

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

KASANDRA MCPHERSON,)
Individually, and as Surviving Spouse of)
PETER W. MCPHERSON, JR., Deceased,)
and KASANDRA MCPHERSON, as)
Administrator of the Estate of)
PETER W. MCPHERSON, JR.,)

Plaintiff,)

v.)

EXPERT BOTANICALS, LLC (A/K/A)
BEDROCK MANUFACTURING, LLC;)
UNIVERSAL BOTANICALS;)
PATTY’S HEMP);)
SAS WHOLESALERS, LLC;)
STAR IMPORTERS & WHOLESALERS, INC.;)
AMIN MONTY HUDDA;)
KARIM SHERALI HUDDA;)
SHANAZ AMIN HUDDA;)
ZIYA BUSINESS INC. d/b/a ZCELL &)
NOVELTIES; SAMADALI LAKHANI;)
HAMID MADATALI KAZANI;)
MANISHA M. BABUL;)
JAI BALIYADE V, INC.)
(d/b/a A-NIGHT HI-TECH FUEL and/or)
A-KNIGHT HI-TECH FUEL) at)
295 W Line Street, Calhoun, GA 30701)
 (“Chevron Mart 1”); CDP USA LLC)
(d/b/a A-NIGHT #2, A-KNIGHT HI-TECH)
FUEL, and/or CALHOUN CHEVRON) at)
1531 Dews Pond Rd., Calhoun, GA 30701)
 (“Chevron Mart 2”); MURAD ALI;)
BIRVA 1, INC. (d/b/a SHELL HIGHWAY)
EXPRESS) at 4053 Chatsworth Hwy 225,)
Resaca, GA, 30735 (“Highway Express”);)

CIVIL ACTION

FILE NO. _____

22-C-06494-S3

JOHN AND JANE DOES 1 THROUGH 20;)
 JOHN DOE CORPORATIONS 1 THROUGH)
 20, and OTHER JOHN DOE ENTITIES 1)
 THROUGH 20, all whose true names are)
 unknown)
)
 Defendants.)
 _____)

COMPLAINT FOR DAMAGES

COME NOW Kasandra McPherson, Individually and as Surviving Spouse of Peter W. McPherson, Jr., Deceased, and Kasandra McPherson, as Administrator of the Estate of Peter W. McPherson, Jr., Plaintiff in the above-styled action, and names as Defendants Expert Botanicals, LLC, SAS Wholesalers, LLC, Star Importers & Wholesalers, Inc., Amin Monty Hudda, Karim Sherali Hudda, Shanaz Amin Hudda, Ziya Business, Inc. d/b/a/ ZCell & Novelties, Samadali Lakhani, Hamid Madatali Kazani, Manisha M. Babul, Chevron Mart 1, Chevron Mart 2, Murad Ali, Highway Express, John and Jane Does 1 through 20, John Doe Corporations 1 through 20, and other John Doe Entities 1 through 20, and show the Court the following:

PARTIES, JURISDICTION, AND VENUE

1.

Plaintiff Kasandra McPherson (“Plaintiff”) is a resident of Nebraska. She is the surviving spouse of Peter W. McPherson, Jr., who died on November 19, 2020.

Plaintiff was or will be appointed the Administrator of the Estate of Peter W. McPherson, Jr.

2.

Defendant Expert Botanicals, LLC (a/k/a Bedrock Manufacturing, LLC, Universal Botanicals, Patty's Hemp) (hereafter "Expert") is a foreign, Texas corporation. At all times material hereto, Expert was and is a foreign Texas corporation doing business in this State. Expert markets, distributes, and sells kratom in the United States and in Georgia, including the Expert kratom which is the subject of this action, through distributors and retailers. After a diligent search, it appears Expert does not maintain a registered agent in Texas, or any other state. Accordingly, Expert may be served according to O.C.G.A. § 14-2-504(b) by certified mail at 11718 N Garden St, Houston, Texas 77071 and/or at SL Brothers, LLC, 9507 Town Park Drive, Houston, Texas 77036 and/or CT Corporation, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. Once served, Expert will be subject to the jurisdiction and venue of this Court.

