

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

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

Court File No. 0:20-cv-2463-MJD-HB

Plaintiff,

v.

**FIRST AMENDED
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 through product packaging, product literature, Defendant's retail website, third-party retail websites, 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 existence 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. Plaintiff purchased, received, consumed, and was injured by Defendant’s product in Minnesota, and moved to Alabama as a direct result of Defendant’s misrepresentations, as further described below.

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

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

Defendant advertises its products throughout the United States through its website, business representatives, and third-party online retailers.

12. Jack Fallon is Defendant's sole member.

JURISDICTION AND VENUE

13. Plaintiff originally brought this action in Minnesota District Court, Fourth Judicial District, Hennepin County, citing that court's subject matter jurisdiction under Minn. Stat. § 484.01 and personal jurisdiction over Defendant under Minn. Stat. § 543.19. *See ECF No. 1, Ex. B.*

14. Defendant removed this action to this Court, citing diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) as well as original jurisdiction under the Class Action Fairness Act of 2005 pursuant to 28 U.S.C. § 1332(d).

15. Venue is proper in this Court because a substantial part of the events at issue in this lawsuit took place in Minnesota.

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 3,000,000 people have used their products.⁴

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 February 18, 2021).

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

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.

⁴ *Id.*

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

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.

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

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).

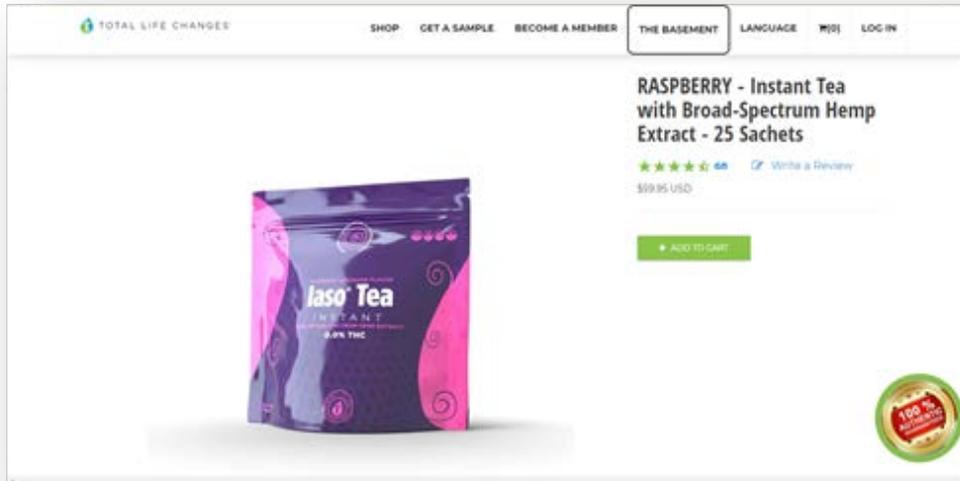
32. Notably, the ERC had previously sued Defendant for alleged violations of Proposition 65 in 2016 for failing to warn consumers of lead in some of Defendant’s products. *See Environmental Research Centers, Inc. v. Total Life Changes, LLC et al.*, No. RG16826366 (California Superior Court, 2016).

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).

¹¹ *Id.* at 3 (emphasis added).

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 (as of the date Plaintiff filed her original Complaint in this action) is as follows:¹²



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 stated “0.0% THC.”

36. Defendant further provided a “100% Authentic Guaranteed” badge on its website as illustrated in paragraph 33.

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

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).

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, were 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.

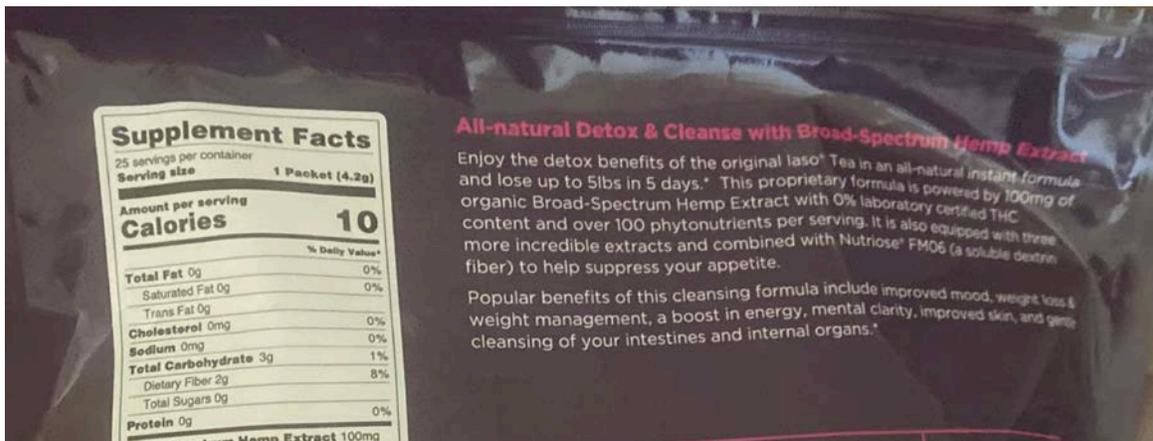
45. Plaintiff received the Tea and the Drops on or about July 12, 2020.

