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10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 B. D. and L. M., individually and on
 13 behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 MIT45 INC.,

17 Defendant.

Case No. '24CV0499 L DEB

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs B.D. and L.M. (“Plaintiffs”) bring this action on behalf of
2 themselves, and all others similarly situated, against MIT45 Inc. (“Defendant”).

3 NATURE OF THE ACTION

4 1. This is a civil class action lawsuit against Defendant MIT45 Inc., for
5 false, misleading, deceptive, and negligent sales practices regarding its kratom
6 powder, capsule, gummy, and liquid extract products (the “Products”). Kratom is a
7 type of plant indigenous to Southeast Asia which can produce psychoactive effects
8 when ingested. Dried kratom leaves are sold as a loose powder, packaged into gel
9 capsules, or made into an extract. However, what reasonable consumers do not
10 know, and Defendant fails to disclose, is that the “active ingredients” in kratom are
11 similar to opioids. That is, kratom works on the exact same opioid receptors in the
12 human brain as morphine and its analogs, has similar effects as such, and critically,
13 has the same risk of physical addiction and dependency, with similar withdrawal
14 symptoms. When reasonable consumers think of opiates and opioids, they think of
15 heroin, fentanyl, hydrocodone, oxycodone, and morphine; they do not expect that the
16 “all natural” product bought at their local corner store operates like an opioid, with
17 similar addiction and dependency risks. Kratom is perniciously addictive – on a
18 whole different level than caffeine or nicotine – and it has sunk its hooks into tens of
19 thousands of unsuspecting consumers and caused them serious physical,
20 psychological, and financial harm. Here, Defendant intentionally and negligently
21 failed to disclose these material facts anywhere on its labeling, packaging, or
22 marketing materials, and it has violated warranty law and state consumer protection
23 laws in the process.

24 2. Defendant relies on its Products’ innocuous packaging and the public’s
25 limited knowledge about kratom and its pharmacology to get users addicted, while
26 reaping profits along the way. Reasonable consumers do not expect the liquid
27 extract bottles, gummies, and pouches of kratom powder, which they can purchase at
28 gas stations and corner stores, to perform like an opioid with the same addictive

1 potential of morphine and its analogs. Defendant relies on this ignorance and does
2 nothing to correct it. Such activity is outrageous and is in contravention of
3 California law and public policy.

4 3. Defendant has engaged in a systemic effort to peddle an addictive
5 substance to unsuspecting and oftentimes vulnerable consumers. Plaintiffs seek
6 relief in this action individually, and as a class action on behalf of similarly situated
7 purchasers of Defendant's Products, for: (i) violation of California's Unfair
8 Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (ii) violation
9 of California's Consumers Legal Remedies Act ("CLRA"), Cal. Civil Code §§ 1750,
10 *et seq.*; (iii) violation of California's False Advertising Law ("FAL"), Cal. Bus. &
11 Prof. Code §§ 17500, *et seq.*; (iv) breach of implied warranty; (v) unjust enrichment;
12 (vi) fraud by omission; and (vii) negligent misrepresentation.

13 4. Because this action concerns issues of addiction and medical status,
14 Plaintiffs are filing under their initials for the sake of their personal privacy.
15 Plaintiffs are reasonable consumers who fell victim to Defendant's omissions and
16 misrepresentations about the addictive nature of kratom, which operates like an
17 opioid, and became addicted as a result. Since addiction issues are still wrongly
18 stigmatized, Plaintiffs are filing this matter anonymously but will reveal their names
19 as necessary to the Court under seal.

20 **PARTIES**

21 5. Plaintiff B.D. is a citizen of California who resides in San Diego,
22 California and intends to stay there.

23 6. Plaintiff L.M. is a citizen of California who resides in Oroville,
24 California and intends to stay there.

25 7. Defendant MIT45 Inc., is a Delaware corporation with its principal
26 place of business in Salt Lake City, Utah.

27 8. Plaintiffs reserve the right to amend this Complaint to add different or
28 additional defendants, including without limitation any officer, director, employee,

1 supplier, or distributor of Defendant who has knowingly and willfully aided, abetted,
2 and/or conspired in the false and deceptive conduct alleged herein.

3 **JURISDICTION AND VENUE**

4 9. This Court has subject matter jurisdiction over this action pursuant to 28
5 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate
6 amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and
7 at least one Class member is a citizen of a state different from Defendants.

8 10. This Court has personal jurisdiction over the parties because Plaintiffs
9 reside in California, are citizens of California, and submit to the jurisdiction of the
10 Court, and because Defendant has, at all times relevant hereto, systematically and
11 continually conducted, and continues to conduct, business in this State. Defendant
12 therefore has sufficient minimum contacts with this state, including within this
13 District, and/or intentionally availed itself of the benefits and privileges of the
14 California consumer market through the promotion, marketing, and sale of its
15 products to residents within this District and throughout this State. Additionally,
16 Defendant marketed and sold its kratom to Plaintiffs in this District.

17 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
18 Defendant regularly does business in this District, and the same misrepresentations,
19 omissions, and injures giving rise to the claims alleged herein have occurred in this
20 District (e.g., the distribution and sale of Kratom to Plaintiffs, and Plaintiffs’
21 subsequent addiction to kratom).

22 **FACTUAL ALLEGATIONS**

23 **Background and Pharmacology of Kratom**

24 12. Kratom is a drug¹ which is derived from the kratom plant, *mitragyna*
25 *speciosa*, indigenous to Southeast Asia, where it has been used in herbal medicine

26 _____
27 ¹ Kratom is unregulated by the FDA, so the usage of the word “drug” here is meant
28 in the colloquial sense, rather than as a defined term under the Food, Drug, and
Cosmetic Act.

1 since at least the early 19th Century. Use of the plant has been particularly well-
2 documented in Thailand, Indonesia, and Malaysia, and it remains popular in each of
3 those countries to this day. Kratom is the most widely used drug in Thailand, for
4 example.

5 13. The first reported use of kratom in scientific literature dates back to
6 1836 when it was noted that the leaves of the tree were used by Malays as a
7 substitute for opium.

8 14. The plant's leaves are harvested, dried, and crushed into a fine powder
9 which is then packaged, either straight into a pouch or in capsules, and sold by
10 manufacturers like MIT45. The drug can also be extracted into a liquid formulation,
11 colloquially called a kratom "shot."

12 15. In the West, kratom is sold through the Internet and at herbal stores, gas
13 stations, corner stores, smoke shops, and "head" shops where it is primarily marketed
14 as an herbal medicine or supplement to treat a variety of ailments (*e.g.*, pain, mental
15 health, opioid withdrawal symptoms), as well as a "legal" or "natural" high by some
16 manufacturers.

17 16. The chemicals in the plant that produce a psychoactive effect when
18 ingested are called "alkaloids."

19 17. The primary alkaloids in kratom plant leaves responsible for the kratom
20 "high" are Mitragynine² ("MG") and 7-hydroxymitragynine ("7-MG").

21 18. MG and 7-MG exhibit a wide variety of pharmacological effects,
22 resulting in a highly dose-dependent response. For example, a low dose (0.5 grams
23 to 3 grams) of kratom is typically described as stimulating or energizing, whereas a
24 high dose (3+ grams) is described as euphoric, sedating, and analgesic. On the
25 whole, however, kratom's high is not overwhelming like it would be for a "hard"
26 drug like cocaine or heroin – it is somewhat more subtle, but its effects are

27 _____
28 ² Pronounced "Mitra-Guy-Neen."

1 nonetheless substantially similar to opiate-based painkillers such as hydrocodone and
2 oxycodone in sufficient dosages.

