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10 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**

11 **FOR MULTNOMAH COUNTY**

12	<b>ESTATE OF MATTHEW J. TORRES</b>	)	Case No.:
13	<b>BY AND THROUGH MARY C.</b>	)	
14	<b>TORRES AS PERSONAL</b>	)	
15	<b>REPRESENTATIVE</b>	)	
		)	
	Plaintiff,	)	<b>PLAINTIFF'S COMPLAINT</b>
16		)	(Civil Action For Wrongful Death/Product
	v.	)	Liability)
		)	
17	<b>HOUSE OF PIPES &amp; TOBACCO, LLC,</b>	)	<b>DEMAND FOR JURY TRIAL</b>
18	<b>individually and doing business as HOUSE</b>	)	
19	<b>OF PIPES; PTV, LLC, individually and</b>	)	Prayer Amount: \$ 10,000,000.00
20	<b>doing business as HOUSE OF PIPES; AND</b>	)	Fee - \$ 1,178.00 ORS 21.160(1)(d)
	<b>JOHN DOES 1-5,</b>	)	
	Defendant(s).	)	<b>CLAIM NOT SUBJECT TO</b>
		)	<b>MANDATORY ARBITRATON</b>

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1 Mary Torres brings this product liability action against the importers, designers,  
2 manufacturers, licensors, distributors, and/or sellers of kratom, a product containing mitragynine,  
3 on behalf of her son Mathew Torres who died from the toxic effects of mitragynine, and alleges as  
4 follows:

5 **GENERAL ALLEGATIONS**

6 1.

7 Plaintiff Mary C. Torres is the surviving mother of Matthew J. Torres (“decedent”) and the  
8 duly appointed personal representative of the Estate of Matthew J. Torres, In the Matter of:  
9 Matthew J Torres Clackamas County Case 24PB00973. Pursuant to ORS 30.020, the beneficiaries  
10 of the Estate are Mary Torres (mother) and Richard Torres (father).

11 2.

12 At the time of his death, Matthew J. Torres lived in Beaver Creek, Oregon.

13 3.

14 At all relevant times, defendant House of Pipes operated as an Oregon Limited Liability  
15 Company, with its principal place of business in Washington County, at 5121 SE Tualatin Valley  
16 HWY, Hillsboro, OR 97123.

17 4.

18 At all relevant times, defendant House of Pipes & Tobacco, LLC, doing business as House  
19 of Pipes, operated as an Oregon Limited Liability Company, with its principal place of business in  
20 Multnomah County, at 925 NE Broadway St. Portland, OR 97232.

21 5.

22 At all relevant times, defendant PTV, LLC, doing business as House of Pipes, operated as  
23 an Oregon Limited Liability Company, with its principal place of business in Washington County,  
24 at 5121 SE Tualatin Valley HWY, Hillsboro, OR 97123.

1 6.

2 Upon information and belief, defendants John Doe 1 through 5 are unknown individuals  
3 and/or entities whose names and addresses of residence are unknown, but who have directly  
4 participated in the wrongful design, manufacture, distribution, and sale of kratom products,  
5 described more fully below. These John Doe defendants include, but are not limited to, owners,  
6 managers, agents, and/or affiliates involved in the kratom transactions, including the import,  
7 manufacture, marketing, distribution, and/or sale of the “Real Kratom” brand kratom at issue, and  
8 whose identities and roles have remained undisclosed or hidden.

9 7.

10 Defendants House of Pipes, House of Pipes & Tobacco, LLC, PTV, LLC, and the John  
11 Doe defendants are collectively referred to as “HOP Defendants” or simply “Defendants.”

12 8.

13 Defendants import, design, manufacture, market, distribute, and/or sale kratom products  
14 containing mitragynine, including “Real Kratom,” Defendant’s house brand.

15 9.

16 In the days and months preceding his death, believing that kratom was a non-addictive  
17 substitute to pharmaceuticals, Mr. Torres used kratom products manufactured, promoted,  
18 packaged, distributed, and/or sold by Defendants to manage his pain and muscular ailments,  
19 including purchasing and ingesting Real Kratom branded kratom from various House of Pipes  
20 locations, including in Oregon City.

21 10.

