purely economic reasons and placed profits over safety.

6.14 On its website, Defendant “KONO LABS” represented that: “In its in-house lab, Kono Labs performs a full array of testing to confirm product purity and consumer safety.” (last accessed August 18, 2022).

6.15 On its website, Defendant “WHOLE HERBS KRATOM” represented that:

- "Whole Herbs is providing you with the safest and most effective Kratom experience."
- Kratom has been used “to reduce pain and help fight diseases. It can be found in three different colors ... each one affects differently the human body. The kratom plant has many properties that can be beneficial for various treatments, especially as an alternative to reduce the pain produced by some illnesses like cancer naturally. It alleviates the symptoms of depression and anxiety and is used to minimize opium withdrawal. In small doses, the Kratom plant helps boost the immune system, gives concentration, and fill the body with energy. In high doses, Kratom’s effect is soothing and allows the person to relax and sleep peacefully.”
- “Its health benefits can help to treat many cases of chronic pain and help people with anxiety, depression, insomnia that some illnesses can cause.”
- Kratom “... can be helpful to prevent COVID-19.”
- "Whole Herbs is Professionally Manufactured. Facilities are held to the highest standards.”
- Kratom “is less risky than other medications ...”
- “Some strains are more effective as a stimulant, working the same way as a

strong coffee cup ...”

- “Kratom has excellent benefits for the human body. It helps the immune system, giving it a boost to be able to fight external damaging agents like infections and viruses.”
- “we perform strict laboratory testing on all of our products to ensure safety for customers. . . . Whether you shop our Kratom powder or capsules you know that Whole Herbs is proving you with the safest and most effective Kratom experience.”¹

6.16 The WHOLE HERBS website also promoted kratom as an essential medical product for “everyone” with articles such as “Why Kratom is considered essential during the COVID-19 crisis?”. In this article WHOLE HERBS describes its kratom as: “an all-natural medical product in the US and western hemisphere ...”, explaining that “It’s properties and beneficial uses to treat illnesses and pain make it an essential product that should be at reach for everyone during a crisis, like the one currently happening with the COVID-19.” (Whole Herbs Kratom News, July 8, 2020).

6.17 The WHOLE HERBS website also promoted kratom as a remedy for serious mental illnesses and addiction, including an article entitled: “What are the best Kratom strains for anxiety and depression?” In this article, WHOLE HERBS represented: “Today, new studies show that Kratom offers many benefits to those who consume it, and some people use it to help stop the withdrawal symptoms for opium addiction. Kratom also has excellent properties that can help reduce and control naturally severe mental diseases like depression

¹ <https://wholeherbskratom.com/about-whole-herbs> (last accessed August 17, 2022).

and anxiety.” (July 8, 2020 – Kratom 101)

6.18 Defendant SHAMAN SUPPLIES KRATOM published its internet marketing through the “botanicalpros.com” marketing channel, representing that it was offering “Homeopathic Botanical Based Medicinal Therapies”; with kratom that was “[s]electively chosen based on the sheer science of what makes good kratom.”²

6.19 SHAMAN SUPPLIES KRATOM also published kratom reviews promoting kratom as safe for medicinal use: “**Veteran W/PTSD Anxiety:** In 2013, the VA was trying to throw any meds they could at me and called it treatment. An old vet turned me on to this stuff and found this page through a search. They have been great and extremely helpful. This helped so much better than any other medication.”³

6.20 Defendant A PERFECT PEACE also packaged, promoted, and sold Kratom from its retail store in Waxahachie, Texas.

6.21 Defendant A PERFECT PEACE knew or should have known that the re-packaging and sale of its Kratom products presented an unreasonable risk to consumers, including but not limited to the known risks of addiction, seizure, and death.

6.22 Defendant A PERFECT PEACE knew or should have known that its Kratom products had not been cleared for human consumption, had not been verified as safe for human consumption, and was unreasonable and dangerous for it to re-package and sell Kratom products without adequate warnings or instructions for use.

