

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Marilyn Williams, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

Total Life Changes, LLC,

Defendant.

Case No. _____
(Removed from Hennepin County
Court, Fourth Judicial District
Case No. 27-CV-20-14517)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Total Life Changes, LLC (“TLC”), through the undersigned counsel, hereby files this Notice of Removal of this civil action from the Minnesota District Court, Fourth Judicial District, Hennepin County, to the United States District Court for the District of Minnesota. In addition to this Notice of Removal, TLC also relies on the accompanying Declaration of John Licari (“Licari Decl.”). This Court has jurisdiction under 28 U.S.C. §§ 1332 (a)(1) and 1332(d) (the “Class Action Fairness Act of 2005 (“CAFA”)). In further support of this Notice of Removal, TLC states as follows:

INTRODUCTION

1. On or about November 6, 2020, plaintiff Marilyn Williams (“Plaintiff”) commenced this action by serving on TLC the attached Summons and Class Action Complaint (the “Complaint”), bearing the caption *Marilyn Williams v. Total Life Changes, LLC*. The Complaint was subsequently filed in Minnesota District Court,

Fourth Judicial District, Hennepin County, Minnesota, and assigned Minnesota State Court File Number 27-cv-20-14517. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders and papers or exhibits served upon TLC are appended to this Notice of Removal as Exhibit A.

2. In the Complaint, Plaintiff alleges that TLC falsely advertised and labeled its Iaso Raspberry Lemonade Tea (the “Product”) as “not contain[ing] Tetrahydrocannabinol (“THC”) when in fact the product does contain THC.” (Exhibit A, Complaint, ¶ 2.) Plaintiff alleges that “[a]fter purchasing and consuming” the Product, “Plaintiff failed her employer drug test and was terminated after the test came back positive for THC.” (*Id.* ¶ 6.)

3. Plaintiff claims that TLC violated the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.68 *et seq.*, the Minnesota Unlawful Trade Practice Act, Minn. Stat. § 325D.09 *et seq.*, and the Minnesota False Statements in Advertising Act, Minn. Stat. § 325F.67. (*Id.* ¶¶ 1-2, 82 -106.) Plaintiff also claims that TLC is liable under the common law. (*Id.* ¶¶ 107-112.)

4. Plaintiff seeks to pursue such claims on her own behalf, and also seeks to represent, and pursue such claims on behalf of, a class of “[a]ll persons who within the last six years of the filing of the complaint: (1) purchased [the Product] from [TLC] or [TLC’s] Life Changers; (2) while residing in Minnesota; (3) for personal use and not resale.” (*Id.* ¶ 72.)

5. This action may be removed to the United States District Court for the District of Minnesota on two separate grounds. First, the Complaint is removable because the Court has original jurisdiction based on diversity of the parties pursuant to 28 U.S.C. § 1332(a). Second, the Complaint is brought on behalf of a putative class that gives rise to jurisdiction under CAFA. *See* 28 U.S.C. § 1332(d).

**DEFENDANT HAS SATISFIED THE
PROCEDURAL REQUIREMENTS FOR REMOVAL**

6. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days of the time of service. Plaintiff served TLC on November 6, 2020.

7. The United States District Court for the District of Minnesota is the federal district court for the district embracing the place where the state court action was pending. *See* 28 U.S.C. § 1441(a).

8. A Notice of Filing Notice of Removal will be filed with the Minnesota District Court, Fourth Judicial District, Hennepin County, as required by 28 U.S.C. § 1446(d), and is attached hereto as Exhibit B. Copies of the same have been served upon Plaintiff's counsel as verified by the attached proof of service.

**REMOVAL IS PROPER UNDER 28 U.S.C. § 1332 BECAUSE
THIS COURT HAS DIVERSITY JURISDICTION**

9. Pursuant to 28 U.S.C. § 1332(a), this Court has original jurisdiction over a civil action when diversity among the parties is present and the amount in controversy exceeds the sum or value of \$75,000.

10. For purposes of determining the amount in controversy upon removal, the Court assesses “not whether the damages are greater than the requisite amount, but whether a fact finder might legally conclude that they are.” *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002). Punitive damages are included when determining the amount in controversy. *See, e.g., Mathias v. Hettich*, NO. 2-CV-1014 (SRN/LIB), 2020 WL 5708920, at *2 (D. Minn. Sept. 24, 2020).

11. Demands for restitution and statutory attorneys’ fees are also included when determining the amount in controversy. *See Winters v. Winters*, No. 19-CV-3177-SRN-KMM, 2020 WL 1049145, at *7 n.9 (D. Minn. Feb. 11, 2020), *report and recommendation adopted*, No. 19-CV-3177 (SRN/KMM), 2020 WL 1043742 (D. Minn. Mar. 4, 2020) (including relief for restitution when determining amount in controversy); *Rasmussen v. State Farm Mut. Auto. Ins. Co.*, 410 F.3d 1029, 1031 (8th Cir. 2005) (noting that statutory attorneys’ fees count towards amount in controversy); Minn. Stat. § 8.31, subd. 3a (authorizing reasonable attorneys’ fees for violations of Minn. Stat. § 325F.68 *et seq.*, Minn. Stat. § 325D.09 *et seq.*, and Minn. Stat. § 325F.67).

a. Minimal Diversity Exists

12. Minimal diversity exists under 28 U.S.C. § 1332(a)(1) when plaintiffs and defendant(s) are citizens of different states.

13. Plaintiff alleges that she is a citizen of Alabama. (Exhibit A, Complaint ¶ 9.)

14. TLC is a citizen of Michigan because it is a Michigan limited liability company with its principal place of business in Michigan. (*Id.* ¶ 11.) “An LLC’s citizenship, for purposes of diversity jurisdiction, is the citizenship of each of its members.” *OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 346 (8th Cir. 2007); *see also ARP Wave, LLC v. Salpeter*, 364 F. Supp. 3d 990, 1001 (D. Minn. 2019) (noting “for purposes of diversity jurisdiction, a limited-liability company (‘LLC’) takes the citizenship of all of its members and ‘sub-members’ and ‘sub-sub-members.’”) (internal quotations omitted). Jack Fallon is the sole member of TLC. (*Id.* ¶ 12.) Mr. Fallon is a citizen of Michigan. (*See Licari Decl.* ¶ 3.)