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 stated, “[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 the ingredient list is included below:

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



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® FMO6 (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.*

59. The product literature further stated, “[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. As she had moved to Minnesota for her job and no longer had the resources to pay her rent, Plaintiff was forced to move back to her home in Alabama in September 2020.

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.

Defendant Had Notice that the Tea Contained THC

69. Defendant had notice that the Raspberry Lemonade Instant Tea product contained THC before Plaintiff purchased the product from Defendant.

70. Specifically, on May 22, 2020, someone named “Brittany” posted a complaint to the Better Business Bureau (“BBB”) website, stating:

The raspberry lemonade which clearly states 0.0% THC HAS THC in it! which caused me to fail a DOT Drug test and lose my job! This company is disgusting and when you call to speak with someone No one answers nor calls you back!¹⁵

71. On May 26, 2020, Defendant responded on the BBB website, stating:

Hello Brittany, We apologize this happened to you. Our Broad-Spectrum Hemp Extract with 0% laboratory certified THC content, over 100 phytonutrients, and over 12.5 mg of CBD per serving. Please review this certificate of analysis for more information:

¹⁵ Better Business Bureau, *Total Life Changes, LLC Customer Reviews*, <https://www.bbb.org/us/mi/fair-haven/profile/health-and-wellness/total-life-changes-llc-0332-90027281/customer-reviews> (last visited February 15, 2021).

<https://totallifechanges.zendesk.com/hc/en-us/articles/360043143074-Iaso-Tea-Instant-with-Broad-Spectrum-Hemp-Extract> Thank you¹⁶

72. Despite this consumer complaint, Defendant continued to advertise and sell the Raspberry Lemonade Instant Tea product to consumers like Plaintiff.

73. Defendant's representations that its Raspberry Lemonade Instant Tea product does not contain THC were false and misleading to Plaintiff and others similarly situated.

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

75. Plaintiff is not aware of Defendant issuing any recalls of the Raspberry Lemonade Instant Tea product.

76. Plaintiff and other Class Members are likely to suffer future harm in the absence of an injunction against Defendant's misrepresentations.

CLASS ALLEGATIONS

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

78. 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.

79. 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

¹⁶ *Id.*

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.

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

81. 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 includes over 600 members. These members can be identified based on Defendant's records. Indeed, Defendant has stated on the record that "more than 600 persons with residential shipping and billing addresses in Minnesota have purchased" the Raspberry Lemonade Instant Tea in the last two years alone. *ECF No. 5 ¶ 4*.

82. 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. Whether Defendant's conduct constitutes fraud by omission;
 - h. The proper equitable and injunctive relief;
 - i. The proper amount of actual or compensatory damages;
 - j. The proper amount of restitution or disgorgement;
 - k. The proper amount of punitive damages, and;

1. The proper amount of reasonable attorneys' fees and costs.

83. 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.

84. 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.

85. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(2) 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.

86. This action is also maintainable as a class action under Fed. R. Civ. P. 23(b)(3) 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.

87. Plaintiff intends to request to send notice to all members of the Proposed Class to the extent required by Fed. R. Civ. P. 23(c)(2). 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)

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

89. 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.

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

91. 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.

92. 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.*

93. 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, through its own website as well as third-party retailers, making it likely that, without the legal and equitable relief requested below, Plaintiff as well as hundreds more Minnesota residents have fallen and/or may continue to fall victim to Defendant's deceptive and misleading advertising. See Knotts v. Nissan N. Am., Inc., 346 F. Supp. 3d 1310, 1328 (D. Minn. 2018) (“Given that the advertisement is alleged to have appeared online, the Court finds that the alleged misrepresentation may have affected the public to a significant degree. While Plaintiff seeks damages, he also requests injunctive relief.”); Hudock v. LG Elec. U.S.A., Inc., No. 16-cv-1220 (JRT/FLN), 2017 WL 1157098, at *6 (D. Minn. Mar. 27, 2017) (finding allegations that Plaintiff cannot know when or if the misrepresentation had been remedied was sufficient to demonstrate a likelihood of future harm for injunctive relief).¹⁷

94. 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 PRACTICES ACT

MINN. STAT. § 325D.09, *et seq.*

via MINN. STAT. § 8.31, subd. 3A

(On behalf of Plaintiff and all Class Members)

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

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

¹⁷ In Hudock, the Court also held that the named plaintiffs' consumer fraud claims provided a public benefit under Minnesota law, despite the fact that both the named plaintiffs were residents of Wisconsin and purchased the product at issue online, because “the result of this lawsuit may indirectly lead to changes in LG's and BestBuy.com's marketing...thereby preventing future lawsuits and creating a public benefit.” 2017 WL 1157098, at *6.

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

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

98. Specifically, Defendant stated on its website, product packaging, marketing literature, and through business representatives and third-party online retailers that its Raspberry Lemonade Instant Tea does not contain THC when in fact, it does.

99. 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.

100. 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.