3.

Defendant SAS Wholesalers, LLC (hereafter "SAS") is a foreign, Texas corporation. At all times material hereto, SAS was and is a foreign Texas corporation doing business in this State. SAS markets, distributes, and sells kratom in the United States and in Georgia, including the Expert kratom which is

the subject of this action, through distributors and retailers. Defendant SAS may be served by personal service upon its registered agent with Summons and Complaint pursuant to O.C.G.A. § 9-11-4 on Sohail Ladhani, 17117 Westheimer Road # 54, Houston, Texas 77082. Once served, SAS will be subject to the jurisdiction and venue of this Court.

4.

Defendant Star Importers & Wholesalers, Inc. (hereafter “Star Wholesale”) is a domestic corporation. At all times hereto, Star Wholesale was and is a domestic corporation doing business in this State. Star Wholesale markets, distributes, and sells kratom in the United States and in Georgia, including the Expert kratom which is the subject of this action. Defendant Star Wholesale may be served by personal service upon its registered agent with Summons and Complaint pursuant to O.C.G.A. § 9-11-4 on Amin Monty Hudda, 2166 Mountain Industrial Blvd., Tucker, GA 30084. Once served, Star Wholesale will be subject to the jurisdiction and venue of this Court.

5.

On information and belief, Defendant Amin Monty Hudda owns, operates, or otherwise manages Star Wholesale. Defendant Amin Monty Hudda is a Georgia resident selling, marketing, and distributing kratom products in Georgia, including the Expert kratom which is the subject of this action. Defendant Amin Monty

Hudda may be served with process by serving him at 2857 Darlington Run, Duluth, Gwinnett County, Georgia 30097. Once served, Amin Monty Hudda will be subject to the jurisdiction and venue of this Court.

6.

On information and belief, Defendant Karim Sherali Hudda owns, operates, or otherwise manages Star Wholesale. Defendant Karim Sherali Hudda is a Georgia resident selling, marketing, and distributing kratom products in Georgia, including the Expert kratom which is the subject of this action. Defendant Karim Sherali Hudda may be served with process by serving him at 2862 Briaroak Drive, #23A, Duluth, Gwinnett County, Georgia. Once served, Karim Sherali Hudda will be subject to the jurisdiction and venue of this Court.

7.

On information and belief, Defendant Shanaz Amin Hudda owns, operates, or otherwise manages Star Wholesale. Defendant Shanaz Amin Hudda is a Georgia resident selling, marketing, and distributing kratom products Georgia, including the Expert kratom which is the subject of this action. Defendant Shanaz Amin Hudda may be served with process by serving him at 2857 Darlington Run, Duluth, Georgia 30097. Once served, Shanaz Amin Hudda will be subject to the jurisdiction and venue of this Court.

8.

On information and belief, Defendants Star Wholesale, Amin Monty Hudda, Karim Sherali Hudda, and Shanaz Amin Hudda, in some form or fashion operate as a joint venture, single business enterprise, and/or in such a joint and indistinct fashion and with such unity of interest as to blur or nullify the corporate distinctions between the individuals and entities named as defendants in this action. On information and belief, Amin Monty Hudda, Karim Sherali Hudda, and Shanaz Amin Hudda undercapitalized Star Wholesale to evade tort liability. On information and belief, Amin Monty Hudda, Karim Sherali Hudda, Shanaz Amin Hudda, and Star Wholesale have devised a scheme to evade tort liability for injuries caused by their kratom products.

9.