3 19. Kratom’s variable but not debilitating effects have always been part of
4 its appeal. For instance, the use of kratom in Southeast Asia has been documented
5 back for at least 150 years and the earliest accounts described both a stimulant effect
6 for use in hard day-labor when fresh leaves are chewed, and an analgesic and
7 relaxing effect if brewed into a tea.

8 20. MG and 7-MG produce such a wide spectrum of effects because they
9 interact with many different receptors in the brain. Studies have shown that MG and
10 7-MG interact with alpha-2 adrenergic receptors (adrenaline), D2 dopamine
11 receptors, and the serotonin receptors 5-HT2A and 5-HT2C, all of which contribute
12 to the drug’s mood-lifting and stimulant-like effects.

13 21. Most crucially, MG and 7-MG also interact with the mu-opioid
14 receptor.

15 22. The mu-opioid receptor is known as “the gateway to addiction” because
16 it is the receptor which all opiates/opioids interact with to produce the classic opiate
17 high: euphoric, sedating, and analgesic. This means that MG and 7-MG interact with
18 the primary receptor that heroin and oxycodone interact with.

19 23. There are other opioid receptors, but the mu-opioid receptor produces
20 the most “hedonic” or habit-forming effects such as euphoria and analgesia.

21 24. Mitragynine and 7-hydroxymitragynine were found to be more potent to
22 the mu-opioid receptor than morphine via oral administration; 7-MG in particular is
23 17 times more potent than morphine, though the actual effect of kratom is dose-
24 dependent, as discussed above.

25 25. Kratom is therefore considered by health professionals to be similar to
26 an “opioid” and a “quasi-opiate.”

27 26. The notion that kratom is substantially similar to an opioid, and a quasi-
28 opiate, is reaffirmed by a few facts. First, kratom’s effects are very similar to those

1 of other opioids. Second, when administered, kratom alleviates opioid withdrawal
2 symptoms. Third, repeated use of kratom in itself results in opioid withdrawal
3 symptoms.

4 27. All substances which act on the opioid receptors carry a very high risk
5 of addiction, and kratom is no exception.

6 28. Addiction occurs when an opioid is ingested on a regular basis. Over
7 time, the user develops a tolerance to the drug, requiring increased dosages to get the
8 same effects as a lower dose used to have. As the dosages go up, the body becomes
9 dependent on some amount of the drug to feel normal. When the drug is suddenly
10 taken away, the user feels much worse than before they started taking the drug: this
11 is what is known as withdrawal.

12 29. Opioids are addictive not just because of the pleasurable effects that
13 they produce, but because sudden cessation of opioid use causes severe withdrawal
14 symptoms, which users feel compelled to avoid by taking more of the drug. The
15 tragedy of addiction is that users want to stop, but they cannot.

16 30. The symptoms of kratom withdrawal are very similar to those of
17 traditional opiate withdrawal. Such symptoms include: irritability, anxiety, difficulty
18 concentrating, depression, sleep disturbance including restless legs, tearing up, runny
19 nose, muscle and bone pain, muscle spasms, diarrhea, decreased appetite, chills,
20 inability to control temperature, and extreme dysphoria and malaise.

21 31. Users typically start substances like kratom because of how good it
22 makes them feel, but once addicted, they use them to avoid the pain of withdrawal.
23 It no longer is about getting high, but about not feeling “sick.”

24 32. With kratom in particular, users note that the addiction sneaks up on
25 them, and that it feels as though, over time, the color has been sapped from their
26 lives. Long term users of kratom have reported experiencing depression, anxiety,
27 anhedonia, and reduced sex drive.

1 **Kratom Use and Addiction in the United States**

2 33. Kratom use in the United States has exploded over the past decade. As
3 of 2021, the American Kratom Association estimates that kratom is a 1.3 billion
4 dollar a year industry, with 11 million to 15 million annual users in the United States.

5 34. Other studies have found that about 1 million people use kratom in the
6 United States every month. Two-thirds of those users use kratom daily.

7 35. Kratom’s popularity can be attributed to a number of factors: first, it is
8 often marketed as a safe substitute for painkillers and appeals to those who equate
9 “natural” with “safe;” second, it has received attention from the media as a
10 “nootropic” or “smart” drug because it is stimulating at low doses; third, its
11 popularity has grown simply because it is so widely available, it produces a
12 pleasurable high, and it is unregulated; finally, users are not aware that it is similar to
13 an opioid with opioid addiction potential.

14 36. On the whole, however, kratom is a relatively unknown drug to the
15 average consumer. Most people in the United States have never heard of it.

16 37. The advertisements and commentary about kratom say that it is like a
17 substitute for coffee, a pain reliever, a treatment for opioid withdrawal, an
18 antidepressant, an anti-anxiety supplement, that it improves focus and gives users a
19 boost of energy to get through the day. These advertisements universally espouse
20 the purported benefits that kratom use can provide, without disclosing that the drug
21 is similar to an opioid with the addictive potential of one.

22 38. What’s more, because kratom does not produce a debilitating “high”
23 like cocaine or heroin, it is very easy for users to take the drug every day without
24 feeling as though they are developing a drug addiction or harming themselves. This
25 makes kratom a particularly insidious drug because addiction can sneak up on
26 unsuspecting users and can hold them in its grip despite their best efforts to stop
27 using. The advertisements and word-of-mouth disclosures do not make this clear to
28 consumers.

1 39. Because manufacturers and advertisers of kratom, such as Defendant,
2 do not disclose the addictive potential of this drug, many users have found
3 themselves blindsided when they wake up one morning in the throes of withdrawal
4 after having stopped using what they thought was an innocuous supplement. They
5 then discover just how painfully dependent they have become on kratom. Because
6 kratom is relatively unknown in the United States, many did not know where to turn
7 for resources and aid. Some users come together on the Internet to share their
8 experiences and support each other as they attempt to get off the drug. There are
9 even well-populated and very active Internet forums serving as support groups for
10 those struggling with and recovering from kratom addiction.

11 40. The reports from users who have fallen into addiction, or succeeded in
12 escaping the drug's grasp, are heart-wrenching. Consistent amongst these reports is
13 the initial shock that users felt when they realized they had become unwittingly
14 addicted, and just how difficult it was for them to stop. Below are just a few
15 accounts from the "Quitting Kratom" forum on www.reddit.com, which had 41,000
16 members as of February 2024:

17 About 4 months ago, a user wrote: "OK, so mit45 shots. All I can say is
18 be careful. I was taking these shots about 1 every two to three days. After
19 a few months, my back (kidneys) started hurting and getting worse! So I
20 decided it's time to stop, and yes, the withdrawals are real. Another side
21 effect I have, along with the kidney issues now, is that 5 days post
22 withdrawal is gut issues and bad diarrhea like the worst bial coming out.
23 I'm not sure if I spelled bial correctly, but it was nasty. That comes and
24 goes with constipation and gut pain. Their is research that shows it can
cause severe liver and kidney damage on high doses over long periods
but can be reversed when stopped and some diet changes. Going through
the worst part now, I think, wish me luck! I can tell you I will never touch
that stuff again! Good luck to you all.."

25 About 8 months ago, one user wrote: "I've been on a 50gpd [grams per
26 day] habit for about 4 years. Like most people here, **I was in denial that
27 the Kratom was causing my multitude of issues. How could it be the
28 Kratom when everyone keeps telling me how great it is?** I made
myself believe that I had underlying issues that the Kratom was helping.
Spoiler: It wasn't. **I slowly became a shell of the person I used to be.**

1 **TRUE clinical depression symptoms with zero joy in my life.** I started
2 browsing this subreddit and reading everyone's stories and I related to
3 every single one. Everyone had the same exact experience I had and at
4 that moment I knew it was the Kratom causing my depression."
(emphasis added).