15. Therefore, diversity exists because Plaintiff is a citizen of a different state than TLC and its members.

b. Plaintiff Seeks Relief in Excess of \$75,000

16. Although Plaintiff does not specify in the Complaint the amount of relief she seeks, it is apparent from the face of the Complaint that she seeks relief in excess of \$75,000.

17. While TLC disputes Plaintiff’s allegations, including that Plaintiff is entitled to damages, Plaintiff’s Complaint puts in controversy the amount necessary for diversity jurisdiction.

18. Plaintiff claims that TLC’s alleged false advertising and mislabeling caused her to fail her employer’s drug test, which caused the termination of her employment in Minnesota. (*See Exhibit A, Complaint* ¶¶ 6, 10, 59-64.)

19. According to Ziprecruiter, the average annual compensation for employees employed in Minnesota is approximately \$57,000 per year. *See* <https://www.ziprecruiter.com/Salaries/Average-Salary--in-Minnesota> (last accessed November 20, 2020).

20. Plaintiff also alleges she paid \$115 for the Product and two other products. (Exhibit A, Complaint ¶¶ 43-44.)

21. In her Complaint, Plaintiff demands “[m]onetary damages,” “restitution,” “[p]enalties as provided by law,” permanent injunctive relief, attorneys’ fees, and potentially punitive damages on behalf of herself and the putative class. (*Id.* at p. 19, Prayer For Relief.) It is apparent from the face of the Complaint that Plaintiff seeks relief in excess of \$75,000 because Plaintiff seeks, among other things compensatory damages (including her alleged loss of income), attorneys’ fees, penalties, and injunctive relief. Because all of the requirements of 28 U.S.C. § 1332(a) are met, TLC is entitled to remove this action to this Court.

**REMOVAL IS PROPER UNDER 28 U.S.C. § 1332(d) BECAUSE
THIS COURT HAS JURISDICTION UNDER CAFA**

22. This Court also has original jurisdiction over this action under CAFA. *See* 28 U.S.C. § 1332(d). CAFA grants district courts original jurisdiction over class actions filed under state law in which: (1) any member of a putative class is a citizen of a state different from any defendant; (2) the members of the putative class are over 100 people; and (3) where the amount in controversy for the putative class exceeds \$5,000,000. *Id.*

23. When the notice of removal *plausibly alleges* that a class might recover actual damages, punitive damages, and attorneys’ fees aggregating more than \$5 million, “then the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much.” *Pirozzi v. Massage Envy Franchising, LLC*, 938 F.3d 981, 984 (8th Cir. 2019) (citations omitted). “Even if it is highly improbable that the Plaintiffs will recover the amounts Defendants have put into controversy, this does not meet the legally impossible standard.” *Id.*

a. Minimal Diversity Exists

24. Minimal diversity exists under CAFA when any plaintiff, or prospective class-member, is a citizen of a different state than any defendant. 28 U.S.C. § 1332(d)(2)(A).

25. Plaintiff alleges that she is a citizen of Alabama. (Exhibit A, Complaint ¶ 9.) Plaintiff also seeks to represent a class of “all persons who within the last six years of the filing of the complaint: (1) purchased [the Product] from [TLC] or [TLC’s] Life Changers; (2) while residing in Minnesota; (3) for personal use and not for resale.” (*Id.* ¶ 72.) In contrast, TLC is a citizen of Michigan. (*Id.* ¶ 11; *see also* Licari Decl. ¶ 3.) Therefore, diversity exists as Plaintiff and the putative class members are citizens of a different state than TLC.

b. There Are at Least 100 Members in Plaintiff's Putative Class

26. CAFA requires the existence of at least 100 members in Plaintiff's putative class. 28 U.S.C. § 1332(d)(5)(B).

27. As noted above, Plaintiff seeks to represent a class of “all persons who within the last six years of the filing of the complaint: (1) purchased [the Product] from [TLC] or [TLC’s] Life Changers; (2) while residing in Minnesota; (3) for personal use and not for resale.” (Exhibit A, Complaint ¶ 72.)

28. Plaintiff further estimates that there are more than 40 potential members of the Class. (See Complaint ¶ 75.)

29. While TLC disputes that Plaintiff’s claims are appropriate for class treatment, TLC’s records reflect that that more than 600 persons with residential shipping and billing addresses in Minnesota have purchased the Product during the last two years alone. (See Licari Decl. ¶ 4.)

c. Plaintiff Seeks Relief in Excess of \$5,000,000

30. Notwithstanding Plaintiff’s failure to allege the total amount of monetary relief she seeks, CAFA authorizes the removal of class actions in which the amount in controversy for all potential class members exceeds \$5 million. See 28 U.S.C. § 1332(d). “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

31. TLC denies Plaintiff’s claim of wrongdoing, denies the allegations in the Complaint, and denies that Plaintiff can meet the requirements for class certification. As pled, however, the total amount of compensatory damages, restitution, penalties, punitive damages, attorneys’ fees, injunctive relief and other monetary relief at issue in this action,

on an aggregate, class-wide basis, would exceed CAFA's \$5 million jurisdictional minimum.

32. Indeed, since 2014, more than 600 different individuals with residential shipping and billing addresses in Minnesota have purchased the Product. (*See Licari Decl.* ¶ 4.)