6.23 Defendant CHANEY’S also packaged, promoted, and sold Kratom from its retail

² <https://botanicalpros.com/home/ols/categories/shaman-botanicals-kratom> (last accessed August 23, 2022).

³ <https://botanicalpros.com/home/ols/products/kratom-kilos-flash-sale-limited-supply-bulk-prices-only> (last accessed August 23, 2022).

store in Waxahachie, Texas.

6.24 Defendant CHANEY'S knew or should have known that the re-packaging and sale of its Kratom products presented an unreasonable risk to consumers, including but not limited to the known risks of addiction, seizure, and death.

6.25 Defendant CHANEY'S knew or should have known that its Kratom products had not been cleared for human consumption, had not been verified as safe for human consumption, and was unreasonable and dangerous for it to re-package and sell Kratom products without adequate warnings or instructions for use.

6.26 All Defendants knew or should have known that regular consumers of their Kratom products would be prone to develop an increasing tolerance, dependence, and use of Kratom; and that this increased use of Kratom would lead to increasingly risky levels of the powerful Kratom alkaloids in their consumers' bodies.

6.27 Decedent, DUSTIN HERNANDEZ, regularly purchased Kratom from Defendants, under the belief that Kratom products were natural, safe, a stimulant, like coffee, and appropriate for medical purposes, such as anxiety and addiction.

6.28 Decedent, DUSTIN HERNANDEZ, regularly purchased Kratom from A PERFECT PEACE and CHANEY'S, in Waxahachie and Ennis.

6.29 In purchasing Kratom products from Defendants, DUSTIN HERNANDEZ reasonably relied upon representations and assumed that Kratom was healthy, safe, pure, and legally sold for human consumption.

6.30 With regular use, Decedent DUSTIN HERNANDEZ became dependent on Kratom, and his daily intake of Kratom product from the Defendants increased, as did the Defendants' profits from selling Kratom consumed by DUSTIN HERNANDEZ.

6.31 On March 24, 2021, twenty-nine (29) year old DUSTIN HERNANDEZ was working the night shift at Comfort Inn and Suites in Ennis, Ellis County, Texas.

6.32 During his shift, DUSTIN HERNANDEZ was consuming a tea mixed with WHOLE HERBS “Green Vein Maeng Da Kratom” kratom powder. DUSTIN HERNANDEZ brought the bag of WHOLE HERBS kratom to work in his lunchbox.

6.33 At some point during his night shift, the Kratom consumed by DUSTIN HERNANDEZ caused him to suffer a seizure.

6.34 DUSTIN HERNANDEZ fell to the floor where his seizure continued and grew increasingly violent. As DUSTIN HERNANDEZ seized, he repeatedly hit his head on the floor, suffering severe head injuries. The prolonged seizure continued until the death of DUSTIN HERNANDEZ.

6.35 The following morning, an employee arrived at work and found DUSTIN HERNANDEZ laying face down on the floor in his own blood. A cup of WHOLE HERBS tea was near his body.

6.36 Law enforcement responded, and DUSTIN HERNANDEZ was pronounced dead on March 25, 2021 at 8:38am.

6.37 An autopsy was performed, and the medical examiner concluded that Dustin died as a result of toxic effects of mitragynine (kratom).

6.38 The toxicology report confirmed that there was 3,700 ng/mL of mitragynine in Dustin’s blood.

VII. NEGLIGENCE

7.01. At all times relevant to this complaint, Defendants designed, assembled, manufactured, sold, distributed, and/or placed into the stream of commerce Kratom and

products containing Kratom, such as the Kratom that caused the death of Dustin Hernandez.

7.02. Defendants owed a duty to those persons purchasing its products, including Dustin Hernandez, to provide a reasonably safe product, free from defects and risks that are unreasonably hazardous to the consumer.

7.03. Defendants owed a duty to exercise reasonable care by fulfilling its or their responsibility to clear their Kratom products as safe to sell to consumers.