5 About 2 years ago, a gas station employee wrote: "I work at a gas station
6 where we sell kratom such as powders, gold and silver pills and
7 especially shots etc (you know which one I'm talking about) **it's just**
8 **mind blowing to me how many people are practically addicted and**
9 **how many customers literally scavenge their money to pay for their**
10 **daily shot.** Why are people so addicted especially to those shots."

11 About 7 months ago, a user solicited "extract horror stories." One user
12 responded: "Took 2-3 shots a day for almost 2 years. How did it screw
13 me up? Let me count the ways. Financially it was draining me, 100%!
14 **I would estimate 60% of my hair fell out. My skin was grey. My**
15 **eyes were dark. I became a hermit.** No longer wanted to do anything,
16 including self care or hygiene. Just taking a shower was a chore I had to
17 talk myself into the last few months. I was disgusting and did not care at
18 all. All I cared about was that I had enough K for tomorrow."

19 Another user responded: "Amen. This [expletive] got hold of me as bad
20 as anything else I've ever done... spent WAY more money on these
21 [expletive] things than real honest to God hard drugs back in the day.
22 **Anywhere from 6-10 of these things daily for... years. Let's call it 7**
23 **at an average of \$18/pop = \$126/day x 30 = \$3780/month = about**
24 **\$45k/year.** How [expletive] embarrassing. I made \$140,000 last year
25 living in Georgia (pretty low cost of living) and pretty regularly get
26 busted "borrowing" money from my 10 year old son. [Expletive] this;
27 I'm not living like this anymore."

28 About 2 years ago, another user wrote: "I saw 'A Leaf of Faith' and got
the impression that kratom was a generally friendly substance to use
freely, never knowing how addictive it was, how much it was further
numbing me beyond how alcohol already was, how it was slowly wiping
out my sex drive, and likely contributing to my perpetual brain fog. ...
My second attempt [at quitting] was maybe another 7 or 8 months later.
Kratom was making me pretty miserable. I was reading posts in this
subreddit and I was finally aware of how addicted I was; feeling crappy,
sluggish, and sorta spacey pretty much all the time."

About 2 years ago, another user wrote: "What a difficult journey it has
been. I was a ~75 GPD [grams per day] user. **Quitting kratom was one**
of the hardest things I've had to do in my life. I learned the hard way
that kratom causes withdrawals on a work trip 3 years ago. I should have
stopped then and there but I gave in because the RLS was so bad. ...

1 Kratom withdrawal is seriously no joke so don't think you're the only one
2 struggling so much. I'm only a week free but after this experience I know
3 for sure that I will never go back. Good luck everyone!" (emphasis
4 added).

5 About 2 years ago, another user wrote a post titled *Kratom Is An*
6 *Addictive Drug*. It said, in part: "It's been 23 hours since my last dose. **I**
7 **just wanted to give my story hoping that it would help others see that**
8 **they've been lied to, deceived and manipulated into thinking this**
9 **plant is 'harmless and safe'**. As a matter of fact, reading the horror
10 stories on this subreddit was the first step in my recovery... I started
11 taking it almost 3 years ago after hearing about it on... well, Reddit. They
12 touted it is a miracle plant that had all the benefits of an opioid with none
13 of the side effects." (emphasis added).

14 About 19 months ago, another user wrote: "**I think the perfect word to**
15 **describe Kratom addiction is 'insidious'. Here is the definition**
16 **– 'proceeding in a gradual, subtle way, but with harmful effects.'** I think
17 this is why it takes so long to realize what is going on. There was never
18 a rock bottom moment for me like there would be for other more
19 conventional abused drugs. No overdose, no bad behavior, no
20 abusiveness to my family, no DWI, etc.. - It was just a lazy, slow descent
21 into nothingness. I was living in a groundhogs day type of existence.
22 Wake up, go to work, leave work, buy an extract shot or 2, have dinner,
23 drink my shot, mindlessly look at my phone and/or watch TV. Wake up
24 and do it all over again." (emphasis in original).

25 About 12 months ago, another user wrote: "I started using k[ratom] when
26 I had knee surgery Dec 2019 so 3 years. **I didn't want to use pain killers**
27 **because I got sober from alcohol 3/6/2018 and i felt the pain killers**
28 **were going to make me relapse.** I didn't know I would end up in a worst
place as I am now." (emphasis added).

About 2 years ago, another user wrote: "Was in bed all day yesterday
fighting withdrawals. I used to even be an athlete - strong lean and fit,
until I got on [kratom] shots and extracts. Didn't even get high any more
- just wanted to not feel bad."

About 4 years ago, another user wrote: "I researched kratom before using
it and almost every site promoted that its harmless with healthy benefits,
and that its withdrawals are like coffee for 3 days max. Information
wasn't clear that kratom could become a negative addiction that takes
months to recover" ... "I took something I thought was helping me for
1.5-2 years, not even knowing the downsides bc that information was so
misleading. It [expletive] up my digestion, energy, mood, brain fog,
anxiety, etc. [Expletive] kratom, and [expletive] those who peddle it as a
harmless cure-all."

1 About 4 years ago, another user wrote: “I got out of treatment for a heroin
2 relapse 6 months ago after a year and a half clean. **A couple months**
3 **after I got out, I was at the gas station and saw the MIT 45 shots and**
4 **caved. I had heard kratom wasn’t addictive and had no idea what**
5 **these shots were or how strong they are. Taking one mad me feel like**
6 **I had taken a 30 mg oxy and used them for three days.** After only 3
7 days I had minor withdrawals due to my past opiate addiction (if I use
8 opioids for 2-3 days in an row I get withdrawals bc of my past abuse). I
9 went a week without using and relapsed again. Since then I have gotten
10 to where I take 3 MIT 45 in the morning, and at this point I don’t even
11 feel anything from them. ... I am in a bad situation because I am actively
12 in AA, working the steps (on my amends step 9) but I haven’t been able
13 to tell my sponsor or be honest with everyone because I am so scared that
14 **I will lose my fiancé if she knows I relapsed again, and my family will**
15 **be devastated.**

16 About 10 months ago, another user wrote: “For any newcomers: this stuff
17 is absolutely no joke. It’s not harmless and the wd [withdrawal]
18 is *definitely not* like caffeine. I’ve cold turkey’d caffeine before and I had
19 a slight headache for a couple hours. I definitely have never woken up in
20 a pool of my own sweat from not having my caffeine. ... **This stuff is a**
21 **drug. A serious drug. And it’s super freakin addictive.** Extracts,
22 powder, or in my case, capsules...it doesn’t matter. Yes some forms are
23 more addictive than others but the WD is hellacious no matter how you’re
24 taking it.” (emphasis original).

25 About 10 months ago, another user wrote: “This stuff is a drug, and
26 dangerous! **I started taking it because of all the good things I heard**
27 **and read about it.** I’ve never been addicted to or dependent on anything
28 before, but this stuff has totally taken control of my life.” (emphasis
added).

About 9 months ago, another user wrote: “I finally realized a few weeks
ago how much of a negative impact kratom was having on my life. I
noticed myself planning my whole day around my doses and making sure
when I left the house I’d bring an extra dose with me in a shaker bottle.
It was heavily affecting my mood overall, but especially in public
settings. I did not want to leave my house most days even if I did dose.”

41. This Internet forum is filled with accounts just like these. The stories
are consistent – well-meaning people who were looking to feel better, in mind body
and spirit, by taking an “herbal supplement,” only to end up with an opioid-like
addiction.

1 42. What is particularly insidious about kratom is that, at the early stages,
2 many users are unaware of its negative side effects and its addictive potential, so
3 when they begin to experience the malaise of addiction, they do not attribute it to the
4 kratom. Rather, they take more of the substance thinking that it is helping them with
5 their malaise.