Defendant Ziya Business Inc. d/b/a ZCell & Novelties (hereafter “Zcell”) is a domestic corporation. At all times hereto, Zcell was and is a domestic corporation doing business in this State. Zcell markets, distributes, and sells kratom in the United States and in Georgia, including the Expert kratom which is the subject of this action. Defendant Zcell may be served by personal service upon its registered agent with Summons and Complaint pursuant to O.C.G.A. § 9-11-4 on Samad Lakhani, 2063 Mountain Industrial Blvd., Tucker, DeKalb County,

Georgia 30084. Once served, Zcell will be subject to the jurisdiction and venue of this Court.

10.

On information and belief, Defendant Samadali Lakhani owns, operates, or otherwise manages Zcell. Defendant Samadali Lakhani is a Georgia resident selling, marketing, and distributing kratom products in Georgia including the Expert kratom which is the subject of this action. Defendant Samadali Lakhani may be served with process by serving him at 6255 Bellmoore Park Lane, Duluth, Fulton County, Georgia 30097. Once served, Samadali Lakhani will be subject to the jurisdiction and venue of this Court.

11.

On information and belief, Defendant Hamid Madatali Kazani owns, operates, or otherwise manages Zcell. Defendant Hamid Madatali Kazani is a Georgia resident selling, marketing, and distributing kratom products in Georgia including the Expert kratom which is the subject of this action. Defendant Hamid Madatali Kazani may be served with process by serving him at 2798 Molly Drive, Lawrenceville, Gwinnett County, Georgia 30044. Once served, Hamid Madatali Kazani will be subject to the jurisdiction and venue of this Court.

12.

On information and belief, Defendant Manisha M. Babul owns, operates, or otherwise manages Zcell. Defendant Manisha M. Babul is a Georgia resident selling, marketing, and distributing kratom products in Georgia, including the Expert kratom which is the subject of this action. Defendant Manisha M. Babul may be served with process by serving her at 6255 Bellmoore Park Lane, Duluth, Fulton County, Georgia 30097. Once served, Manisha M. Babul will be subject to the jurisdiction and venue of this Court.

13.

On information and belief, Defendants Zcell, Samadali Lakhani, Hamid Madatali Kazani and Manisha M. Babul, in some form or fashion operate as a joint venture, single business enterprise, and/or in such a joint and indistinct fashion and with such unity of interest as to blur or nullify the corporate distinctions between the individuals and entities named as defendants in this action. On information and belief, Samadali Lakhani, Hamid Madatali Kazani and Manisha M. Babul undercapitalized Zcell to evade tort liability. On information and belief Samadali Lakhani, Hamid Madatali Kazani and Manisha M. Babul, and Zcell have devised a scheme to evade tort liability for injuries caused by their kratom products.

14.

Defendant Jai Baliyade V, Inc. (d/b/a/ A-Night Hi-Tech Fuel and/or A-Knight Hi-Tech Fuel) at 295 W. Line Street, Calhoun, GA 30701 (hereafter “Chevron Mart 1”) is a domestic corporation. At all times hereto, Chevron Mart 1 was and is a domestic limited liability company doing business at 295 W Line St., Calhoun, GA 30701. Chevron Mart 1 markets, distributes, and sells kratom in Georgia, including the Expert kratom which is the subject of this action.

Defendant Chevron Mart 1 may be served by personal service upon its registered agent with Summons and Complaint pursuant to O.C.G.A. § 9-11-4 on Vinod Patel, 3403 Kingston Highway, Rome, Floyd County, Georgia 30161. Once served, Chevron Mart 1 will be subject to the jurisdiction and venue of this Court.

15.

Defendant CDP USA LLC (d/b/a/ A-Night #2, A-Knight Hi-Tech Fuel, and/or Calhoun Chevron) at 1531 Dews Pond Rd., Calhoun, GA 30701 (hereafter “Chevron Mart 2”) is a domestic corporation. At all times hereto, Chevron Mart 2 was and is a domestic limited liability company doing business at 1531 Dews Pond Road, Calhoun, GA 30701. Chevron Mart 2 markets, distributes, and sells kratom in Georgia, including the Expert kratom which is the subject of this action.