22 On May 26, 2021, Matthew Torres consumed Kratom product(s) imported, manufactured,  
23 packaged, distributed, promoted, and/or sold by Defendants and shortly thereafter suffered a

1 violent seizure with convulsions and foaming at the mouth. With guidance from the 911 dispatch,  
2 Mr. Torres’ unregistered domestic partner, Meghan Gates, conducted CPR until emergency  
3 responders arrived and continued to apply CPR until Mr. Torres was declared deceased.

4 11.

5 After a thorough investigation, the Clackamas County Medical Examiner’s Office issued  
6 its case report for Mr. Torres, confirming the cause of death as “toxic effects of mitragynine,” (a  
7 kratom overdose).

8 12.

9 At the time of Mr. Torres’ death, Defendants knew or in the exercise of due care and  
10 diligence should have known the following:

- 11 a. Kratom, also known as “mitragynine,” is derived from the *Mitragyna Speciosa*  
12 tree native to Southeast Asia;
- 13 b. Kratom was not approved for and is unreasonably dangerous for human  
14 consumption, especially for medicinal uses such as the alleviation of chronic pain;<sup>1</sup>
- 15 c. Serious risks of Kratom consumption include but are not limited to: “kratom-  
16 associated withdrawal symptoms (KAWS) in adults, kratom-associated neonatal  
17 abstinence syndrome (KANAS), hypothyroidism, hypogonadism, kratom-induced  
18 hepatotoxicity (KIH), CNS effects causing seizure and coma or posterior reversible  
19 encephalopathy syndrome (PRES), acute respiratory distress syndrome (ARDS),  
20 overdose toxidrome, and fatalities;”<sup>2</sup>

21  
22 <sup>1</sup> See e.g. [https://www.eastoregonian.com/news/local/pendleton-police-arrest-man-they-say-was-driven-to-psychosis-by-the-substance-kratom/article\\_40954120-5aa9-11eb-9d3c-7b3d883733f8.html](https://www.eastoregonian.com/news/local/pendleton-police-arrest-man-they-say-was-driven-to-psychosis-by-the-substance-kratom/article_40954120-5aa9-11eb-9d3c-7b3d883733f8.html) (last accessed February 5, 2024); and <https://www.kgw.com/article/news/health/coroners-report-leaves-questions-about-kratom-unanswered/283-71572311> (last accessed February 5, 2024).

23  
24 <sup>2</sup> See Elmad Alsarraf, et al., *Kratom from Head to Toe – Case Reviews of Adverse Events and Toxicities*, 7 Current

- 1 d. The nature and extent of Kratom's impact upon human physiology remains largely  
2 unknown, and medical and scientific research confirms that the powdered Kratom  
3 sold in the United States is far more dangerous than other natural products that are  
4 sold over the counter;
- 5 e. Kratom contains dozens of psychoactive compounds or alkaloids, many of which  
6 are not currently well understood. The two most-studied alkaloids are mitragynine  
7 and 7-hydroxymitragynine which bind to the same opioid brain receptors as  
8 morphine, causing the consumer to experience analgesia (release of pain),  
9 euphoria, and sedation;
- 10 f. Kratom causes addiction, dependency, and tolerance, leading to overdose deaths;<sup>3</sup>
- 11 g. Kratom was not marketed as a dietary ingredient in the United States before  
12 October 15, 1994, and is a “new dietary ingredient” under industry standards;
- 13 h. As a new dietary ingredient, Kratom must not be marketed or sold for human  
14 consumption without premarket verification that it is safe for that purpose;
- 15 i. A growing body of independent scientific and medical research and literature  
16 confirms that no form of psychoactive kratom will ever satisfy the basic standard  
17 of premarket safety when it comes to over-the-counter sale of kratom for human  
18 consumption;
- 19 j. Kratom is known to cause a wide range of adverse events, including nervousness,  
20 agitation, aggression, sleeplessness, hallucinations, delusions, tremors, loss of  
21 libido, constipation, skin hyperpigmentation, nausea, vomiting, addiction, severe

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22 Emergency and Hospital Medicine Reports 141-168 (2019) (internal citations omitted).

23 <sup>3</sup> See <https://www.fda.gov/files/drugs/published/Adverse-event-reports-for-Kratom-involving-death.pdf> (last  
24 accessed February 5, 2024).