33. As discussed above, one of Plaintiff's demands for relief seeks money damages, which, according to Plaintiff's allegations would include her lost income. (Exhibit A, Complaint at p. 19, Prayer For Relief.) While TLC disputes Plaintiff's allegations and disputes that other persons lost their employment as a result of any conduct by TLC, Plaintiff's allegations in her Complaint presume that the putative class she seeks to represent sustained damages similar to or the same as the damages for which Plaintiff claims. As set forth above, the average annual income for employees in Minnesota is \$57,000. Because the putative class arguably consists of more than 600 people, the potential relief Plaintiff seeks on behalf of putative class members (who Plaintiff alleges are similarly situated) exceeds CAFA's \$5 million jurisdictional limit.

34. Accordingly, because all of the requirements of CAFA are met, TLC is entitled to remove this action to the United States District Court for the District of Minnesota for this additional and separate reason.

RESERVATION OF RIGHTS AND DEFENSES

35. No admission of fact, law, liability or damages is intended by this Notice of Removal, and all defenses, affirmative defenses, objections, and motions hereby are

reserved. TLC does not waive, and expressly reserves, all rights, including but not limited to, the rights to challenge: (a) Plaintiff's standing, pursuant to Rule 12(b)(1); (b) whether Plaintiff has stated a claim upon which relief may be granted, pursuant to Rule 12(b)(6); and (c) the propriety of class certification pursuant to Rule 23.

36. If any question arises as to the propriety of the removal of this action, TLC requests the opportunity to brief any disputed issues and to present oral argument in support of its position that this case is properly removable.

WHEREFORE, TLC respectfully removes this action from Minnesota District Court, Fourth Judicial District, Hennepin County, to the United States District Court for the District of Minnesota.

Dated this 3rd day of December, 2020. Respectfully submitted,

/s/ Kristina H. Kaluza

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*Attorneys for Defendant
Total Life Changes, LLC*

EXHIBIT A

SUMMONS

State of Minnesota

District Court

County of Hennepin

Fourth Judicial District

Marilyn Williams, individually
and on behalf of all others similarly
situated,

Court File Number: _____
Case Type: Civil

Plaintiff,

Summons

vs.

Total Life Changes, LLC

Defendant.

THIS SUMMONS IS DIRECTED TO: Total Life Changes, LLC

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

Nichols Kaster, PLLP
4700 IDS Center, 80 S. 8th St.
Minneapolis, MN 55402

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to

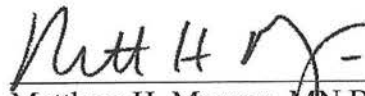
tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: November 5, 2020

NICHOLS KASTER, PLLP



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ATTORNEYS FOR PLAINTIFF

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

Marilyn Williams, individually
and on behalf of all others similarly situated,

Court File No. _____

Plaintiff,

v.

**CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

Total Life Changes, LLC

Defendant.

Plaintiff, Marilyn Williams, on behalf of herself and all others similarly situated, by and through her undersigned counsel, brings this action for damages and other legal and equitable relief against Defendant Total Life Changes, LLC. Plaintiff states the following for her claims against Defendant:

INTRODUCTION

1. Plaintiff files this class action on behalf of herself and the Proposed Class (as defined below) who were misled into purchasing Defendant's Raspberry Lemonade Flavor Iaso Tea Instant product ("Raspberry Lemonade Instant Tea" or "the Tea") due to Defendant's false and misleading advertising as described herein.

2. Defendant represented (and continues to represent) through product packaging, product literature, Defendant's retail website, and statements by Defendant's representatives, that Defendant's Raspberry Lemonade Instant Tea does not contain Tetrahydrocannabinol ("THC") when in fact the product does contain THC.

3. THC is “the primary psychoactive component in marijuana, hashish, and other preparations derived from cannabis plants.”¹

4. Plaintiff and the Proposed Class would not have purchased Defendant’s Raspberry Lemonade Instant Tea had they known that the representations made by Defendant regarding the amounts of THC in the product were false, deceptive and/or misleading.

5. Plaintiff saw, read, and relied on Defendant’s representations regarding the Raspberry Lemonade Instant Tea’s THC levels, and ultimately decided to purchase the Tea.

6. After purchasing and consuming the Tea, Plaintiff failed her employer drug test and was terminated after the test came back positive for THC.

7. Defendant’s representations that its Raspberry Lemonade Instant Tea does not contain THC are false.

8. Plaintiff brings this action to remedy Defendant’s unlawful practices.

PARTIES

9. Plaintiff Marilyn Williams is a natural person presently residing in Alabama.

10. Plaintiff previously resided in Minnesota from June 2, 2019 until September 14, 2020. From April 25, 2020, until September 14, 2020, Plaintiff resided in Plymouth, Minnesota, which is located in Hennepin County. It was during Plaintiff’s residency in Plymouth that she purchased and was injured by Defendant’s product as further described below.

11. Defendant Total Life Changes, LLC, is a Michigan limited liability company with a registered mailing address of 6094 Corporate Drive, Fair Haven, Michigan.

12. Jack Fallon is Defendant’s sole member.

¹ *THC*, Dictionary.com, <https://www.dictionary.com/browse/thc> (last visited on October 23, 2020).

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to Minn. Stat. § 484.01.

14. This Court has jurisdiction over Defendant pursuant to Minn. Stat. § 543.19 because Defendant transacts business within this state and has caused injury within this state.

15. Venue is proper in this Court because a substantial part of the events at issue in this lawsuit took place in Plymouth, Minnesota, which is located in Hennepin County and the Fourth Judicial District.

FACTUAL ALLEGATIONS

Defendant's Background

16. Defendant is a top 100 global direct selling company.²

17. Defendant develops, markets, distributes, and/or sells products including vitamins, weight loss supplements, teas, essential oils, and skin care products.³

18. According to Defendant's website, over 2,500,000 people have used their products.⁴

19. Defendant serves customers worldwide, including customers in the state of Minnesota.

20. Defendant sells products through its retail website and through its business representatives called "Life Changers."⁵

21. A "Life Changer" sells Defendant's products to new retail customers while earning a fifty-percent retail bonus on each product sold.⁶

² Total Life Changes, *Become A Member*, <https://retail.totallifechanges.com/6925551/enrollment> (last visited on October 23, 2020).