Defendant Chevron Mart 2 may be served by personal service upon its registered agent with Summons and Complaint pursuant to O.C.G.A. § 9-11-4 on Murad Ali

at 72 Lankford Road, Tucker, Gwinnett County, Georgia 30084. Once served, Chevron Mart 2 will be subject to the jurisdiction and venue of this Court.

16.

On information and belief, Defendant Murad Ali owns, operates, or otherwise manages Chevron Mart 2. Defendant Murad Ali is a Georgia resident selling, marketing, and distributing kratom products in Georgia, including the Expert kratom which is the subject of this action. Defendant Murad Ali may be served with process by serving him at 72 Lankford Road, Tucker, Gwinnett County Georgia, 30084. Once served, Murad Ali will be subject to the jurisdiction and venue of this Court.

17.

Defendant BIRVA 1, Inc. (d/b/a Shell Highway Express) at 4053 Chatsworth Hwy 225, Resaca, GA 30735 (“Highway Express”) is a domestic corporation. At all times hereto, Highway Express was and is a domestic limited liability company doing business at 4053 Chatsworth Hwy 225, Resaca, GA 30735. On information and belief, Highway Express markets, distributes, and sells kratom in Georgia, including the Expert kratom which is the subject of this action. Defendant Highway Express may be served by personal service upon its registered agent with Summons and Complaint pursuant to O.C.G.A. § 9-11-4 on Chugh LLP at 8800 Roswell Road, Building C, Suite 230, Atlanta, Fulton County, Georgia

30350. Once served, Highway Express will be subject to the jurisdiction and venue of this Court.

18.

Defendants Expert, SAS, Star Wholesale, Amin Monty Hudda, Karim Sherali Hudda, Shanaz Amin Hudda, Zcell, Samadali Lakhani, Hamid Madatali Kazani, and Manisha M. Babul are referred to collectively in this Complaint as the “Kratom Defendants”. Defendants Chevron Mart 1, Chevron Mart 2, Murad Ali, and Highway Express are referred to collectively in this Complaint as the “Retailer Defendants”.

19.

On information and belief, Defendants John and Jane Does 1 through 100 are individuals whose names and addresses of residences are presently unknown.

20.

On information and belief, Defendants John Doe Corporations 1 through 20 are corporations, the names and addresses of residences of which are presently unknown.

21.

On information and belief, Defendants Other John Doe Entities 1 through 20 are other persons or legal entities, the names and addresses of residences of which are presently unknown.

22.

All Kratom Defendants and Retailer Defendants are joint tortfeasors or obligors and, therefore, venue properly lies in this county.

Kratom – A Deadly Unregulated Drug

23.

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

24.

Kratom is a regulated substance in the United States, and there are no FDA approved uses for kratom.

25.

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.

26.

There are no federal regulations requiring consistency in kratom's quality, formulation, purity, and dosage.

27.

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.

28.

The FDA has issued 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.

29.

The Defendants' kratom is a new dietary ingredient that was unlawfully imported and distributed through interstate commerce without the required premarket notice and verification of safety required under 21 U.S.C. § 350b(d) of the United States Dietary Supplement Health and Education Act ("DSHEA"). As a result, the Kratom Defendants' kratom is "adulterated."

30.

O.C.G.A. § 16-13-122 requires that Kratom packaging shall be accompanied by a label bearing the following information prior to its sale in this State: clearly labeled ingredients, a statement the sale or transfer possession of kratom to another person under 18 years of age is prohibited, the amount of mitragynine and 7-

hydroxymitragynine contained in such product, the common or usual name of each ingredient used in the manufacture of such product, listed in descending order of predominance, the name and the principal mailing address of the manufacturer or the person responsible for distributing such product, clear and adequate directions for the consumption and safe and effective use of such product; any precautionary statements as to the safety and effectiveness of such product.

31.

The Kratom Defendants and the Retailer Defendants in this action have failed to comply with Georgia law in the manufacture, packaging, marketing, and/or sale of the products at issue.