1 withdrawal, heart arrhythmias, respiratory depression, seizures, drug-drug  
2 interactions, overdose and death;<sup>4</sup>

3 k. Kratom is 63 times more deadly than other natural products that are sold to  
4 American consumers;<sup>5</sup>

5 l. It is not currently scientifically possible for Kratom sellers to verify that their  
6 products are safe for human consumption;

7 m. Unable to verify kratom's safety, the Kratom industry has instead been built upon  
8 clandestine and fraudulent business activities, including the unlawful importation  
9 of Kratom as "plant food," "incense," "cosmetic" powders, and other legal items.<sup>6</sup>

10 n. Federal agencies (and courts) have attempted to protect the public by seizing  
11 Kratom and taking other civil and criminal actions against Kratom importers,  
12 distributors, and those who illegally sell Kratom as an unapproved treatment for  
13 significant medical conditions such as chronic pain, anxiety, addiction, or  
14 withdrawal;<sup>7</sup>

15 o. In addition to enforcement actions at the national level, an increasing number of  
16 states and cities have passed laws making Kratom illegal at the local level;

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18 <sup>4</sup> See, e.g., Xiaotong Li, et al., *An evaluation of adverse drug reactions and outcomes attributed to kratom in the*  
19 *US Food and Drug Administration Adverse Event Reporting System from January 2004 through September*  
20 *2021* (Clinical and Translational Science, 00:1-10; 2023); Mori J. Krantz, et al, *Ventricular Arrhythmias*  
21 *Associated With Over-the-Counter and Recreational Opioids* (Journal of American College of Cardiology, Vol.  
22 81, No. 23, 2023); Donna Papsun, *Forensic Implications of Kratom: Kratom Toxicity, Correlation*  
23 *with Mitragynine Concentrations, and Polypharmacy* (Current Addiction Reports; published online May 19,  
24 2023).

21 <sup>5</sup> Xiaotong Li, et al., *An evaluation of adverse drug reactions and outcomes attributed to kratom in the US Food*  
22 *and Drug Administration Adverse Event Reporting System from January 2004 through September 2021*  
(Clinical and Translational Science, 00:1-10; 2023).

23 <sup>6</sup> See FDA Import Alert # 54-15 ([https://www.accessdata.fda.gov/cms\\_ia/importalert\\_1137.html](https://www.accessdata.fda.gov/cms_ia/importalert_1137.html)) (last accessed  
24 February 5, 2024).

24 <sup>7</sup> See Seizures and Injunctions – Health Fraud ( [https://www.fda.gov/consumers/health-fraud-scams/seizures-and-](https://www.fda.gov/consumers/health-fraud-scams/seizures-and-injunctions-health-fraud)  
[injunctions-health-fraud](https://www.fda.gov/consumers/health-fraud-scams/seizures-and-injunctions-health-fraud) ) (last accessed February 5, 2024); FDA Statement, Advisory about deadly risks

- 1 p. Billions of dollars of Kratom have been smuggled into the United States,  
2 channeled into chains of distribution, and marketed with unproven and deceptive  
3 claims about its safety and ability to cure, treat or prevent medical conditions and  
4 diseases;
- 5 q. The FDA’s examples of illegal claims include statements such as: “many people  
6 use kratom to overcome opiate addiction,” and kratom is frequently used “as a  
7 natural alternative” to treat various health conditions, replacing opiate  
8 prescriptions;<sup>8</sup>
- 9 r. Many of the leading kratom businesses conceal their identities and activities  
10 behind mysterious and evolving shell companies, and misleading labels;
- 11 s. Notwithstanding the forgoing, defendants hold out kratom as intended for treating  
12 acute and chronic pain, anxiety, and depression, for use as an energy booster and  
13 focus enhancer, and for the treatment of opiate withdrawals.

14 13.

15 Defendants have never, indeed no kratom involved business entity has ever, satisfied the  
16 basic industry standard for establishing that Kratom is safe for human consumption.

17 14.

18 Defendants have profited from Kratom industry business practices, including those  
19 described in paragraph 12 above, by promoting, distributing and/or selling dangerous Kratom  
20 products to Oregon residents, including Mathew Torres.

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21 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 February 5, 2024).

22 <sup>8</sup> See FDA News Release, FDA issues warnings to companies selling illegal, unapproved kratom drug products  
23 (<https://www.fda.gov/news-events/press-announcements/fda-issues-warnings-companies-selling-illegal-unapproved-kratom-drug-products-marketed-opioid>) (last accessed February 5, 2024).

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15.