³ Total Life Changes, *About TLC*, <https://totallifechanges.com/about-us/> (last visited on October 23, 2020).

⁴ *Id.*

⁵ Total Life Changes, *Become A Member*, *supra* at n.2.

22. Life Changers may achieve various rank levels including: Affiliate, Associate, Apprentice, Director, Rising Star, Executive Director, Regional Director, National Director, Global Director, Ambassador, and Executive Ambassador.

23. In order to apply to be a Life Changer, one must agree to and execute an agreement with Defendant containing specific terms and conditions.⁷

24. Defendant generates a monthly report called a “Downline Activity Report” that contains the identities of Life Changers as well as the customers, sales information, and enrollment activity of each Life Changer’s marketing organization.⁸

25. Defendant maintains that the Downline Activity Reports and the information contained therein are owned exclusively by TLC.⁹

26. Defendant’s Life Changers act as agents of Defendant.

27. During the times and places at issue in this complaint, Life Changers were acting (and continue to act) on behalf of Defendant.

Defendant’s Prior Issues with Product Quality

28. Defendant received a warning letter from the Federal Trade Commission (“FTC”) on or about April 24, 2020, regarding in part social media posts made by Defendant’s “business participants or representatives that unlawfully advertise that certain products treat or prevent Coronavirus Disease 2019 (COVID-19)[.]”¹⁰

⁶ *Id.*

⁷ Total Life Changes, *United States Policies and Procedures* (July 2019), https://totallifechanges.com/wp-content/uploads/2019/09/TLC_TC_PP_ENGLISH.pdf (last visited on October 23, 2020).

⁸ *See id.* at Sections 6, 15.

⁹ *Id.* at Section 6.1.

¹⁰ Federal Trade Commission, *Warning Letter to Total Life Changes, LLC*, <https://www.ftc.gov/enforcement/warning-letters/warning-letter-total-life-changes-llc> (last visited on October 23, 2020).

29. Notably, the FTC stated in part:

You are responsible for the claims of your business opportunity participants and representatives. As the FTC stated in the January 2019 Business Guidance Concerning Multi Level Marketing, the compensation structure of a Multi-Level Marketing entity (“MLM”) may create incentives for its participants to make certain representations to current or prospective participants. ‘As a consequence, an MLM should (i) *direct its participants not to make false, misleading, or unsubstantiated representations and (ii) monitor its participants so they don’t make false, misleading, or unsubstantiated representations.*’¹¹

30. Additionally, in or about May 2020, Defendant was sued by the Environmental Research Center, Inc. (“ERC”), a California non-profit organization.

31. Specifically, the ERC alleged Defendant exposed consumers to lead in the State of California through certain of Defendant’s products in violation of Proposition 65. *See Environmental Research Centers, Inc. v. Total Life Changes, LLC et al.*, No. RG20060596 (California Superior Court, 2020).

32. Notably, the ERC had previously sued Defendant for alleged violations of Proposition 65 in 2016 for failing to warn consumers of lead in some of Defendant’s products. *See Environmental Research Centers, Inc. v. Total Life Changes, LLC et al.*, No. RG16826366 (California Superior Court, 2016).

Defendant Falsely Advertises that the Tea Does Not Contain THC

33. Defendant distributes its Raspberry Lemonade Instant Tea product. A sample of the product as provided on Defendant’s website is as follows:¹²

¹¹ *Id.* at 3 (emphasis added).

¹² Total Life Changes, *Raspberry - Instant Tea With Broad-Spectrum Hemp Extract - 25 Sachets*, <https://retail.totallifechanges.com/6925551/shopping/itemdetails?itemCode=1603> (last visited on October 23, 2020).



34. Defendant sells its Raspberry Lemonade Instant Tea for \$59.95 per package as stated on Defendant's website.

35. The front of the packaging states "0.0% THC."

36. Defendant further provides a "100% Authentic Guaranteed" badge on its website as illustrated in paragraph 33.

37. Defendant's website description for the Tea provides in part: "This proprietary formula is powered by 100mg of organic Broad Spectrum Hemp Extract with 0% laboratory certified THC content . . ."

38. Based on Defendant's representations as described herein, it is reasonable for a consumer to believe that the Tea does not contain THC.

39. Defendant's representations, however, are false because Defendant's Raspberry Lemonade Instant Tea does in fact contain THC.

Plaintiff Fails Drug Test After Consuming Defendant's Product

40. In June 2020, Plaintiff began corresponding with Emily Roberts, a Regional Director for TLC.

41. Plaintiff told Ms. Roberts that her job conducted random drug tests and, accordingly, Plaintiff wanted a product that would not cause her to fail a drug test.

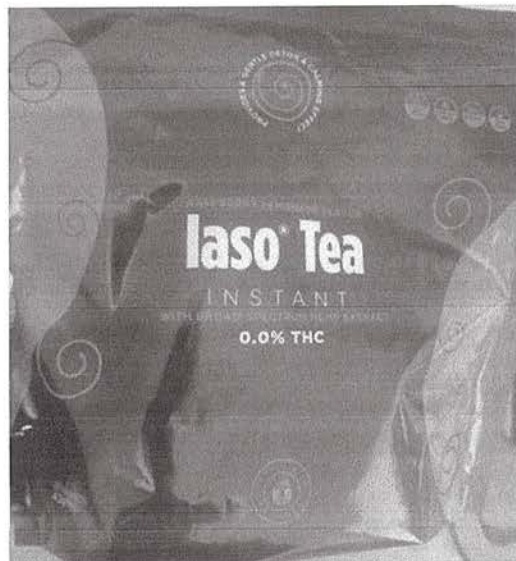
42. Ms. Roberts recommended that Plaintiff purchase Defendant's brewed tea or the Raspberry Lemonade Instant Tea since "there is no [THC] in raspberry."