6 43. As these accounts make clear, the addictive potential of kratom is a
7 material fact to reasonable consumers which would help inform their purchase and
8 consumption decisions. Defendant's products have no information whatsoever, that
9 kratom is similar to an opioid, is habit-forming, and that regular use will result in
10 opioid-like dependency, with withdrawal symptoms similar to those of traditional
11 opioids.

12 44. Consumers who knew the truth about kratom may not have purchased
13 Defendant's Products or would have paid less than they did for them.

14 **Defendant Knew or Should Have Known it was Selling a Highly Addictive Drug**
15 **to Unsuspecting Consumers**

16 45. Despite its traditional medical uses, kratom dependence has been known
17 and observed for a long time and is well-documented in Southeast Asia, where the
18 plant originates and has the longest history of use.

19 46. Addiction to kratom among users in Thailand, Indonesia, and Malaysia
20 has been documented by scientists and researchers in the United States since at least
21 1988.

22 47. Defendant operates under the brand name MIT45 (short for both
23 "*Mitragynine*," the active alkaloid in kratom, and "*Mitragyna*," the kind of kratom
24 plant that produces kratom leaves) and is a growing producer and seller of kratom
25 Products in the United States. The increasing demand for Defendant's Products and
26 expansion into new markets, like the fitness industry, has furthered its revenue
27 growth. In 2022, MIT45 recorded seven figures in revenue from its MIT45 Boost
28

1 Product alone.³ But Defendant has enjoyed extensive profits for years from the sale
2 of its addictive Products. For example, Defendant claims to have sold over
3 35,000,000 units of its MIT45 Gold Extract (now just “MIT45” Extract”) over the
4 last decade.

5 48. Notably, Defendant specializes in kratom extracts. As Defendant’s
6 website notes: “MIT45 is one of the country’s premier providers of kratom, featuring
7 the finest lineup of products available on the market today.”⁴ MIT45 emphasizes the
8 safety of its Products as measured by their “purity.” For instance, Defendant’s
9 website vaunts that it “take[s] great pride in [its trademarked] Triple Purification
10 Process.”⁵ Defendant describes how its extracts are third-party tested for purity to
11 ensure that “only products that have passed this stringent testing are made available
12 for purchase.” However, such “stringent” testing means very little when Defendant’s
13 Products, even in their “purest” forms, are harmful in themselves. Kratom’s
14 addictive properties are not filtered out by Defendant’s “purification process.”
15 Moreover, Defendant’s use of “safe” and “pure” are misleading and misguided since
16 its “pure” Product is still certainly unsafe because of its potential for addiction, a
17 material fact about its Products conveniently omitted from Defendant’s website.

18 49. Defendant makes no mention of its Products’ addictive nature on its
19 website nor on its Products’ packaging. Instead, Defendant vaguely references how
20 the FDA has “warned against the dangers of consuming kratom and [how] there are
21 no safe guidelines for use as a dietary supplement” in its website FAQ without
22 explaining what said dangers are.⁶ The average consumer is not aware that the
23 “danger” Defendant references is danger for potential addiction. On its packaging
24

25 ³ <https://www.abc27.com/business/press-releases/ein-presswire/604420976/mit45-achieves-recording-breaking-year-in-2022/>

26 ⁴ <https://mit45.com/our-brand/>

27 ⁵ <https://mit45.com/faq/>

28 ⁶ <https://mit45.com/faq/>

1 for its liquid extract and gummy Products, Defendant includes an ambiguous
2 “Caution” label, which states “Mitragyna Speciosa Extract can be much more
3 powerful than whole leaf Kratom powder. Read above table.” What metrics or
4 criteria Defendant uses to define and categorize the power of its Products is unclear
5 to an average consumer from this labeling. The “table” referenced shows how much
6 Mitragyna Speciosa and 7-MG is included in each serving, measured in milligrams.
7 This provides absolutely no useful information to consumers, who do not know how
8 much an arbitrary amount of relatively-unknown alkaloids will affect them. It
9 certainly does not provide any clarity as to the amount in milligrams that may
10 potentially lead to addiction if consumed over an extended period of time.
11 Defendant further does not even list on any of its Products the amount of 7-MG
12 found in each serving. Because there is no warning to consumers that even the
13 suggested serving size may lead to addiction, consumers are not put on notice that
14 they should not consume Defendant’s Products at the suggested dose on a daily
15 basis. This is contrary to the average consumer’s actual use of Defendant’s Products.

16 50. Kratom extracts are a concentrated form of kratom, whereby the active
17 kratom alkaloids (MG and 7-MG included) are distilled from the leaf powder and
18 sold in powder or liquid preparations.

19 51. The purpose of kratom extracts is to create a vastly more potent product
20 as there is a greater concentration of MG and 7-MG, and all other alkaloids, by
21 weight compared to regular powder kratom. For example, a single MIT45 Black
22 Label capsule, contains 67.5mg of mitragynine, which is equivalent to about seven
23 grams of kratom powder when using an average mitragynine concentration of 1%.

24 52. Consumers who take Defendant’s extracts are exposed to significantly
25 elevated levels of MG and 7-MG compared with those who take regular kratom.
26 This produces greater euphoria and “feel good” effects at first, but only leads to
27 deeper addiction down the road.

1 53. No matter what Product consumers take, they are exposed to highly
2 concentrated forms of kratom without knowing just how addictive the extracts, in
3 particular, can be.

4 54. Upon information and belief, Defendant has interacted with growers and
5 distributors in Southeast Asia who have disclosed the addictive nature of kratom to
6 it. Defendant touts its direct partnership with farmers throughout Southeast Asia and
7 how this allows Defendant control over the final product sold.

8 55. Even without such interactions, Defendant has received numerous user
9 reports about the addictive potential of kratom in the United States.

10 56. Defendant describes how its extracts are manufactured in a
11 pharmaceutical grade laboratory, which monitors the potency and consistency of its
12 Products. Thus, Defendant must be aware of the interaction between MG and 7-MG
13 (the two primary alkaloids in kratom) and the mu-opioid receptor.

14 57. Defendant therefore knew or should have known that the Products it
15 was selling were highly addictive.

16 58. Despite this knowledge, Defendant has failed to disclose the addictive
17 potential of kratom on its website or on its Products' packaging.

18 59. Defendant makes no effort to disclose or warn of the addictive nature of
19 kratom. On its website, there is no mention at all of the potential for addiction when
20 using kratom or Defendant's kratom Products. This is deliberately misleading, and
21 further no such disclaimer is made on the Product packaging in stores, where
22 consumers are most likely to encounter Defendant's statements. The addictiveness
23 of kratom has been well-documented for decades and is an established fact in
24 medical literature. The pharmacological effects of MG and 7-MG have been
25 thoroughly studied, and it is well-established that MG and 7-MG act on the same
26 mu-opioid receptors in the brain as traditional opioids. Further, there are widespread
27 user reports and case studies of addiction and dependency issues.

1 60. To reiterate, this is not an instance where the science on the effects of
2 kratom is still up for debate. It has been known for decades in the English-speaking
3 world that kratom is highly addictive and has the potential to cause physical and
4 psychological dependence in regular users. It has been known for over a century in
5 Southeast Asia that kratom is addictive.

6 61. For example, kratom is the most commonly used drug in Thailand. A
7 2007 study found that 2.3% of people in Thailand have used kratom. Many of those
8 users have developed a dependence on kratom to avoid withdrawal.

9 62. On information and belief, Defendant imports some or all of its raw
10 kratom powder from Thailand and other neighboring countries.

11 63. Under the totality of circumstances Defendant knew or should have
12 known that kratom users can develop an addiction. Yet, Defendant does not warn
13 consumers about the potential risks of taking its Products.

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64. Defendant’s Products’ packaging, in particular, is woefully sparse. A representative image of Defendant’s Products is depicted below:



65. On the back of each Product’s packaging is a bog-standard disclaimer stating that the Product is not intended to diagnose, treat, cure or prevent any disease, and that the manufacturer is not “responsible for the misuse or misrepresentation of it’s [sic] products.” Defendant does not explain what misuse or misrepresentation looks like.