Defendants hold out kratom as intended for treating acute and chronic pain, anxiety, and depression, for use as an energy booster and focus enhancer, and for the treatment of opiate withdrawals.

16.

Paradoxically, Defendants mislead consumers, including Matthew Torres, about the risks and benefits of kratom by claiming that kratom is “sold for research purposes, not for human consumption,” and at the same time selling kratom to consumers, including Matthew Torres, knowing they will ingest their kratom product.

17.

Had Defendants disclosed the risks and defects of their product to Mr. Torres, he would have avoided taking kratom for his chronic pain, or he would have discontinued taking it, thus avoiding dependency, overdose, and death.

18.

Despite the serious risks of kratom use, companies such as Defendants continue to market kratom products without appropriate warnings or guidance for consumption and plaintiff intends to move the court to add a claim for punitive damages to this case.

**FIRST CLAIM FOR RELIEF**

**Negligence (Against All Defendants)**

For its first claim for relief against all Defendants plaintiff alleges:

19.

Plaintiff realleges and incorporates by reference paragraphs 1 through 18 above.



1 20.

2 Defendants know or in the exercise of due care and diligence should know that Kratom  
3 is unreasonably dangerous and that it cannot be encountered with reasonable safety by a person  
4 in Mr. Torres' position.

5 21.

6 The manner in which Defendant's Kratom killed Mr. Torres was reasonably foreseeable  
7 to Defendants.

8 22.

9 Plaintiff's harms and losses alleged herein were the foreseeable result of all the Defendant's  
10 negligence in one or more of the particular ways:

- 11 A. In failing to stay apprised of the risks associated with consuming kratom and to  
12 update their labeling and marketing communications to warn of these risks;
- 13 B. In failing to warn of the risks of abuse, dependence, addiction, overdose, and death  
14 associated with ingesting kratom;
- 15 C. In failing to provide specific guidance regarding kratom use, including  
16 recommended levels of dosage and daily consumption limits;
- 17 D. In failing to provide warnings regarding potential drug-drug interactions with  
18 kratom;
- 19 E. In promoting Kratom as a safe and all-natural alternative to pharmaceuticals;
- 20 F. In failing to reasonably investigate and inspect their kratom products, including the  
21 kratom product(s) sold to Mr. Torres, to ensure they were safe for public  
22 consumption;
- 23

- 1 G. In failing to ensure the kratom products they sell, including the kratom product(s)  
2 sold to Mr. Torres, are not adulterated;
- 3 H. In failing to ensure the kratom products they sell, including the kratom product(s)  
4 sold to Mr. Torres, are not misbranded;
- 5 I. In failing to ensure the kratom products they sell, including the kratom product(s)  
6 sold to Mr. Torres, do not contain false representations of material facts;
- 7 J. In producing kratom products when they knew that their kratom products, including  
8 the product(s) sold to Mr. Torres may lead to overdose and death;
- 9 K. In failing to make timely and truthful disclosures about kratom's risks and side  
10 effects prior to selling kratom to its customers, including Mr. Torres;
- 11 L. In failing to properly label and package their product in order to make their  
12 customers, including Mr. Torres, Plaintiff and aware of the risks associated with  
13 consuming Kratom;
- 14 M. In failing to properly label and package their product in order to provide effective  
15 guidance for product use and consumption;
- 16 N. In selling kratom to its customers, including Mr. Torres, when Defendants knew or  
17 in the exercise of due care and diligence should have known of kratom's potential  
18 to cause serious side effects, including tolerance, addiction, overdose, and death;
- 19 O. In selling the kratom products to customers, including Mr. Torres, for medical  
20 purposes, when defendants knew or in the exercise of reasonable care should have  
21 known that it was unlawful to do so because the unreasonable health risks of such  
22 use were not properly understood, identified, disclosed, approved, and/or regulated;
- 23
- 24

1 P. In selling kratom products, including the product(s) sold to Mr. Torres, with  
2 disclaimers that defendants knew were a sham attempt to avoid responsibility for  
3 products that were not safe for human consumption; and/or

4 Q. In communicating to their customers, including Mr. Torres, that kratom was safe and  
5 appropriate for pain relief, and as such was an acceptable alternative to medically  
6 approved and regulated treatments for pain management.

7 23.

8 As a reasonably foreseeable result of ingesting the kratom that was imported,  
9 manufactured, distributed and/or sold by defendants, the Estate of Mathew J. Torres suffered the  
10 harms and losses described more fully below.