32.

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,

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 May 2, 2022); DOJ DEA Drug Fact Sheet – Kratom (https://www.dea.gov/sites/default/files/2020-06/Kratom-2020_0.pdf) (last accessed October 10, 2022).

tremors, loss of libido, constipation, skin hyperpigmentation, nausea, vomiting, and severe withdrawal signs and systems.²

33.

Over the past ten years, reports of kratom poisonings and overdoses in which kratom is the sole cause or a contributing cause of death have risen dramatically throughout the United States.

34.

Kratom is already illegal in several states and cities, and it is not approved for medical purposes. The FDA has issued numerous warnings against the use of products containing kratom or its psychoactive compounds and has acted against those who illegally sell the product for pain treatment and other medical uses.³

35.

More research is needed to understand kratom's safety profile, including the potential impact of kratom's various compounds on underlying medical conditions or their interactions with other drugs. The FDA determined there is inadequate

² See FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html) (last accessed October 10, 2022).

³ See FDA Statement, 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 October 10, 2022).

information to provide any reasonable assurance that kratom does not present significant or unreasonable risk of illness or injury.⁴

36.

Despite the serious risks of kratom use, profit-seeking companies such as the Kratom Defendants and the Retailer Defendants are continuing to market and sell kratom products based upon unproven and deceptive claims about its safety and ability to cure, treat or prevent medical conditions and diseases. The FDA's examples of illegal claims being made include statements that "many people use kratom to overcome opiate addiction," and kratom is frequently used "as a natural alternative" to treat various health conditions, replacing opiate prescriptions.⁵

37.

Kratom manufacturers and distributors, such as the Kratom Defendants and the Retailer Defendants, are a serious threat to public health and safety. The kratom products are not safe for human consumption, and the deceptive marketing and sale of these products has encouraged consumers and patients to experiment

⁴ See FDA Import Alert # 54-15 (https://www.accessdata.fda.gov/cms_ia/importalert_1137.html) (last accessed October 10, 2022).

⁵ 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 October 10, 2022).

with mysterious and dangerous compounds in lieu of seeking appropriate and approved medical treatments that can be safely supervised by medical professionals.

The Tragic Passing of Peter W. McPherson, Jr.

38.

On November 19, 2020, Peter McPherson mixed Expert kratom powder in his orange juice prior to sitting down to dinner with his wife and son.

39.

While at the dinner table, Peter McPherson started shaking uncontrollably and fell down. Mr. McPherson's wife and son performed CPR on him for approximately 15 minutes before the ambulance arrived.

40.

Mr. McPherson was transported to Murray County Hospital, where he was declared deceased.

41.

The Gordon County Medical Examiner determined that Mr. McPherson's cause of death was acute mitragynine (kratom) toxicity.

COUNT I
STRICT LIABILITY OF THE KRATOM DEFENDANTS

42.

The allegations set out above are incorporated by reference as if set out fully herein.

43.

The Kratom Defendants manufactured, selected, inspected, tested (or failed to test), marketed, and distributed the Expert kratom that caused the death of Peter McPherson.

44.

The Kratom Defendants sold the Expert kratom that caused the death of Peter McPherson as a new product within ten years before the filing of this action.

45.

The kratom that caused the death of Peter McPherson left the control of the Kratom Defendants in the same condition as it was at the time and place of Peter's death.

46.

The Kratom Defendants had a legal duty to manufacture, select, inspect, test, market, label, and distribute the Expert kratom that caused the death of Peter McPherson so that it would be reasonably safe to consumers.

47.

The Expert kratom that caused the death of Peter McPherson is unreasonably and dangerously defective in its manufacture, as marketed, and as distributed in the following particulars:

- (a) The known risks of addiction, overdose, and death and the lack of consistent and reliable safety testing make the risks of kratom use outweigh the utility.
- (b) The Kratom Defendants failed to adequately warn Peter McPherson, other consumers, or the public in general, of the risks of abuse, dependence, addiction, overdose, and death.
- (c) The Kratom Defendants failed to provide specific guidance regarding product use, including recommended levels of dosage and daily consumption limits and adequate labeling.
- (d) The Kratom Defendants promoted Kratom as a safe and effective alternative to prescription anxiety and/or pain medication.