43. Plaintiff ultimately purchased from Ms. Roberts one bag of the Raspberry Lemonade Instant Tea and one box containing two other products, Resolution Drops and Life Drops ("Drops").¹³

44. Plaintiff paid approximately \$115 to Ms. Roberts for these products.

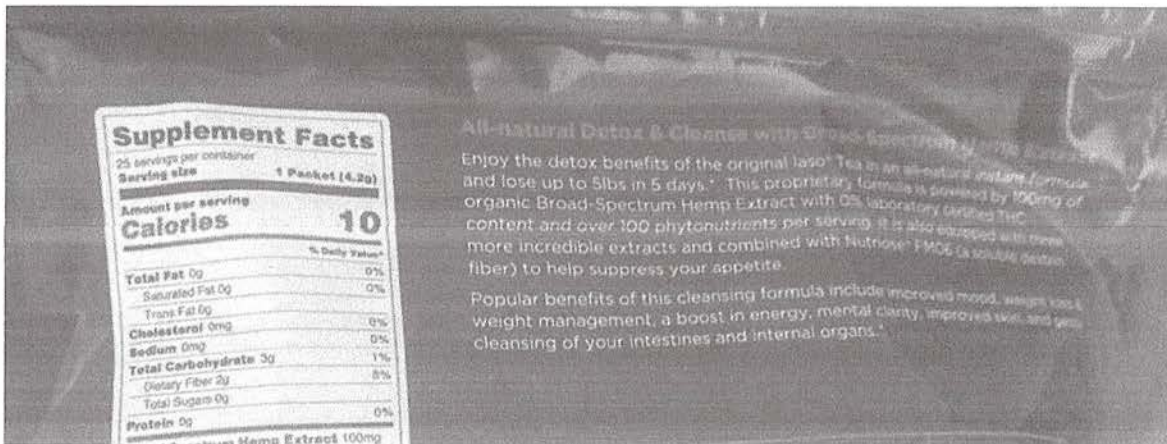
45. Plaintiff received the Tea and the Drops on or about July 12, 2020.

46. When Plaintiff received Defendant's products in the mail, the Raspberry Lemonade Instant Tea stated on the front of the package "0.0% THC," as demonstrated below:



¹³ The Resolution Drops and Life Drops are not at issue in this case.

47. The back of the bag states, “[t]his proprietary formula is powered by 100 mg of organic Broad-Spectrum Hemp Extract with 0% laboratory certified THC content . . .” as illustrated below:



48. Plaintiff relied on Defendant’s representations that the Tea contained 0.0% THC and began consuming the product daily on or about July 12, 2020.

49. On or about July 15, 2020, Plaintiff’s employer subjected her to a random drug test.

50. Thereafter, Plaintiff’s employer told her that she failed the drug test because it came back positive for THC.

51. Thereafter, on or about July 20, 2020, Plaintiff contacted Defendant’s representative, Ms. Roberts, and told her that she needed to know what was in the Raspberry Lemonade Instant Tea because her employer drug test came back positive for THC.

52. Plaintiff reiterated to Ms. Roberts that she had a career she could lose because of the test results.

53. Ms. Roberts told Plaintiff that while Defendant’s lemon-flavored instant tea has THC, the Raspberry Lemonade Instant Tea does not.

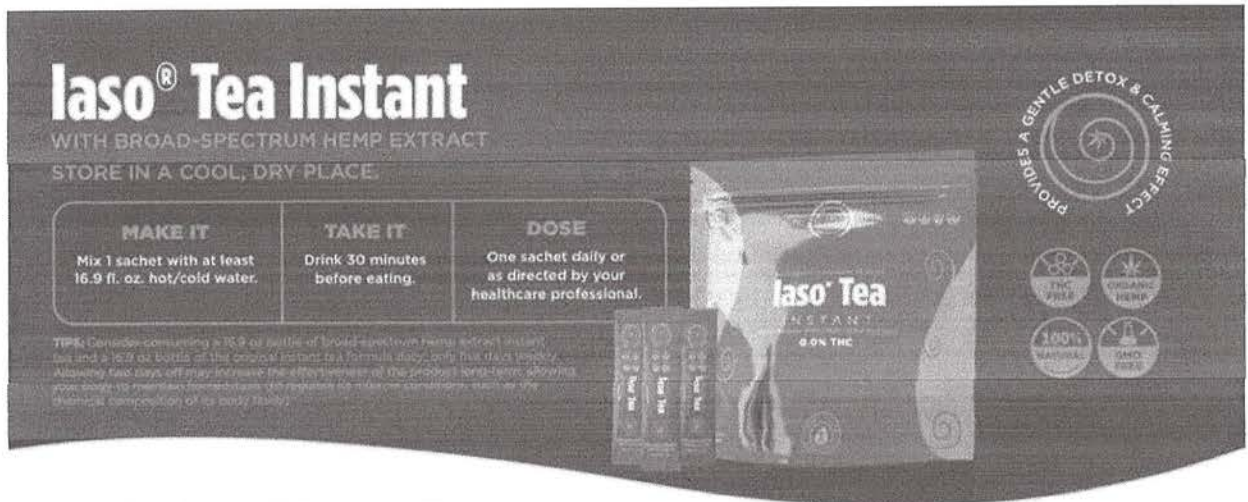
54. Ms. Roberts further confirmed that she had only sent Defendant’s Raspberry Lemonade Instant Tea to Plaintiff.

55. Plaintiff asked Ms. Roberts if the Drops had THC and Ms. Roberts told Plaintiff there was no THC in the Drops either.

56. Ms. Roberts sent Plaintiff the ingredients for the Resolution Drops and the Raspberry Lemonade Instant Tea.¹⁴

57. The ingredient list for the Raspberry Lemonade Instant Tea that Ms. Roberts provided to Plaintiff states in part that the product is “THC Free” and that “100% of the THC is removed...”