11 **SECOND CLAIM FOR RELIEF**

12 **Strict Liability – Warnings Defect – ORS § 30.900 and §30.920**  
13 **(Against All Defendants)**

14 For its second claim for relief against all Defendants, plaintiff alleges:

15 24.

16 Plaintiffs re-allege and incorporate by reference all previous paragraphs.

17 25.

18 Defendants were engaged in the business of manufacturing, promoting, distributing, and  
19 selling the kratom product that killed decedent.

20 26.

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

1 27.

2 At the time they left Defendants' hands, the kratom products were defectively labeled.  
3 They did not provide adequate warnings and instructions that an ordinary consumer would expect,  
4 and the inadequate warnings made the kratom products more dangerous than an ordinary consumer  
5 would expect. Specifically, the information accompanying Defendants' kratom products,  
6 including the packaging, promotional materials, website information, and directions for use, were  
7 inadequate in one or more of the following ways:

- 8 A. Defendants failed to warn of the risks of abuse, dependence, addiction, overdose,  
9 and death.
- 10 B. Defendants failed to provide specific guidance regarding product use, including  
11 recommended levels of dosage and daily consumption limits.
- 12 C. Defendants failed to provide warnings regarding potential drug-drug interactions  
13 with kratom.
- 14 D. Defendants promoted Kratom as a safe and all-natural alternative to  
15 pharmaceuticals while knowing kratom's safety profile was at best in question.

16 28.

17 Defendants' labels made the kratom products unreasonably dangerous and defective,  
18 beyond what an ordinary consumer would expect.

19 29.

20 Had Defendants' kratom products been sold with adequate warnings and instructions  
21 regarding their risks, decedent would not have taken Defendants' kratom products for his chronic  
22 pain, and he would not have died from kratom toxicity.

1 30.

2 As a foreseeable and/or direct result of Defendant's acts and omissions alleged herein, the  
3 Estate of Mathew J. Torres suffered the harms and losses described more fully below.

4 **THIRD CLAIM FOR RELIEF**

5 **Strict Liability – Design Defect – ORS § 30.900 and §30.920**  
6 **(Against All Defendants)**

7 For its third claim for relief against all Defendants, plaintiff alleges:

8 31.

9 Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 32.

11 Defendants were engaged in the business of manufacturing, designing, promoting,  
12 distributing, and selling the kratom product that killed decedent.

13 33.

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

17 34.

18 Decedent used Defendants' kratom products for chronic pain – the very purposes for which  
19 Defendants designed, manufactured, promoted, distributed, and sold these products. At the time  
20 Defendants designed, manufactured, promoted, distributed, and sold their kratom products to  
21 decedent, they were defectively manufactured and/or designed in one or more of the following  
22 ways:

- 23 A. As designed, Defendants' kratom products could not be made reasonably safe for  
24 human consumption.

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

4 35.

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

7 36.

8 Had defendants' kratom products been adequately tested and designed, decedent would not  
9 have suffered injury or death.

10 37.

11 As a foreseeable and/or direct result of Defendant's acts and omissions alleged herein, the  
12 Estate of Mathew J. Torres suffered the harms and losses described more fully below.

13 **FOURTH CLAIM FOR RELIEF**

14 **BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY**  
15 **(Against All Defendants)**

16 For its fourth claim for relief against all Defendants, plaintiff alleges:

17 38.

18 Plaintiffs re-allege and incorporate by reference all previous paragraphs.

19 39.

20 Defendants are in the business of selling kratom, including the kratom products purchased  
21 and consumed by decedent.

22 40.

23 Defendants impliedly warranted that their kratom product(s) were reasonably fit for its  
24 intended purpose of improving health and well-being, including for the purposes described in

1 paragraph 12(s). Defendants' warranties included, without limitation, the representations specified  
2 on product packaging, in store marketing material, and representations that the kratom product(s):

- 3 a. Are of superior quality than other forms of kratom on the market.
- 4 b. Are unadulterated.
- 5 c. Are safe and do not have the potential to cause death.

6 41.

7 Defendants issued these warranties to develop and promote the sale of their product(s)  
8 through their distribution chain, including the sales to decedent.

9 42.

10 Decedent purchased the kratom products at Defendants' retail locations in Washington  
11 County, Clackamas County, and Multnomah County. All Defendants are in privity.

12 43.