7.04. Defendants owed a duty to exercise reasonable care to inform those for whose use the article is manufactured of the facts which make it likely to be dangerous.

7.05. Defendants knew or should have known of the dangerous and potentially lethal effects of Kratom, which Defendants intended their customers to ingest and/or otherwise consume.

7.06. Defendants knew or should have known of the devastating injuries, addiction and/or death that would befall their customers upon the ingestion and/or use of their Kratom.

7.07. Despite this knowledge, Defendants utterly failed to design, assemble, manufacture, sell, supply, distribute, and/or place into the stream of commerce a product free of defects to prevent the unknowing consumption of the dangerous product.

7.08. Defendants failed to fulfill its or their obligation to clear its kratom products as safe for direct over-the-counter sale to consumers.

7.09. Despite the above-described knowledge, Defendants also outrageously and deliberately failed to include warnings and/or information regarding the dangerous and lethal effects of its Kratom product.

7.10. Defendants' deliberate decision to not include warnings and/or information

with its Kratom product was made for purely economic reasons and was made in reckless, willful, and wanton disregard for the health and rights of its customers, including Dustin Hernandez.

7.11. The negligence, gross negligence, carelessness, recklessness and outrageously wrongful conduct of Defendants, its agents, servants and/or employees, is the proximate cause of the accident, injuries, and death described herein to Dustin Hernandez.

7.12. By reason of the carelessness, negligence, gross negligence and recklessness of Defendants, DUSTIN HERNANDEZ passed away as set forth above.

7.13. By conducting themselves as set forth above, Defendants' acts and/or omissions were a substantial factor in, a factual cause of, and/or increased the risk of harm of Dustin Hernandez' ultimate death.

7.14. If Defendants had fulfilled their obligation to first clear their kratom products as safe before making them available to consumers, the products would not have been available for sale, and would not have killed Dustin Hernandez.

**VIII. PRODUCTS LIABILITY:
DESIGN DEFECT, FAILURE TO WARN, AND MANUFACTURING DEFECT**

8.01. Plaintiffs reallege and incorporate the facts and allegations that are set forth above as if same were set forth at length herein.

8.02. Before his death, Dustin Hernandez regularly purchased and consumed Kratom WHOLE HERBS Kratom products from A PERFECT PEACE and CHANEY'S. The Kratom products were sold without adequate warnings or instructions for use, and without the required premarket verification of safety. All of Defendants' Kratom products were, therefore, unreasonably dangerous for human consumption as sold.

8.03. The WHOLE HERBS Defendants and A PERFECT PEACE and CHANEY'S, by and through their agents, servants, workers, contractors, designers, assemblers, manufacturers, sellers, suppliers, and distributors are strictly liable because:

- a. Defendants engaged in the regular business of designing, manufacturing, selling, supplying, distributing, and/or placing into the stream of commerce Kratom and/or products containing Kratom, such as the Kratom that caused Dustin Hernandez' death;
- b. The Kratom products involved in the subject incident were marketed and placed in the stream of commerce by Defendants;
- c. The Kratom products were expected to and did reach users without substantial change in the condition in which it was designed, manufactured, sold, supplied, distributed, and/or placed into the stream of commerce;
- d. The Products were designed, manufactured, sold, supplied, distributed, and/or placed into the stream of commerce in a defective condition unreasonably dangerous to the consumer for the reason set forth above and below.

8.04. The Kratom products were in a defective condition as: (1) the dangers presented by human consumption of kratom are beyond the reasonable consumer's contemplation, and unacceptable to the average or ordinary consumer; and/or (2) a reasonable person would conclude that the probability and seriousness of the harm caused by the product outweigh the burden or costs of taking precautions.

8.05. The Kratom products sold by Defendants were in a defective condition as it

came without warnings, no information regarding the dangers and risks associated with the products, and no instructions for use.

8.06. The Products were defective because, despite having actual knowledge of prior deaths and injuries caused by use of Kratom and/or Kratom-containing products, Defendants failed to obtain the industry standard premarket verification of their products safety, and failed to investigate, retain, and analyze information related to kratom's risk to human health in order to correct its manufacturing processes by reducing or eliminating the toxic alkaloids and/or to properly warn and/or notify ultimate users and consumers.