101. 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 §§ 325D.09 *et seq.*

102. The vindication of Plaintiff's claims and the claims of the Proposed Class will benefit the public at large. Plaintiff incorporates by reference as if fully set forth herein paragraph 93 from Count I, above.

103. 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 UNLAWFUL TRADE PRACTICES ACT

MINN. STAT. § 325D.09, *et seq.*

(On behalf of Plaintiff and all Class Members)

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

105. Defendant knowingly misrepresented the true contents of its Raspberry Lemonade Instant Tea in connection with the sale of that merchandise, and such misrepresentations were misleading and material. Plaintiff specifically incorporates by reference as if fully set forth herein paragraphs 96 to 100 from Count I, above, which cite the relevant statutory language and Plaintiffs' allegations supporting her claim under the Minnesota Unlawful Trade Practices Act.

106. Pursuant to Minn. Stat. § 325D.15, notwithstanding additional relief available under Minn. Stat. § 8.31, subd. 3a, Plaintiff may seek relief for injunctive relief and actual damages.

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

COUNT IV

MINNESOTA FALSE STATEMENTS IN ADVERTISING ACT

MINN. STAT. § 325F.67

(On behalf of Plaintiff and all Class Members)

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

109. 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.

110. 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.

111. 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 and third-party online retailers.

112. 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.

113. 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.

114. The vindication of Plaintiff's claims and the claims of the Proposed Class will benefit the public at large. Plaintiff incorporates by reference as if fully set forth herein paragraph 93 from Count I, above.

115. Plaintiff and the Proposed Class have suffered damages and monetary loss as a

result of Defendant's false, deceptive and misleading advertising.

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

COUNT V

FRAUD BY OMISSION

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

118. Under Minnesota law, a duty to disclose may arise where a party: (1) is in a confidential or fiduciary relationship with the other party; (2) has made a representation and must disclose more information to prevent the representation from being misleading; or (3) has special knowledge of material facts to which the other party does not have access. Johnson v. Bobcat Company, 175 F. Supp. 3d 1130, 1146 (D. Minn. 2016) (citing Exeter Bancorporation, Inc. v. Kemper Sec. Grp., Inc., 58 F.3d 1306, 1314 (8th Cir. 1995)). A defendant has superior knowledge when it is in "a superior position to know the true facts about their product." *Id.*

119. Defendant had a duty to disclose the existence of THC in the Raspberry Lemonade Instant Tea because Defendant had superior knowledge of material facts to which Plaintiff did not have access.

120. Plaintiff alleges that Defendant was in a superior position to know the true facts about the contents of Defendant's Raspberry Lemonade Instant Tea product and to know that the product in fact contained THC in direct contradiction to Defendant's product label and marketing materials, including because Defendant was in possession of laboratory analysis of the Tea and Defendant was put on notice that other consumers had tested positive for THC after consuming the tea.

121. Plaintiff could not have reasonably been expected to learn or discover the misrepresentations at the time of purchase where Defendant's product packaging, product literature, retail website, marketing materials, and statements by Defendant's representatives represented that the product contained 0.0% THC.

122. Plaintiff alleges that Defendant failed to disclose the fact that the Tea contained THC despite Defendant's superior knowledge.

123. The facts concealed or not disclosed by Defendant to Plaintiff and the Proposed Class are material. A reasonable consumer would have considered these facts to be important in determining whether to purchase the product at issue.

124. Plaintiff and the Proposed Class justifiably relied on omissions of Defendant to their detriment.

125. As a result of Defendant's misconduct, Plaintiff and the Proposed Class members suffered and will continue to suffer actual damages.

126. Thus, Plaintiff and the Proposed Class are entitled to restitution and other appropriate relief allowable at law or equity.

COUNT VI

UNJUST ENRICHMENT

(On behalf of Plaintiff and all Class Members)

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

128. Plaintiffs alleging violations of the Minnesota Consumer Fraud Act "may pursue alternative theories at law and in equity." Khoday v. Symantec Corp., 858 F. Supp. 2d 1004, 1019 (D. Minn. 2012) (citing Marty H. Segelbaum, Inc. v. MW Capital, LLC, 673 F. Supp. 2d 875, 880 (D. Minn. 2009) (rejecting defendant's argument that "an unjust enrichment claim is barred because plaintiff has an adequate remedy at law" at the motion to dismiss phase because

“plaintiff is permitted to pursue alternative theories that would provide remedies at law and equity”)).

129. 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.

130. Defendant used various forms of advertisements 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.

131. These advertisements were disseminated for the purposes of causing Plaintiff and members of the Proposed Class to purchase the Tea.

132. 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.

133. 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

134. 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 as provided by law;
- F. Compensatory damages as provided by law;
- G. Restitution as provided by law;
- H. Penalties as provided by law;
- I. A permanent injunction enjoining Defendant from continuing the unlawful, unjust, unfair, and deceptive acts and practices described herein;
- J. Pre-judgment and post-judgment interest;
- K. Leave to amend the pleadings to add a claim for punitive damages;
- L. Reasonable attorneys' fees and expenses, Minn. Stat. § 8.31, subd.3a; and
- M. Such other further relief that the Court deems just and equitable.

Dated: February 24, 2021

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