66. Defendant’s kratom extract bottle labeling is substantially the same, with minimal disclosures or warnings:



PRODUCT FACTS

Average Reported Usage Amount: 3 per Bottle

	Amount Per Use	%DV
Mitragyna Speciosa Extract (leaves)	83mg	*
7-Hydroxymitragynine	**	*

* Daily Value (DV) not yet established.
 ** Less than 2% of total alkaloid content.
 Daily Value (DV) based on a 2000 calorie diet.

Other Ingredients: Vegetable glycerin, Filtered water, Citric acid
Reported Use: 1/3 bottle with water

CAUTION: Mitragyna Speciosa Extract can be much more powerful than whole leaf Kratom powder. Read above table.

These statements have not been evaluated by the U.S. & Food & Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease. The FDA has not yet approved this product for human consumption.

67. There is no warning to consumers that the Product interacts with opioid receptors, nor is there any warning that the product is highly addictive and that it should not be taken on a daily basis.

68. Further, the packaging itself is innocuous. The company logo is all that is included on the front of the packaging of the Products and is printed in clear, bold text, implying a “no frills” Product with an assumed straightforward use. Defendant’s extract bottle is reminiscent of a “5-Hour Energy” brand bottle. Nothing about this packaging would lead reasonable consumers to believe they were purchasing compounds similar to opioids, that function on the same mu-opioid receptors in the brain.

69. Reasonable consumers looking at the Products’ packaging would not presume that kratom is highly addictive or that daily use would be inappropriate and lead to potential addiction to the Product.

1 70. Defendant’s website is sparse as well, with most of the text on each
2 Product page dedicated to extolling either the Product’s potency or “energetic”
3 effects when consumed. The only representations that Defendant makes about the
4 properties of its Products are that they are “natural” made with “botanical”
5 ingredients and an emphasis on the “purity” of the Products. Whether an average
6 reasonable consumer were to purchase Defendant’s Products from Defendant’s
7 website or from a retailer with only the Products’ packaging to inform themselves of
8 the Product, the consumer would receive the same information. There is no
9 disclosure or disclaimer of the potential risks for addiction from kratom use on
10 Defendant’s website or Product packaging.

11 71. Defendant’s “powder” line of kratom Products contains the lowest
12 doses of MG. However, Defendant does not list an actual amount of 7-MG
13 contained in each Product and instead notes how the Products contain “less than 2%
14 of total alkaloid content.” This information is not useful to an average reasonable
15 consumer as they are not aware of what an alkaloid is or what is an appropriate
16 amount for consumption.

17 72. Nowhere does Defendant mention that kratom presents the same
18 addiction problems that former opioid users and other consumers would want to
19 avoid. Those seeking help as they come off opioids may be drawn in by Defendant’s
20 statements about kratom without knowing that they risk trading one addiction for
21 another.

22 73. The consequences of this addiction are not mild: “in humans, opioid-
23 like withdrawal symptoms have been reported following cessation of kratom use,”
24 though “the withdrawal syndrome appears to be less severe than withdrawal from
25 morphine.”

26 74. While kratom withdrawal may be “less severe” than morphine
27 withdrawal, that is hardly a seal of approval – morphine withdrawal is one of the
28 most agonizing experiences that one can endure in modern life. And kratom

1 withdrawal, while perhaps “less severe” than morphine withdrawal, is still an
2 “opioid-like withdrawal” (according to the World Health Organization), with the
3 same physical and mental symptoms. And kratom is unquestionably addictive and
4 habit-forming.

5 75. The risk of “opioid-like withdrawal symptoms” is a material fact to
6 reasonable consumers.

7 76. As a kratom product manufacturer and distributor, Defendant occupied
8 a position of superior knowledge to the average reasonable consumer, who likely
9 knows next to nothing about kratom.

10 77. Defendant, through its misleading advertising and its failure to disclose
11 kratom’s addictive properties on its Products’ labels, relied upon the average
12 consumer’s incomplete knowledge of kratom to sell its Products and get users
13 addicted to kratom.

14 78. Defendant fails to disclose kratom’s addictive potential because
15 Defendant knows that it is a material fact to reasonable consumers which would
16 influence their purchasing and consumption decisions, likely to Defendant’s
17 detriment.

18 79. By any metric, Defendant’s conduct is immoral, unethical, and contrary
19 to California public policy.

20 80. The United States is going through an opiate crisis that is shaking the
21 foundations of our society. Amid this crisis, Defendant is creating more addicts for
22 no reason other than to line its pockets, without adequate disclosures of its Products’
23 risks and through the use of false and misleading packaging. That cannot – and
24 should not – be allowed, at least when their conduct entails breaches of warranty and
25 violation of state consumer protection statutes (as it does here).

26 **Plaintiff B.D.’s Experience**

27 81. Plaintiff B.D. first heard about kratom through a smokeshop owner who
28 did not mention the risks of dependency or addiction. B.D. was getting clean from

1 alcohol and dealing with intense anxiety. B.D. was looking for a natural way to help
2 with these symptoms without risking another addiction. B.D. did not know that
3 kratom was addictive and had no reason to know. He began purchasing MIT45
4 branded kratom extracts in 2021 in San Diego, California. When B.D. made his first
5 purchase, he reviewed the MIT45 Gold Extract bottle's packaging and labels, but
6 there were no disclosures on the package that would have corrected his
7 misunderstanding about the Product's addictive potential. Because there were no
8 disclosures, B.D. thought that MIT45 kratom could be consumed every day without
9 the risk of physical dependence.

10 82. B.D. eventually found himself requiring larger and larger doses. B.D.
11 was consuming Defendant's extract shots, which are significantly more potent.
12 From July 2021 through December 2023, B.D. was using MIT45 liquid extracts
13 every day, starting with the weakest "Gold," then moving to the "Blue Super K," and
14 finally ending with the "Purple Super K Extra Strength," which contains a whopping
15 360mg of mitragynine, equivalent to about 36 grams of raw kratom leaf. When B.D.
16 attempted to cease using kratom he was wracked by intense physical and
17 psychological withdrawal symptoms that were substantially similar to traditional
18 opiate withdrawals – with symptoms including profound anxiety, deep headaches,
19 severe gastrointestinal distress, and fatigue. B.D. realized he was addicted to kratom
20 in February 2022 and felt that he was being held captive by the specter of
21 withdrawal. Though B.D. wanted to stop, he could not. B.D. estimates he has spent
22 at least \$25,000 on Defendant's Products.

23 83. Had B.D. known that kratom was so addictive, and that cessation would
24 be so difficult, he would never have purchased the Products. B.D. made his
25 purchases in and around San Diego, California. Notably, San Diego County has
26 made illegal the manufacturing, sale, distribution, and possession of kratom.

Plaintiff L.M.'s Experience

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2 84. Plaintiff L.M. heard about kratom through a friend, who told him it
3 would help alleviate withdrawal from other substances without being addictive itself.
4 L.M. was under the reasonable, but mistaken, impression that kratom was not an
5 opioid and that, as an all-natural supplement, it did not carry any risk of dependency.
6 Consequently, L.M. believed that kratom was non-habit forming before he made his
7 first purchase, and he had no reason to suspect otherwise. He began purchasing
8 MIT45 branded extracts and capsules in September 2022 in Oroville, California.
9 When L.M. made his first purchase, he reviewed the MIT45 packaging and labels,
10 but there were no disclosures on the package that would have corrected his
11 misunderstanding about the Product's addictive potential. As a result, L.M. thought
12 that MIT45 kratom could be consumed every day without the risk of physical
13 dependence.