13 Decedent used Defendants' kratom products for the purposes for which Defendants  
14 warranted that their products could be safely used.

15 44.

16 As an Oregon resident, decedent was a reasonably foreseeable end user of Defendants'  
17 products and was a direct beneficiary of all warranties made by Defendants.

18 45.

19 Defendants' warranties related to material facts regarding the safety and efficacy of kratom.

20 46.

21 Decedent relied on Defendants' warranties, including the warranty that the kratom  
22 product(s) were safe and would not kill you, in purchasing and consuming Defendants' products.

1 47.

2 Defendants breached their warranties because their kratom products were not of  
3 merchantable quality and were unfit for their ordinary purposes. Specifically, contrary to  
4 Defendants' representations:

- 5 A. Defendants' kratom was not safe or approved for the uses represented by  
6 Defendants described in paragraph 12(s).  
7 B. Defendants' kratom products were not, in fact, superior in quality or safer than  
8 other forms of kratom on the market.  
9 C. Defendants' kratom products were, in fact, adulterated.  
10 D. Defendants' kratom products had potentially deadly side effects.

11 48.

12 Defendants' products did not conform to the quality and representations Defendants made.

13 49.

14 As a foreseeable and/or direct result of Defendant's acts and omissions alleged herein, the  
15 Estate of Mathew J. Torres suffered the harms and losses described more fully below.

16 **FIFTH CLAIM FOR RELIEF**

17 **NEGLIGENT MISREPRESENTATION**  
18 **(Against All Defendants)**

19 For its fifth claim for relief as to all Defendants, plaintiff alleges:

20 50.

21 Plaintiffs re-allege and incorporate by reference all previous paragraphs.

22 51.

23 In the course of their business as manufacturers, and/or distributors, and sellers of kratom  
24 products, Defendants made misrepresentations of material facts and intentionally concealed



1 information about their products from decedent during the time decedent bought and used these  
2 products.

3 52.

4 Defendants intended these misrepresentations and false information to serve as guidance  
5 for consumers in deciding whether to purchase the kratom products and how to use them.

6 53.

7 Defendants' misrepresentations in general included one or more of the following:

- 8 A. Statements that their kratom products are only intended for research purposes.
- 9 B. Statements that their kratom products are pure while they are in fact adulterated by  
10 operation of law.
- 11 C. Statements that their kratom products are effective and intended for use as  
12 described in paragraph 12(s).

13 54.

14 The information above was false at the time it was supplied.

15 55.

16 Defendants possessed superior knowledge about the lack of clinical testing and safety of  
17 their products, including the risks associated to kratom use.

18 56.

19 In misrepresenting the safety of their kratom products, defendants also failed in their duty  
20 to disclose known material facts to decedent regarding kratom products, including but not limited  
21 to:

- 22 a. The health risks associated with regular consumption of kratom.
- 23 b. Information regarding adverse events associated with kratom.

1 c. The risk of overdose and death associated with kratom.

2 57.

3 The above representations and omissions were material, and defendants made them with  
4 the intent to persuade and induce decedent to choose and regularly use the products.

5 58.

6 Defendants made the above representations or omissions knowing the misrepresentations  
7 were false or were ignorant of the truth of the assertions.

8 59.

9 Together, all Defendants unlawfully promoted and sold these unreasonably dangerous  
10 products to Oregon consumers, including decedent.

11 60.

12 It was reasonable for Oregon consumers, including decedent, to rely on the misinformation  
13 provided by Defendants when deciding whether and how to use their kratom products. As  
14 manufacturers, and/or distributors, and sellers of kratom, Defendants had superior knowledge of  
15 kratom, its history, and its safety and risk profile that was unavailable to ordinary consumers.

16 61.

17 Decedent relied upon and was induced to act in reliance on Defendants' misrepresentations  
18 and omissions when he purchased the product(s) to achieve relief from chronic pain.

19 62.

20 As a foreseeable and/or direct result of Defendant's acts and omissions alleged herein, the  
21 Estate of Mathew J. Torres suffered the harms and losses described more fully below.

1 **SIXTH CLAIM FOR RELIEF**

2 **NEGLIGENCE PER SE**  
3 **(Against All Defendants)**

4 For its sixth claim for relief as to all Defendants, plaintiff alleges:

5 63.

6 Plaintiffs re-allege and incorporate by reference all previous paragraphs.

7 64.