48.

The defective nature of the Expert kratom was a proximate cause of the death of Peter McPherson and all the injuries and damages, as set forth herein, thus rendering the Kratom Defendants strictly liable.

COUNT II
NEGLIGENCE OF THE KRATOM DEFENDANTS

49.

The allegations set out above are incorporated by reference as if set out fully herein.

50.

The Kratom Defendants were negligent in manufacturing, inspecting, testing (or failures to test), distributing, marketing, selling, and providing warnings for the Expert kratom that caused the death of Peter McPherson.

51.

The Kratom Defendants' negligence proximately caused the injuries and damages sustained by Plaintiff, as set forth herein.

COUNT III
BREACH OF WARRANTY OF THE RETAILER DEFENDANTS AND
THE KRATOM DEFENDANTS

52.

The allegations set out above are incorporated by reference as if set out fully herein.

53.

The Kratom Defendants breached their implied warranty of merchantability by selling the kratom that caused the death of Peter McPherson when it was not fit for the ordinary purpose for which such goods are sold.

54.

This breach of warranty proximately caused the injuries and damages sustained by Plaintiff, as set forth herein.

COUNT IV
NEGLIGENCE OF THE RETAILER DEFENDANTS

55.

The allegations set out above are incorporated by reference as if set out fully herein.

56.

As a retail seller of kratom, the Retailer Defendants had a duty to reasonably investigate and inspect these products before selling them to ensure they were safe for public consumption. The Retailer Defendants also had a duty to ensure the products they sell are not adulterated or misbranded, and a duty to ensure the products they sell do not contain false representations of material facts.

57.

When the Retailer Defendants sold kratom products to Peter McPherson, the Retailer Defendants knew or should have known that kratom was not approved and unreasonably dangerous for human consumption, especially for medicinal uses, such as the alleviation of chronic pain. Knowledge of kratom's dangers was available to kratom product sellers, including the Retailer Defendants, from news articles and news segments, medical literature, and the FDA. The Retailer

Defendants had a duty to access and use the available information regarding kratom.

58.

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

- (a) The Retailer Defendants knew or should have known of kratom's potential to cause serious side effects, including tolerance, addiction, overdose, and death.
- (b) The Retailer Defendants knew or should have known that it was unlawfully selling the products to customers for medical purposes, even though the unreasonable health risks of such use were not properly understood, identified, disclosed, approved, or regulated.
- (c) The Retailer Defendants knew or should have known that the Kratom Defendants' disclaimers were a sham attempt to avoid tort responsibility for products that were not safe for human consumption.
- (d) The Retailer Defendants negligently passed on to consumers (including Peter McPherson) representations about the products, including representations that kratom was safe and appropriate for pain relief, and was an acceptable alternative to medically approved and regulated treatments for pain management.

59.

The Retailer Defendants' negligence proximately caused the injuries and damages sustained by Plaintiff, as set forth herein.

COUNT V
NEGLIGENCE PER SE OF THE KRATOM DEFENDANTS
AND THE RETAILER DEFENDANTS
O.C.G.A. § 51-5-23

60.

The allegations set out above are incorporated by reference as if set out fully herein.

61.

O.C.G.A. § 51-5-23 provides that “[a]ny person who knowingly or negligently sells unwholesome provisions of any kind to another person, the defect being unknown to the purchase, by the use of which damage results to the purchaser or to his family, shall be liable in damages for such injury.”

62.

The Kratom Defendants and the Retailer Defendants knowingly or negligently sold unwholesome kratom to Peter McPherson, which resulted in his death.

63.

The Kratom Defendants and the Retailer Defendants were negligent per se because they sold unwholesome kratom to Peter McPherson in violation of O.C.G.A. § 51-1-23.

64.

The negligence per se of the Retailer Defendants and the Kratom Defendants caused the death of Peter McPherson.

COUNT VI
NEGLIGENCE PER SE OF THE KRATOM DEFENDANTS AND THE
RETAILER DEFENDANTS
21 U.S.C. §§ 331, 343, and 350(b)

65.

The allegations set out above are incorporated by reference as if set out fully herein.

66.

Kratom was not marketed as a dietary ingredient in the United States before October 15, 1994, and is therefore a new dietary ingredient under 21 U.S.C. § 350b(d) of the United States Dietary Supplement Health and Education Act (“DSHEA”) and the Federal Food, Drug, and Cosmetic Act (“FDCA”).

67.

Because kratom is a new dietary ingredient, it is unlawful under 21 U.S.C. § 350b(a)(2) and 21 U.S.C. 331 to import or distribute kratom through interstate commerce without the required premarket notice and verification of safety.

68.

If the premarket verification of the kratom product's safety has not been substantiated to the FDA, the kratom is "adulterated" under 21 U.S.C. § 350b(a).

69.

The Kratom Defendants owed a duty under 21 U.S.C. § 350b(d) to ensure that a Premarket Notification for their kratom products was prepared and submitted to the FDA, substantiating that their Kratom products were reasonably safe for human consumption in the form and packaging proposed for sale.

70.

The Kratom Defendants failed to fulfill their obligation to prepare and submit the Premarket Notifications to the FDA, with the required substantiation that their Kratom products were reasonably safe for human consumption; thus, each Defendant breached their duty of care by receiving, holding, distributing and selling the adulterated kratom products.

71.

With reckless indifference and complete disregard for the decedent's safety, the Kratom Defendants designed, assembled, manufactured, packaged, sold, supplied, and distributed kratom-containing products with knowledge of its dangerousness, and without any attempt to comply with the well-known industry and regulatory standards under which kratom products have repeatedly been rejected as adulterated and too dangerous for human consumption.

72.

If the Kratom Defendants had fulfilled their obligation to refrain from the marketing and sale of the adulterated kratom products without the required substantiation of safety, the product would not have been available for sale to Peter McPherson, and would not have killed him.

73.

If Kratom Defendants had warned Peter McPherson that they were marketing and selling adulterated kratom products without the required substantiation of safety, Peter McPherson would not have consumed the toxic levels of mitragynine that ultimately killed him.

74.

Furthermore, 21 U.S.C. § 331(a) through (d) of the FDCA prohibits the manufacture, delivery, receipt, and introduction of “adulterated” or “misbranded” foods (including dietary ingredients like kratom).

75.

Under 21 U.S.C. § 343(a), kratom is deemed “misbranded” if its labeling or advertising is false or misleading in any material respect.

76.

Under 21 U.S.C. § 343(e), packaged kratom is deemed “misbranded” unless it bears a label specifying: (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

77.

The Expert kratom labels and advertising at issue in this case were false and misleading because they conveyed that the kratom products are lawfully sold as a safe and merchantable supplement for human consumption. This is categorically false.

78.

The kratom labels and advertising at issue in this case were also false and misleading because they failed to convey essential information regarding the risks of adverse events, including death, for those who consume kratom.

79.

The Kratom Defendants' kratom at issue in this case was also "misbranded" to the extent that its labeling did not specify the information required by 21 U.S.C. § 343(e).

80.

The Kratom Defendants violated 21 U.S.C. § 343 through their actions of manufacturing, delivering, receiving, mislabeling, and introducing the "adulterated" and "misbranded" kratom that was purchased and consumed by Peter McPherson, leading to his death.

81.

The above-mentioned laws, violated by each Kratom and/or Retailer Defendant, were designed to protect consumers and Plaintiff from the very harm sustained: serious injury and death from unsafe products.

82.