14 85. About eight months after he began using Defendant's Products, L.M.
15 discovered that MIT45 kratom was, in fact, addictive, and found himself requiring
16 larger and larger doses to stave off withdrawal. This forced L.M. to move to
17 Defendant's more potent Products, including the Blue and Purple line of liquid
18 extracts. All told, L.M. purchased and consumed the Black Label capsules, the
19 Boost, Super K, Super K Purple, and MIT45 Gold extract shots. When L.M.
20 attempted to cease using kratom he was wracked by intense physical and
21 psychological withdrawal symptoms that were substantially similar to traditional
22 opiates – with symptoms including manic episodes, restlessness, irritability, and
23 severe gastrointestinal distress. L.M. realized he was truly addicted to kratom in
24 May 2023 and recognized that he had merely replaced one addiction with another.
25 Though L.M. wanted to stop, he could not.

26 86. L.M. turned to kratom because he wanted to responsibly manage his
27 substance dependence without the risk of addiction. Had L.M. known that kratom
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1 was so addictive, and that cessation would be so difficult, he would never have
2 purchased the Products.

3 **CLASS ALLEGATIONS**

4 87. ***Class Definition.*** Plaintiffs bring this action as a class action pursuant
5 to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), on behalf of
6 themselves and all other similarly situated consumers, and seek to represent a class
7 (the “**Class**”) defined as:

8 All persons in the United States who, within the applicable
9 statute of limitations period, up to and including the date of
final judgment in this action, purchased MIT45 kratom
products.

10 88. Plaintiffs also seek to represent a subclass of all Class members who
11 purchased kratom Products in California, within the applicable statutory period (the
12 “**California Subclass**,” together with the **Class**, the “**Classes**”).

13 89. Specifically excluded from the Class are Defendant and any entities in
14 which Defendant has a controlling interest, Defendant’s agents and employees, the
15 judge to whom this action is assigned, members of the judge’s staff, and the judge’s
16 immediate family.

17 90. Plaintiffs reserve the right to amend the definition of the Class if
18 discovery or further investigation reveals that the Class should be expanded or
19 otherwise modified.

20 91. ***Numerosity.*** Members of the Class are so numerous that their
21 individual joinder herein is impracticable. On information and belief, the Class
22 comprises at least thousands of consumers throughout California. The precise
23 number of Class members and their identities are unknown to Plaintiffs at this time
24 but may be determined through discovery. Class members may be notified of the
25 pendency of this action by mail and/or publication through the distribution records of
26 Defendant.

1 92. **Commonality and Predominance.** Common questions of law and fact
2 exist as to all Class members and predominate over questions affecting only
3 individual Class members. Common legal and factual questions include, but are not
4 limited to:

- 5 a. whether the labels on Defendant’s Products have the capacity to
6 mislead reasonable consumers;
- 7 b. whether Defendant knew that kratom is a highly addictive
8 substance;
- 9 c. whether Defendant’s conduct alleged herein violated California’s
10 False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§
11 17500, *et seq.*, California’s Consumers Legal Remedies Act
12 (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*, and/or California’s
13 Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§
14 17200, *et seq.*;
- 15 d. whether Defendant’s conduct alleged herein constitutes unjust
16 enrichment;
- 17 e. whether Defendant’s conduct constitutes negligent omission;
- 18 f. whether Plaintiffs and the Class are entitled to damages and/or
19 restitution; and
- 20 g. whether Plaintiffs and the Class are entitled to attorneys’ fees and
21 costs.

22 93. **Typicality.** The claims of Plaintiffs are typical of the claims of the Class
23 in that Plaintiffs and the Class sustained damages as a result of Defendant’s uniform
24 wrongful conduct, based upon Defendant’s failure to inform Plaintiffs and all others
25 similarly situated that its Products are highly addictive and akin to opioids.

26 94. **Adequacy.** Plaintiffs will fairly and adequately protect Class members’
27 interests. Plaintiffs have no interests antagonistic to Class members’ interests, and
28 Plaintiffs have retained counsel that have considerable experience and success in
prosecuting complex class-actions and consumer-protection cases.

 95. **Superiority.** A class action is superior to all other available methods for
the fair and efficient adjudication of this controversy for, *inter alia*, the following

1 reasons: prosecutions of individual actions are economically impractical for
2 members of the Class; the Class is readily definable; prosecution as a class action
3 avoids repetitious litigation and duplicative litigation costs, conserves judicial
4 resources, and ensures uniformity of decisions; and prosecution as a class action
5 permits claims to be handled in an orderly and expeditious manner.

6 96. Defendant has acted or failed to act on grounds generally applicable to
7 the Class, thereby making appropriate final injunctive relief with respect to the Class
8 as a whole.

9 97. Without a class action, Defendant will continue a course of action that
10 will result in further damages to Plaintiffs and members of the Class and will likely
11 retain the benefits of its wrongdoing.

12 98. Based on the foregoing allegations, Plaintiffs' claims for relief include
13 those set forth below.

14 **COUNT I**

15 **Violations of California's Unfair Competition Law ("UCL"),** 16 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

17 99. Plaintiffs re-allege and incorporate by reference every allegation set
18 forth in the preceding paragraphs as though alleged in this Count.

19 100. Plaintiffs bring this claim individually and on behalf of the members of
20 the proposed California Subclass against Defendant.

21 101. The UCL prohibits unfair competition in the form of "any unlawful,
22 unfair, or fraudulent business act or practice and unfair, deceptive, untrue or
23 misleading advertising and any act." Cal. Bus. & Prof. Code § 17200. A practice is
24 unfair if it (1) offends public policy; (2) is immoral, unethical, oppressive, or
25 unscrupulous; or (3) causes substantial injury to consumers. The UCL allows "a
26 person who has suffered injury in fact and has lost money or property" to prosecute a
27 civil action for violation of the UCL. Cal. Bus. & Prof. Code § 17204. Such a
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1 person may bring such an action on behalf of himself or herself and others similarly
2 situated who are affected by the unlawful and/or unfair business practice or act.

3 102. As alleged below, Defendant has committed unlawful, fraudulent,
4 and/or unfair business practices under the UCL by: (a) representing that Defendant's
5 Products have certain characteristics that they do not, in violation of Cal. Civil Code
6 § 1770(a)(5); (b) advertising goods and services with the intent not to sell them as
7 advertised, in violation of Cal. Civil Code § 1770(a)(9); (c) selling addictive
8 substances to unsuspecting consumers and profiting from their addiction; and (d)
9 failing to disclose that its Products pose a serious risk of addiction.

10 103. Defendant's conduct has the capacity to mislead a significant portion of
11 the general consuming public or of targeted consumers, acting reasonably in the
12 circumstances.

13 104. Defendant's conduct has injured Plaintiffs and the California Subclass
14 they seek to represent in that they paid money for a product that they would not have
15 purchased or paid more than they would have but for Defendant's failure to disclose
16 the addictive nature of its Products. Such injury is not outweighed by any
17 countervailing benefits to consumers or competition. Indeed, no benefit to
18 consumers or competition results from Defendant's conduct. Since consumers
19 reasonably rely on Defendant's labels, and thus also its omissions, consumers could
20 not have reasonably avoided such injury. *Davis v. Ford Motor Credit Co.*, 179 Cal.
21 App. 4th 581, 597-98 (2009); *see also Drum v. San Fernando Valley Bar Ass'n*, 182
22 Cal. App. 4th 247, 257 (2010) (outlining the third test based on the definition of
23 "unfair" in Section 5 of the FTC Act).

24 105. Pursuant to California Business and Professional Code § 17203,
25 Plaintiffs and the California Subclass members seek an order of this Court that
26 includes, but is not limited to, an order requiring Defendant to (a) provide restitution
27 to Plaintiffs and the other California Subclass members; (b) disgorge all revenues
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1 obtained as a result of violations of the UCL; and (c) pay Plaintiffs and the California
2 Subclass members' attorneys' fees and costs.