8 Defendants violated the following statutes 21 U.S.C. § 331; 21 U.S.C. § 342; 21 U.S.C. §  
9 343; 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381; by importing;  
10 manufacturing, marketing, promoting, distributing, and selling adulterated and misbranded kratom  
11 products without the premarket verifications of safety and notifications required by statute.

12 65.

13 Plaintiff was injured because of Defendants' violation of 21 U.S.C. § 331; 21 U.S.C. §  
14 342; 21 U.S.C. § 343; 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381.

15 66.

16 Plaintiff, as a consumer of kratom, a product subject to Food, Drug, and Cosmetic Act  
17 regulation, is a member of the class persons meant to be protected by 21 U.S.C. § 331; 21 U.S.C.  
18 § 342; 21 U.S.C. § 343; 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381.  
19 That class of persons consists of individuals who purchase and consume supplements and new  
20 dietary ingredients, as well as persons who purchase and consume products (i.e. drugs) for  
21 medicinal purposes.

22 67.

23 Plaintiff's injuries are of a type that 21 U.S.C. § 331; 21 U.S.C. § 342; 21 U.S.C. § 343;  
24 21 U.S.C. 350b; 21 U.S.C. § 352; 21 U.S.C. § 355; and 21 U.S.C. § 381 were enacted to prevent

1 the harm that Matthew Torres ultimately suffered, namely his death due to the toxic effects of the  
2 kratom products consumed.

3 68.

4 As a foreseeable and/or direct result of Defendant's acts and omissions alleged herein, the  
5 Estate of Mathew J. Torres suffered the harms and losses described more fully below.

6 **DAMAGES**

7 Plaintiff realleges and incorporates by reference hereto all the paragraphs above.

8 69.

9 As a foreseeable and/or direct result of defendant's acts and omissions alleged herein,  
10 plaintiff suffered the following harms:

- 11 A. Reasonable charges necessarily incurred for doctors' services, hospital services, nursing  
12 services, other medical services, burial services and/or memorial services rendered for the  
13 decedent, in an amount to be determined by the jury and not to exceed \$150,000.00;
- 14 B. A reasonable amount that would have compensated Mr. Torres for disability, pain, and  
15 suffering during the period between injury to Mr. Torres and his death, in an amount to be  
16 determined by the jury and not to exceed 2 Million Dollars;
- 17 C. A reasonable amount that justly, fairly and reasonably compensates the estate and/or  
18 beneficiaries for pecuniary loss to the decedent's estate and/or beneficiaries, in an amount  
19 to be determined by the jury and not to exceed 3 Million Dollars;
- 20 D. A reasonable amount that justly, fairly and reasonably compensates decedent's  
21 beneficiaries for loss of the society, companionship and services of the decedent, in an  
22 amount to be determined by the jury and not to exceed 4 Million Eight Hundred and Fifty  
23 Thousand Dollars; and
- 24 E. Plaintiff intends to move the court to add a claim for punitive damages.

1  
2 **PRAYER**

3 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as  
4 follows:

- 5 1. Economic damages for reasonable charges necessarily incurred for doctors' services,  
6 hospital services, nursing services, other medical services, burial services and/or  
7 memorial services rendered for the decedent, in an amount to be determined by the  
8 jury and not to exceed \$150,000.00, subject to future amendment;
- 9 2. Non-economic damages for disability, pain, and suffering during the period between  
10 injury to Mr. Torres and his death, in a reasonable amount to be determined by the  
11 jury and not to exceed 2 Million Dollars, subject to future amendment;
- 12 3. Economic damages in an amount that justly, fairly and reasonably compensates the  
13 estate and/or beneficiaries for pecuniary loss to the decedent's estate and/or  
14 beneficiaries, in a reasonable amount to be determined by the jury and not to exceed  
15 3 Million Dollars, subject to future amendment;
- 16 4. Non-economic and economic damages in an amount that justly, fairly and reasonably  
17 compensates decedent's beneficiaries for loss of the society, companionship and  
18 services of the decedent, in a reasonable amount to be determined by the jury and not  
19 to exceed 4 Million Eight Hundred and Fifty Thousand Dollars, subject to future  
20 amendment;
- 21 5. Pre- and post-judgment interest as allowed by law;
- 22 6. For plaintiff's costs and disbursements incurred herein;
- 23 7. For other relief the Court deems just and equitable; and