58. By way of example, a portion of ingredient list is included below:



All-natural Detox & Cleanse with Broad-Spectrum Hemp Extract

Enjoy the detox benefits of the original laso® Tea in an all-natural instant formula. This proprietary formula is powered by 100mg of organic Broad-Spectrum Hemp Extract with 0% laboratory certified THC content, over 100 phytonutrients, and over 12.5 mg of CBD per serving.** It is also equipped with several more incredible extracts combined with Nutriose® FM06 (a soluble dextrin fiber) to help suppress your appetite. Popular benefits of this cleansing formula include improved mood, weight loss & weight management, a boost in energy, mental clarity, improved skin, and gentle cleansing of your intestines and internal organs.*

Active Ingredients

Broad-Spectrum Hemp Extract

When the hemp is processed, the entire plant is utilized like full-spectrum hemp, but the key difference is 100% of the THC is removed, which constitutes the Broad-Spectrum extract. This means you won't have to worry if your occupation requires regular drug-screening tests. Our hemp is laboratory tested, certified for quality, and contains 0% THC.

Beta Vulgaris Extract

Beta Vulgaris extract is derived from beetroot. Beetroot is a superfood that contains significant amounts of vitamin c, vitamin a, folate, magnesium, and phosphorus. It is also rich in fiber, which is key to maintaining digestive regularity.

Matricaria Chamomilla Extract

This extract is derived from the flowering head of the annual plant. It has been used in herbal medicine to treat stomach pain and aid with sleep.

Best Used With

ProZ provides a gentle detoxing, healthier digestion, and improved sleep.*

Stem Sense cellular derived complex supports muscle inflammation and joint repair.*

NutraBurst® liquid multivitamin dietary supplement replenishes vital nutrients and minerals.*

¹⁴ Ms. Roberts did not provide the ingredients for the Life Drops product.

59. The product literature further states, “[t]his means you won’t have to worry if your occupation requires regular drug-screening test.”

60. Ms. Roberts assured Plaintiff that that Defendant has “military and fire and cops” as well as “government” and “health care workers” who have used the product and that there had been “no issues” with positive drug tests.

61. Plaintiff was ultimately terminated by her employer on or about July 20, 2020, for failing her drug test.

62. The last time Plaintiff consumed the Raspberry Lemonade Instant Tea was on or about July 19, 2020.

63. After being terminated, Plaintiff purchased an at-home marijuana drug test kit.

64. Plaintiff tested a serving of the Raspberry Lemonade Instant Tea and the results came back positive for THC.

65. Plaintiff also tested both the Resolution Drops and the Life Drops with the same brand of at-home marijuana drug test kit; neither of the Drops products tested positive for THC.

66. On or about August 9, 2020, Plaintiff purchased a sample pack of the Raspberry Lemonade Instant Tea from Defendant.

67. Plaintiff tested a serving of the Tea from the second package with the same brand of at-home marijuana drug test kit.

68. Again, the Raspberry Lemonade Instant Tea from Defendant tested positive for THC.

69. Defendant’s representations that its Raspberry Lemonade Instant Tea product does not contain THC was (and continues to be) false and misleading to Plaintiff and others similarly situated.

70. Plaintiff and other Class Members suffered actual damages as a result of the advertisements and misrepresentations made by Defendant.

CLASS ALLEGATIONS

71. Plaintiff brings this action as a class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure.

72. Plaintiff seeks to represent the following Classes:

All persons who within the last six years of the filing of this complaint: (1) purchased Raspberry Lemonade Flavored Iaso Tea Instant from Defendant or Defendant's Life Changers; (2) while residing in Minnesota; (3) for personal use and not for resale.

73. Excluded from the Proposed Class is Defendant; any affiliate, parent, or subsidiary of Defendant; any entity in which Defendant has a controlling interest; any officer, director, or employee of Defendant; any successor or assign of Defendant; any individual who worked as a Life Changer for Defendant; any judge to whom this case is assigned and his or her spouse; and members of the judge's staff and their spouses.

74. This action has been brought and may properly be maintained on behalf of the Class proposed above under the criteria of Minnesota Rule of Civil Procedure 23.

75. Members of the putative Class are so numerous that joinder is impracticable. Although the precise number of putative Class Members is currently unknown, Plaintiff believes that the Class as defined above include over 40 members. These members can be identified based on Defendant's records.

76. There are questions of law and fact common among the putative Class, including:
- a. Whether Defendant made false or misleading representations in the advertising and/or packaging of its Raspberry Lemonade Instant Tea;
 - b. Whether Defendant knew or should have known that the THC content of the Tea was false;

- c. Whether Defendant deceived Plaintiff and the Proposed Class, who reasonably relied on them in making their purchase decisions;
- d. Whether Defendant's conduct violates the Minnesota Consumer Fraud Act;
- e. Whether Defendant's conduct violates the Minnesota Unlawful Trade Practices Act;
- f. Whether Defendant's conduct violates the Minnesota False Statements in Advertising Act;
- g. The proper equitable and injunctive relief;
- h. The proper amount of actual or compensatory damages;
- i. The proper amount of restitution or disgorgement;
- j. The proper amount of punitive damages, and;
- k. The proper amount of reasonable attorneys' fees and costs.

77. Plaintiff's claims are typical of those of the putative Class. Plaintiff and the Proposed Class have suffered injuries-in-fact and have lost money as a result of Defendant's false representations. Indeed, Plaintiff purchased Defendant's Raspberry Lemonade Instant Tea under the belief that it did not contain THC. Plaintiff relied on Defendant's statements, packaging, labeling, and marketing and would not have purchased the product if she had known it did in fact contain THC.

78. Plaintiff will fairly and adequately protect the interests of the Proposed Class. Plaintiff is committed to the prosecution of this action and has retained counsel that numerous courts have found sufficiently experienced in class actions to be appointed as class counsel. There are no conflicts between Plaintiff and the Proposed Class she seeks to represent.