3 106. Here, equitable relief is appropriate because Plaintiffs may lack an
4 adequate remedy at law if, for instance, damages resulting from their purchase of the
5 Product is determined to be an amount less than the premium price of the Product.
6 Without compensation for the full premium price of the Product, Plaintiffs would be
7 left without the parity in purchasing power to which they are entitled.

8 **COUNT II**
9 **Violation of California's Consumers Legal Remedies Act,**
10 **Cal. Civ. Code §§ 1750, *et seq.***

11 107. Plaintiffs reallege and reincorporate by reference all paragraphs alleged
12 above.

13 108. Plaintiffs bring this claim individually and on behalf of the California
14 Subclass against Defendant.

15 109. Plaintiffs and California Subclass Members are consumers within the
16 meaning of Cal. Civ. Code § 1761(d).

17 110. Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that goods or
18 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
19 quantities which they do not have or that a person has a sponsorship, approval,
20 status, affiliation, or connection which she or she does not have."

21 111. Cal. Civ. Code § 1770(a)(7) prohibits "[r]epresenting that goods or
22 services are of a particular standard, quality, or grade, or that goods are of a
23 particular style or model, if they are of another."

24 112. Cal. Civ. Code § 1770(a)(9) prohibits "advertising goods or services
25 with intent not to sell them as advertised."

26 113. Defendant violated Cal. Civ. Code §§ 1770(a)(5), (a)(7), and (a)(9) by
27 intentionally and misleadingly representing that its Products are "all natural" and by
28 failing to disclose that its Products are addictive, a fact which is material to
reasonable consumers such as Plaintiffs and the California Subclass members.

1 114. Defendant’s misrepresentations and omissions deceive and have a
2 tendency and ability to deceive the general public.

3 115. Defendant has exclusive or superior knowledge of kratom’s addictive
4 nature, which was not known to Plaintiffs or the California Subclass Members.

5 116. Plaintiffs and California Subclass Members have suffered harm as a
6 result of these violations of the California Consumers Legal Remedies Act, Cal. Civ.
7 Code §§ 1750, *et seq.* (“CLRA”) because they have incurred charges and/or paid
8 monies for the Products that they otherwise would not have incurred or paid had they
9 known that kratom is addictive and causes withdrawals.

10 117. Plaintiffs, on behalf of themselves and all other members of the
11 California Subclass, seek an injunction prohibiting Defendant from continuing their
12 unlawful practices in violation of the CLRA.

13 118. In compliance with the provisions of California Civil Code § 1782,
14 Plaintiffs sent written notice to Defendant on January 29, 2024 informing Defendant
15 of their intention to seek damages under California Civil Code § 1750. The letter
16 was sent via certified mail, return receipt requested, advising Defendant that they
17 were in violation of the CLRA and demanding that they cease and desist from such
18 violations and make full restitution by refunding the monies received therefrom. The
19 letter expressly stated that it was sent on behalf of Plaintiffs and “all other persons
20 similarly situated.” Accordingly, if Defendant fails to take corrective action within
21 30 days of receipt of the demand letter, Plaintiffs will amend their complaint to
22 include a request for damages as permitted by Civil Code § 1782(d) for Defendant’s
23 violations of the CLRA.

24 **COUNT III**
25 **Violation of California’s False Advertising Law,**
26 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

26 119. Plaintiffs reallege and reincorporate by reference all paragraphs alleged
27 above.

1 120. Plaintiffs bring this claim individually and on behalf of the California
2 Subclass against Defendant.

3 121. Defendant's acts and practices, as described herein, have deceived
4 and/or are likely to continue to deceive Class Members and the public. As described
5 above, and throughout this Complaint, Defendant misrepresented that kratom is not
6 addictive. Such representation is not true.

7 122. By its actions, Defendant disseminated uniform advertising regarding its
8 kratom Products to and across California. The advertising was, by its very nature,
9 unfair, deceptive, untrue, and misleading within the meaning of California's False
10 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (the "FAL"). Such
11 advertisements were intended to and likely did deceive the consuming public for the
12 reasons detailed herein.

13 123. The above-described false, misleading, and deceptive advertising
14 Defendant disseminated continues to have a likelihood to deceive in that Defendant
15 continues to misrepresent, without qualification, that kratom is not addictive.

16 124. In making and disseminating these statements, Defendant knew, or
17 should have known, its advertisements were untrue and misleading in violation of
18 California law. Defendant knows that kratom is addictive yet fails to disclose this
19 fact to consumers.

20 125. Plaintiffs and other Subclass Members purchased MIT45 Kratom based
21 on Defendant's representations and omissions that kratom is not addictive. Once
22 their addictions developed, Plaintiffs felt they could not stop purchasing Defendant's
23 Products despite their efforts to quit.

24 126. The misrepresentations and non-disclosures by Defendant of the
25 material facts described and detailed herein constitute false and misleading
26 advertising and, therefore, constitutes a violation of the FAL.

27 127. As a result of Defendant's wrongful conduct, Plaintiffs and California
28 Subclass Members lost money in an amount to be proven at trial. Plaintiffs and

1 California Subclass Members are therefore entitled to restitution as appropriate for
2 this cause of action.

3 128. Plaintiffs and the California Subclass Members seek all monetary and
4 non-monetary relief allowed by law, including restitution of all profits stemming
5 from Defendant's unfair, unlawful, and fraudulent business practices; declaratory
6 relief; reasonable attorneys' fees and costs; and other appropriate equitable relief.

7 **COUNT IV**
8 **Breach of Implied Warranty**

9 129. Plaintiffs reallege and reincorporate by reference all paragraphs alleged
10 above.

11 130. Plaintiffs bring this claim individually and on behalf of the Classes
12 against Defendant.

13 131. This claim is brought pursuant to the laws of the State of California.

14 132. Defendant, as the designer, manufacturer, marketer, distributor, and/or
15 seller of the Products, impliedly warranted that that kratom is not addictive and does
16 not cause opioid-like withdrawal symptoms.

17 133. Defendant breached this warranty implied in the contract for the sale of
18 its kratom Products because the Products could not pass without objection in the
19 trade under the contract description: the kratom Products were not adequately
20 contained, packaged, and labeled as per Defendant's contract with Plaintiffs and
21 members of the Classes, and the Products do not conform to the implied affirmations
22 of fact made on the marketing and packaging for the Products that the Products are
23 not addictive and do not cause withdrawals. U.C.C. §§ 2-313(2)(a), (e), (f). As a
24 result, Plaintiffs and members of the Class did not receive the goods as impliedly
25 warranted by Defendant to be merchantable.

26 134. Plaintiffs and members of the Classes purchased the Products in reliance
27 upon Defendant's skill and judgment and the implied warranties of fitness for the
28 purpose.

1 135. The kratom Products were defective when they left the exclusive control
2 of Defendant.

3 136. Plaintiffs and members of the Classes did not receive the goods as
4 warranted.

5 137. As a direct and proximate cause of Defendant's breach of the implied
6 warranty, Plaintiffs and members of the Classes have been injured and harmed
7 because: (a) they would not have purchased MIT45 Kratom on the same terms if
8 they knew that the Product was addictive and could cause opioid-like withdrawal
9 symptoms; and (b) the Products do not have the characteristics, uses, or benefits as
10 promised by Defendant.

11 138. Prior to filing this action, Defendant was served with a pre-suit notice
12 letter on behalf of Plaintiffs that complied in all respects with U.C.C. §§ 2-314 and
13 2-607. Plaintiffs' counsel sent Defendant a letter advising Defendant that it breached
14 an implied warranty and demanded that Defendant cease and desist from such
15 breaches and make full restitution by refunding the monies received therefrom.
16 Accordingly, if Defendant fails to take corrective action within 30 days of receipt of
17 the demand letter, Plaintiffs will amend their complaint to include a request for
18 damages as permitted by U.C.C. § 2-607.