8.07. The defective condition of the Kratom products caused Dustin Hernandez's death and damage to his Estate and beneficiaries.

8.08. By conducting itself as set forth above, Defendants acts and/or omissions were a substantial factor in, a factual cause of, and/or increased the risk of Dustin Hernandez' tragic death.

IX. BREACH OF IMPLIED WARRANTY

9.01. In designing, manufacturing, packaging, marketing, promoting, selling, distributing, delivering and/or supplying Kratom, Defendants impliedly warranted that their Kratom:

- a. was lawfully offered for sale after satisfying the premarket verification of safety that is a required industry standard for the sale of botanical ingredients like Kratom;
- b. was merchantable, fit, and safe for its intended use and the ordinary purposes for which it was sold: human consumption by members of the general public;

c. would be of even kind, quality, and quantity; and be adequately packed and labeled.

9.02. As a result, Defendants breached the implied warranty of merchantability.

9.03. Defendants breach of the warranty of merchantability was a substantial factor in, a factual cause of, and/or increased the risk of Dustin Hernandez's death.

X. DAMAGES

10.01. The survival action asserted herein, pursuant to Tex. Civ. Prac. & Rem. Code §71.021, is maintained by Plaintiff, DUSTI YOUNG, as Anticipated Representative of the Estate of DUSTIN HERNANDEZ, Deceased, for all damages which the Estate may be justly entitled to because of the wrongful conduct made the basis of this suit, including damages for the pain, suffering, torment, destruction of dignity, mental anguish, reasonable funeral and burial expenses, and death caused to DUSTIN HERNANDEZ by reason of Defendants wrongful conduct detailed above.

10.02. Plaintiff, BRENDA SANDOVAL, as the surviving mother of DUSTIN HERNANDEZ, Deceased, and is entitled to bring this cause of action against Defendants, under the Wrongful Death Statute, for all damages suffered as a result of the wrongful death of her son, DUSTIN HERNANDEZ, pursuant to Section 71 of the Texas Civil Practice and Remedies Code (the "Wrongful Death Statute") including a) grief; b) bereavement; c) torment; d) loss of love and affection; e) comfort; f) companionship; and, g) mental anguish, for the death of DUSTIN HERNANDEZ.

XI. EXEMPLARY DAMAGES

11.01. Defendants conduct as outlined above, illustrates not only an attitude of conscious indifference for the rights, safety and welfare of others, but also shows Defendants

actual and subjective awareness of the dangers of such conduct. Nevertheless, Defendants proceeded with a conscious indifference to the rights, safety or welfare of others, including Dustin Hernandez. Therefore, Defendants are liable for exemplary/punitive damages.

XII. CONDITION PRECEDENT

12.01. All conditions precedent have been performed or have occurred as required by Texas Rule of Civil Procedure 54.

XIII. CONDITION PRECEDENT

13.01. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs request Defendants, each separately, to disclose, within thirty (30) days after the filing of the first answer, the information and material described in Rules 194.2(b), 194.3, and 194.4 of the Texas Rules of Civil Procedure.

XIV. JURY DEMAND

14.01. Plaintiffs DEMAND A TRIAL BY JURY and tender the appropriate fee.

PRAYER

WHEREFORE, Plaintiffs pray that Defendants be cited to appear and answer herein; that upon final determination for these causes of action, Plaintiffs receives judgment from the Defendants for:

- A. The full amount of Plaintiffs' damages as pleaded, special, general, and exemplary, at law and in equity;
- B. Costs of court;
- C. Prejudgment interest at the highest lawful rate and to the maximum extent allowed by law;
- D. Interest on the judgment at the highest legal rate from the date of judgment until collected; and
- E. All other and further relief, at law and in equity, to which the Plaintiffs may be shown to be justly entitled.

Respectfully submitted,

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