79. This action is maintainable as a class action under Minn. R. Civ. P. 23.02 because Defendant has acted or refused to act on grounds generally applicable to the Proposed Class, thus making injunctive relief and corresponding declaratory relief appropriate with respect to the Classes as a whole.

80. This action is also maintainable as a class action under Minn. R. Civ. P. 23.02 because questions of law and fact common to the putative Proposed Class predominate over any questions affecting only individual members of the Proposed Class and because a class action is superior to other methods for the fair and efficient adjudication of this action. Though each Proposed Class Member's injury is meaningful on an individual basis, those injuries are not of such magnitude as to make the prosecution of individual actions economically feasible. Further, this class action will not present unreasonable manageability difficulties.

81. Plaintiff intends to request to send notice to all members of the Proposed Class to the extent required by Rule 23.03. The names and addresses of the Proposed Class Members are readily available from Defendant's business records.

CAUSES OF ACTION

COUNT I

**MINNESOTA CONSUMER FRAUD ACT,
MINN. STAT. § 325F.68, *et seq.*
(On behalf of Plaintiff and all Class Members)**

82. Plaintiff incorporates the paragraphs above by reference as if fully set forth herein.

83. Minn. Stat. § 325F.69, subd. 1 provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

84. Defendant engaged in and continues to engage in fraud, misrepresentations, false promises, and misleading statements as set forth above.

85. Defendant engaged in such representations with the intent that the Plaintiff and

the Proposed Class would rely on such misrepresentations and false promises in connection with the purchase of the Raspberry Lemonade Instant Tea from Defendant, and with the intention that they would purchase said product.

86. Pursuant to Minn. Stat. § 8.31, subd. 3a, Plaintiff and the Proposed Class may pursue a private cause of action based on Defendant's violation of §§ 325F.68 *et seq.*

87. The vindication of Plaintiff's claims and the claims of the Proposed Class will benefit the public at large. Defendant's advertisements were and continue to be broadly and publicly disseminated on the Internet, on the product packaging, and through Defendant's agent multi-level marketers. There is significant public interest in ensuring that Defendant is accurately advertising the contents of its product to the public. The interests of Minnesota consumers are implicated in this action.

88. Plaintiff and members of the Class were injured by Defendant's unlawful actions and are therefore entitled to relief as set forth below.

COUNT II

MINNESOTA UNLAWFUL TRADE PRACTICE ACT

MINN. STAT. § 325D.09, *et seq.*

(On behalf of Plaintiff and all Class Members)

89. Plaintiff incorporates the paragraphs above by reference as if fully set forth herein.

90. Minn. Stat. § 325D.13, subd. 1, provides, in relevant part:

No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise.

91. Defendant knowingly misrepresented the true ingredients of their Raspberry Lemonade Instant Tea in connection with the sale of that merchandise.

92. Specifically, Defendant states on its website, product packaging, marketing literature, and through business representatives that its Raspberry Lemonade Instant Tea does not contain THC when in fact, it does.

93. Defendant's misrepresentations had the tendency or capacity to deceive or mislead (and in fact did deceive and mislead) Plaintiff and members of the Proposed Class.

94. Defendant's misrepresentations were material because they related to facts that would naturally affect the purchaser's decision to purchase the product at issue and that a reasonable person, including Plaintiff and members of the Proposed Class, would have considered important in deciding whether to purchase Defendant's Raspberry Lemonade Instant Tea.

95. Pursuant to Minn. Stat. Minn. Stat. § 8.31, subd. 3a, Plaintiff and the Proposed Class may pursue a private cause of action based on Defendant's violation of §§ 325D.09 *et seq.*

96. The vindication of Plaintiff's claims and the claims of the Proposed Class will benefit the public at large. Defendant's advertisements were and continue to be broadly and publicly disseminated on the Internet, on the product packaging, and through Defendant's agent multi-level marketers. There is significant public interest in ensuring that Defendant is accurately advertising the contents of its product to the public. The interests of Minnesota consumers are implicated in this action.

97. Plaintiff and the Proposed Class were injured by Defendant's unlawful actions and are therefore entitled to relief as set forth below.

COUNT III

**MINNESOTA FALSE STATEMENTS IN ADVERTISING ACT
MINN. STAT. § 325F.67**

(On behalf of Plaintiff and all Class Members)

98. The above paragraphs are incorporated by reference as if fully set forth herein.
99. Minn. Stat. § 325F.67 provides in relevant part:

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

100. Defendant violated Minn. Stat. § 325F.67 by publicly misrepresenting the amount of THC in its Raspberry Lemonade Instant Tea is zero when in fact, it does contain THC.

101. Defendant made false representations and untrue statements about the THC content of its Raspberry Lemonade Instant Tea on its website, product packaging, marketing literature, and through representations made by its business representatives.

102. Defendant's misrepresentations were material because they related to facts that would naturally affect the purchaser's decision to purchase the product at issue and that a reasonable person, including Plaintiff and members of the Proposed Class, would have

considered important in deciding whether to purchase Defendant's Raspberry Lemonade Instant Tea.

103. Pursuant to Minn. Stat. Minn. Stat. § 8.31, subd. 3a, Plaintiff and the Proposed Class may pursue a private cause of action based on Defendant's violation of § 325F.67.

104. The vindication of Plaintiff's claims and the claims of the Proposed Class will benefit the public at large. There is a significant public interest in discouraging false, deceptive and misleading advertising. Defendant broadly and publicly disseminates its advertising on the Internet, making it likely that thousands more Minnesota residents will fall victim to Defendant's deceptive and misleading advertising.

105. Plaintiff and the Proposed Class have suffered damages and monetary loss as a result of Defendant's false, deceptive and misleading advertising.

106. Plaintiff and the Proposed Class were injured by Defendant's unlawful actions and are therefore entitled to relief as set forth below.

COUNT IV

UNJUST ENRICHMENT

(On behalf of Plaintiff and all Class Members)

107. The above paragraphs are incorporated by reference as if fully set forth herein.

108. Defendant's false statements and misrepresentations about the amount of THC in its Raspberry Lemonade Instant Tea caused Defendant to be unjustly enriched at the expense of Plaintiff and the Proposed Class Members.

109. Defendant used various forms of advertainments including the product packaging, Defendant's website, Defendant's marketing literature, and statements by its representatives that deceptively misrepresented the amount of THC in its Raspberry Lemonade Instant Tea.

110. These advertisements were disseminated for the purposes of causing Plaintiff and

members of the Proposed Class to purchase the Tea.

111. As a result of the conduct described above, Defendant has been and continues to be unjustly enriched at the expense of Minnesota consumers, including Plaintiff and the Proposed Class.

112. It would be inequitable for Defendant to retain profits, benefits, and other compensation from the practices alleged herein. Thus, Plaintiff and the Proposed Class are entitled to restitution and other appropriate relief.

JURY DEMAND

113. Plaintiff and the Proposed Class request a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff, individually and on behalf of the Proposed Class, pray for the following relief:

- A. Certification of the proposed Class pursuant to Rule of Civil Procedure 23;
- B. Appointment of Plaintiff as Class Representative for the Class;
- C. Appointment of Plaintiff's counsel as Class Counsel;
- D. A declaration that Defendant violated each of the laws that form the basis of relief;
- E. Monetary damages;
- F. Restitution;
- G. Penalties as provided by law;
- H. A permanent injunction enjoining Defendant from continuing the unlawful, unjust, unfair, and deceptive acts and practices described herein;
- I. Pre-judgment and post-judgment interest;
- J. Leave to amend the pleadings to add a claim for punitive damages;
- K. Reasonable attorneys' fees and expenses, Minn. Stat. § 8.31, subd.3a; and
- L. Such other further relief that the Court deems just and equitable.

Dated: November 5, 2020

NICHOLS KASTER, PLLP

/s/ Matthew H. Morgan
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ATTORNEYS FOR PLAINTIFFS

**ACKNOWLEDGMENT REQUIRED BY
MINN. STAT. § 549.211**

I hereby acknowledge that, pursuant to Minn. Stat. § 549.211, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find I acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings, or to harass, or committed a fraud upon, the Court.

/s/ Matthew H. Morgan
Matthew H. Morgan



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November 5, 2020

VIA PERSONAL SERVICE

Jack T. Fallon
Total Life Changes, LLC
6094 CORPORATE DRIVE
FAIR HAVEN, MI 48023

RE: *Williams v. Total Life Changes, LLC*

Dear Mr. Fallon,

Enclosed and served upon you please find:

1. Summons; and
2. Complaint.

You are further on notice that you have a duty to preserve all documents, including electronically stored information (“ESI”), potentially relevant to this litigation. *See* Minn. R. Civ. P. 37.05. This includes information maintained within your computer systems, recorded materials, removable electronic media, mobile devices, or anywhere else ESI or physical documents are stored or archived, including with third parties.

At this early stage, we anticipate at least the following types of documents will be important in this litigation:

- Communications including but not limited to customer service logs and complaints, emails, instant messages and chats, whether company-supported or otherwise utilized by employees and business associates for work, pertaining to the product(s) at issue or Plaintiff and members of the putative Class;
- Marketing materials for the product(s) at issue including but not limited to print and digital advertisements and brochures, website and social media content, product packaging, and marketing data;
- Materials relating to the contents of Total Life Changes products, including THC test results and related communications, communications to or from regulatory authorities regarding THC content, and other internal and external communications and documentation related to THC content; and

- Purchase records pertaining to all aspects of sales of the product(s) at issue to Plaintiff and members of the putative Class including but not limited to customer names, product purchased, date of purchase, and cost of purchase.

With respect to ESI, we request you preserve it in its native form in a manner that does not in any way remove or degrade metadata, searchability, redlines, underlining formulas, or that otherwise makes it difficult or burdensome to access or use efficiently in litigation.¹ You should likewise refrain from actions that shift ESI from reasonably accessible media to less accessible media.

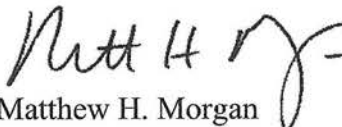
You must act immediately to preserve potentially relevant ESI. Adequate preservation of ESI requires more than simply refraining from efforts to intentionally destroy or dispose of it. Devices can be lost or accidentally damaged. Sources of ESI are altered and erased by continued use. Continued use of databases in business may irretrievably alter or destroy relevant evidence. You must intervene to prevent loss due to routine operations and employ proper protocols to protect ESI until final resolution of this matter, including discontinuing automatic email deletion, backup tape recycling, and hardware or data storage disposal. If you question whether your contemplated preservation method is sufficient to prevent the spoliation of evidence, please contact us to discuss.

Finally, we intend to discuss electronic discovery issues with you at the parties' Rule 26.06 conference as required by the Minnesota Rules of Civil Procedure. To help facilitate a meaningful discussion, I have attached an Exhibit to this letter that identifies the formats we will request for production of various types of ESI and other documents, including the manner in which we will request that the metadata associated with such documents be produced.

Thank you for your cooperation and attention to this matter.

Sincerely,

NICHOLS KASTER, PLLP


Matthew H. Morgan

Encls.

¹ With respect to servers like those used to manage electronic mail or network storage, the complete contents of each user's network share and e-mail account should be preserved. There are several ways to preserve the contents of server and web-based email accounts. If you are questioning whether the preservation methods you are pursuing would be acceptable to us, please contact us to discuss.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Total Life Changes Hit with Class Action Over THC Representations for Raspberry Lemonade Instant Tea](#)