If the Kratom Defendants' had fulfilled their duty to refrain from the manufacture, delivery, receipt, mislabeling, and sale of mislabeled kratom

products, those mislabeled and misleading products would not have been available for Peter McPherson to consume, and he would not have reached the toxic levels of kratom alkaloid that ultimately killed him.

COUNT VII
NEGLIGENCE PER SE OF THE RETAILER DEFENDANTS
AND THE KRATOM DEFENDANTS
O.C.G.A. § 16-13-22

83.

The allegations set out above are incorporated by reference as if set out fully herein.

84.

O.C.G.A. § 16-13-122 requires that kratom packaging bear a label with the following information:

- (1) Clearly labeled ingredients;
- (2) That the sale or transfer possession of kratom to another person under 18 years of age is prohibited;
- (3) The amount of mitragynine and 7-hydroxymitragynine contained in such product;
- (4) The amount of mitragynine and 7-hydroxymitragynine contained in the packaging for such product;
- (5) The common or usual name of each ingredient used in the manufacture of such product, listed in descending order of predominance;
- (6) The name and the principal mailing address of the manufacturer or the person responsible for distributing such product;
- (7) Clear and adequate directions for the consumption and safe and effective use of such product; and

(8) Any precautionary statements as to the safety and effectiveness of such product.

85.

The Kratom Defendants were negligent per se because their kratom product packaging failed to fully comply with the labeling requirements set forth within O.C.G.A § 16-13-122.

86.

The negligence per se of the Retailer Defendants and the Kratom Defendants caused the death of Peter McPherson.

COUNT VIII
INJURIES AND DAMAGES

87.

The allegations set out above are incorporated by reference as if set out fully herein.

88.

Plaintiff Kasandra McPherson, as the Surviving Wife of Peter McPherson, deceased, has standing to recover for the wrongful death of her husband, Peter McPherson.

89.

Plaintiff Kasandra McPherson, as Administrator of the Estate of Peter McPherson, has standing to recover the general damages and special damages of Peter McPherson.

90.

As a direct and proximate result of the aforementioned conduct of Defendants, as well as the defective, unsafe, and unreasonably dangerous kratom, Peter McPherson died and Plaintiff is entitled to recover from the Defendants the full value of the life of Peter McPherson.

91.

As a direct and proximate result of the aforementioned conduct of Defendants, as well as the defective, unsafe and unreasonably dangerous kratom, Peter McPherson experienced mental and emotional pain and suffering, including shock, fright, and terror.

92.

As a direct and proximate result of the aforementioned conduct of Defendants, as well as the defective, unsafe, and unreasonably dangerous kratom, Peter McPherson's estate incurred funeral and burial expenses.

93.

As a result of the Defendants' negligence, Kasandra McPherson has suffered the loss of the love, society, companionship, and services of her husband.

94.

Plaintiff Kasandra McPherson is entitled to recover a judgment against Defendants, jointly and severally, in an amount which the jury deems from the evidence will fully compensate her for this loss of consortium.

COUNT IX
PUNITIVE DAMAGES

95.

The allegations set out above are incorporated by reference as if set out fully herein.

96.

The Kratom Defendants and the Retailer Defendants, through their conduct in manufacturing, testing, distributing, marketing, and selling kratom demonstrated an entire want of care, evidencing a reckless indifference and disregard to the consequences of their actions. Plaintiff, pursuant to O.C.G.A. § 51-12-5.1, is entitled to an award of punitive damages to deter these Kratom and Retailer Defendants from such conduct in the future.

WHEREFORE, Plaintiff Kasandra McPherson demands judgment against the Defendants in an amount which will fully and completely compensate Plaintiff

for the aforementioned injuries, damages, and court costs. Plaintiff also demands punitive damages against Defendants in such an amount to deter these Defendants from such conduct in the future.

Plaintiff demands a jury trial.

RESPECTFULLY SUBMITTED this 14th day of November, 2022.

THE COOPER FIRM

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