19 **COUNT V**
20 **Unjust Enrichment**

21 139. Plaintiffs reallege and reincorporate by reference all paragraphs alleged
22 above.

23 140. Plaintiffs bring this claim individually and on behalf of the Classes
24 against Defendant.

25 141. Plaintiffs and the members of the Classes conferred a benefit on
26 Defendant in the form of the gross revenues Defendant derived from the money they
27 paid to Defendant.
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1 142. Defendant had an appreciation or knowledge of the benefit conferred on
2 it by Plaintiffs and the members of the Classes.

3 143. Defendant has been unjustly enriched in retaining the revenues derived
4 from Plaintiffs and the Class members' purchases of the Products, which retention of
5 such revenues under these circumstances is unjust and inequitable because
6 Defendant omitted that the Products were addictive and similar to opioids. This
7 caused injuries to Plaintiffs and members of the Classes because they would not have
8 purchased the Products or would have paid less for them if the true facts concerning
9 the Products had been known.

10 144. Defendant accepted and retained the benefit in the amount of the gross
11 revenues it derived from sales of the Products to Plaintiffs and the members of the
12 Classes.

13 145. Defendant has thereby profited by retaining the benefit under
14 circumstances which would make it unjust for Defendant to retain the benefit.

15 146. Plaintiffs and the members of the Classes are, therefore, entitled to
16 restitution in the form of the revenues derived from Defendant's sale of the Products.

17 147. As a direct and proximate result of Defendant's actions, Plaintiffs and
18 the members of the Classes have suffered in an amount to be proven at trial.

19 148. Here, equitable relief is appropriate because Plaintiffs may lack an
20 adequate remedy at law if, for instance, damages resulting from their purchase of the
21 Product is determined to be an amount less than the premium price of the Product.
22 Without compensation for the full premium price of the Product, Plaintiffs would be
23 left without the parity in purchasing power to which they are entitled.

24 149. Restitution may also be more certain, prompt, and efficient than other
25 legal remedies requested herein. The return of the full premium price will ensure
26 that Plaintiffs is in the same place they would have been in had Defendant's
27 wrongful conduct not occurred, i.e., in the position to make an informed decision
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1 about the purchase of the Products absent omissions with the full purchase price at
2 their disposal.

3 **COUNT VI**
4 **Fraud by Omission**

5 150. Plaintiffs reallege and reincorporate by reference all paragraphs alleged
6 above.

7 151. Plaintiffs bring this claim individually and on behalf of the Classes
8 against Defendant.

9 152. Defendant distributed its Products throughout the State of California.

10 153. Defendant misrepresented that its kratom Products have attributes or
11 qualities that they do not have by failing to disclose that kratom is addictive and can
12 cause opioid-like withdrawal.

13 154. Defendant knows that kratom is addictive because it interacts with
14 kratom vendors, has been made aware of user reports, and has fully characterized
15 kratom's alkaloids and created advanced extraction methods.

16 155. Defendant knows that knowledge of kratom's addictive nature is a
17 material fact that would influence the purchasing decision of reasonable consumers.

18 156. The average reasonable consumer in the kratom purchasing context
19 does not know that kratom is addictive and cannot reasonably access that
20 information.

21 157. Defendant therefore had a duty to Plaintiffs and the members of the
22 Classes to disclose that kratom is addictive and can cause withdrawals on the
23 Products' packaging.

24 158. Consumers reasonably and justifiably relied on Defendant's omission
25 because it is reasonable to assume that a product which is addictive like an opioid
26 would bear some kind of a warning.

1 159. As a result of Defendant’s omission, Plaintiffs and the members of the
2 Classes paid for kratom Products they may not have purchased or paid more for
3 those Products than they would have had they known the truth about kratom.

4 **COUNT VII**
5 **Negligent Misrepresentation**

6 160. Plaintiffs reallege and reincorporate by reference all paragraphs alleged
7 above.

8 161. Plaintiffs bring this claim individually and on behalf of the Classes
9 against Defendant.

10 162. Defendant distributed its Products throughout the state of California.

11 163. Defendant misrepresented that its kratom Products have attributes or
12 qualities that they do not have by failing to disclose that kratom is addictive and can
13 cause opioid-like withdrawal.

14 164. Defendant knew or should have known that kratom is addictive because
15 it interacts with kratom vendors and has been made aware of user reports and
16 scientific studies.

17 165. Defendant knew or should have known that knowledge of kratom’s
18 addictive nature is a material fact that would influence the purchasing decision of
19 reasonable consumers.

20 166. The average reasonable consumer in the kratom purchasing context
21 does not know that kratom is addictive and cannot reasonably access that
22 information.

23 167. Defendant therefore had a duty to Plaintiffs and the members of the
24 Classes to disclose that kratom is addictive and can cause withdrawals on the
25 Products’ packaging.

26 168. Consumers reasonably and justifiably relied on Defendant’s omission
27 because it is reasonable to assume that a product which is addictive like an opioid
28 would bear some kind of a warning.

1 169. As a result of Defendant’s omission, Plaintiffs and the members of the
2 Classes paid for kratom Products they may not have purchased, or paid more for
3 those Products than they would have had they known the truth about kratom.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs B.D. and L.M., individually and on behalf of all
6 others similarly situated, seek judgment against Defendant, as follows:

- 7 a. For an order certifying the Class and naming Plaintiffs as representatives of
8 the Classes and Plaintiffs’ attorneys as Class Counsel to represent the
9 Classes;
- 10 b. For an order declaring Defendant’s conduct violates the statutes referenced
11 herein;
- 12 c. For an order finding in favor of Plaintiffs and the Classes on all counts
13 asserted herein;
- 14 d. For actual, compensatory, statutory, and/or punitive damages in amounts to
15 be determined by the Court and/or jury;
- 16 e. For prejudgment interest on all amounts awarded;
- 17 f. For an order of restitution and all other forms of equitable monetary relief;
- 18 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 19 h. For an order awarding Plaintiffs and the Classes their reasonable attorneys’
20 fees, expenses, and costs of suit.

21 **JURY TRIAL DEMANDED**

22 Plaintiffs hereby demand a trial by jury of all issues so triable.

23 Dated: March 14, 2024

BURSOR & FISHER, P.A.

24 By: /s/ Neal J. Deckant
Neal J. Deckant

25 Neal J. Deckant (State Bar No. 322946)
26 Luke Sironski-White (State Bar No. 348441)
27 1990 North California Blvd., Suite 940
28 Walnut Creek, CA 94596
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E-mail: ndeckant@bursor.com
lsironski@bursor.com

Attorneys for Plaintiffs

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Neal J. Deckant, declare as follows:

1. I am counsel for Plaintiffs, and I am a partner at Bursor & Fisher, P.A. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.

2. The complaint filed in this action is filed in the proper place for trial because many of the acts and transactions giving rise to this action occurred in this District, and because Plaintiff B.D. resides in this District.

3. Plaintiff B.D. is a resident of San Diego, California.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct, executed on March 14, 2024, at Walnut Creek, California.

/s/ Neal J. Deckant
Neal J. Deckant

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

B. D. and L. M., individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Neal J. Deckant, Bursor & Fisher, P.A., 1990 N. California Blvd., Suite 940 Walnut Creek, CA 94596 Tel.: (925) 300-4455

DEFENDANTS

MIT45 INC.,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'24CV0499 L DEB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d) Brief description of cause: Defendant fraudulently advertises its kratom products.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000+ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Mar 14, 2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Neal J. Deckant

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE