UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RICARDO SANTIAGO, on his own behalf, and on behalf of those similarly situated, Plaintiffs, v. TOTAL LIFE CHANGES, LLC and "JOHN DOES 1-5", fictitious name used to identify presently unknown entities, Defendants.	CIVIL ACTION NO. 2:20-cv-18581-SDW-LDW **Hon. Susan D. Wigenton** **Motion Return Date: March 1, 2021** **ORAL ARGUMENT REQUESTED**

MEMORANDUM OF LAW OF IN SUPPORT OF TOTAL LIFE CHANGES, LLC'S MOTION TO DISMISS

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Defendant Total Life Changes, LLC ("TLC" or "Defendant") respectfully submits this memorandum in support of its motion for an order dismissing plaintiff Ricardo Santiago's ("Plaintiff") Class Action Complaint (the "Complaint") (Dkt. No. 1) pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

PRELIMINARY STATEMENT

Plaintiff's claims against TLC fail for the most fundamental reason: Plaintiff received the very item he sought to purchase; and, by his own pleading, he was not injured and suffered no damages. These facts are not disputed and, in fact, Plaintiff admits to them in his own pleading. Indeed, Plaintiff alleges in his Complaint that in the summer or fall of 2020, he was in the market to purchase a "detox tea." He "came into contact" with Perla Valdez, an independent Life Changer, who recommended he purchase TLC's Iaso Tea with Broad-Spectrum Hemp Extract (the "Product"). Plaintiff then purchased the Product directly through Ms. Valdez's Life Changer website. In other words, Plaintiff avers that he (i) wanted a detox tea, (ii) got a detox tea, and (iii) even recommended the detox tea to at least one other person – his parole officer. Plaintiff also states that he is a parolee who is regularly subject to drug tests. Plaintiff alleges that at some point he was told by his parole officer that his urine sample came back positive for THC. Plaintiff's parole officer soon after corrected her statement, and advised Plaintiff that his allegedly "positive test

for THC would not be considered a violation of his parole as the THC content in Plaintiff's urine sample **did not meet the standard for it to be correlated to Plaintiff having swallowed or inhaled THC.**"

Thus, Plaintiff admits that he suffered no injury as a result of an incorrect report of a failed drug test, which report was quickly corrected. That Plaintiff and his counsel subsequently commissioned laboratory testing purportedly showing that the Product contained what would amount to – at best – trace amounts of THC (less than 0.0%) does not alter the admitted fact that Plaintiff suffered no harm. In addition, Plaintiff concedes that he received the detox tea he sought, and, therefore, could not have suffered any cognizable injury.

Notwithstanding that Plaintiff received the very detox tea he requested, Plaintiff brings an eight count Complaint for violations of the Magnuson Moss Warranty Act ("MMWA"), (Counts 1 and 2), Breach of Express Warranty (Count 3), Breach of Implied Warranty of Merchantability (Count 4), Breach of Implied Warranty of Fitness for a Particular Purpose (Count 5), Unjust Enrichment (Count 6), Deceptive Trade Practices (Count 7), and Negligent Misrepresentation (Count 8). Plaintiff's Complaint should be dismissed in its entirety because he has not suffered any concrete injury and, therefore, lacks Article III standing. Moreover, Plaintiff has not properly pleaded *any* of his claims given his lack of injury and damages. Plaintiff's Magnuson Moss Warranty Act, breach of express warranty,

and breach of implied warranties claims also fail because he provided no pre-suit notice to TLC[1] and because he received exactly what he bargained for – a detox tea. In addition, Plaintiff cannot maintain breach of warranty claims for representations that he saw *after* his purchase.

Plaintiff's other common law claims fail for those reasons and others. Plaintiff's claim for deceptive trade practices fails because this is not a viable cause of action in New Jersey. His negligent misrepresentation claim is barred by the economic loss rule. Plaintiff's unjust enrichment claim fails because there is nothing unjust or unfair about Plaintiff receiving the exact item he sought to purchase.

Accordingly, and for the reasons set forth more fully below, Plaintiff's Complaint should be dismissed in its entirety.

SUMMARY OF RELEVANT FACTS

Background on the Parties. TLC, based in Michigan, is a company that sells vitamins, weight loss supplements, teas, essential oils and skin care products, including the Product,[2] directly and through a network of independent distributors called "Life Changers." (Compl. ¶¶ 20-21.) Plaintiff is a New Jersey resident and

[1] On or about February 1, 2021, well after the filing of the Complaint, Plaintiff provided notice of his warranty act claims via letter dated January 26, 2021. Plaintiff's after-the-fact letter does not satisfy the applicable notice requirements.

[2] Plaintiff refers to the "Product" as "ITI BSH Tea."

current parolee who, "[i]n or around the summer or fall of 2020," was considering purchasing a detox tea. (Compl. ¶¶ 21, 27.)

The Product Purchase. Plaintiff claims that "he came into contact with Perla Valdez"—an independent Life Changer—who suggested that he purchase the Product in response to his inquiry about a detox tea. (Compl. ¶ 21.)[3] Plaintiff alleges that Ms. Valdez provided him with a link to her Life Changer website, https://retail.totallifechanges.com/Pmvaldez, and that he purchased the Product through Ms. Valdez's website link. (Compl. ¶ 22.)

The Alleged Misrepresentations. Plaintiff alleges the following with respect to the Product's packaging: (i) the Product's "proprietary formula is powered by 100mg of organic Broad-Spectrum Hemp Extract with 9% laboratory certified THC content. . ." and (ii) that the Product "utilizes a Broad-Spectrum Hemp Extract which contains 0.0% total THC as evidenced through independent laboratory tests." Plaintiff further alleges that he "relied on the representation on the front and back of the packaging" when purchasing the Product. (Compl. ¶¶ 25-26.)

This allegation, however, is refuted by Plaintiff's own assertions concerning his actual purchase of the Product. Those assertions include that Plaintiff asked Ms.

[3] Plaintiff alleges that Ms. Valdez is a salesperson of Defendant but that is not the case. (Compl. ¶ 21.) As Plaintiff's subsequent allegation demonstrates, Ms. Valdez is actually an independent contractor who solicits sales without any instruction from TLC. (Compl. ¶ 22.) ("Ms. Valdez provided Plaintiff with a link to her special section of the website. . .")

Valdez to recommend a detox tea, she recommended the Product, and then he purchased the Product based on Ms. Valdez's recommendation through Ms. Valdez's independent Life Changer website link. (Compl. ¶¶ 21-22.)

Purported Basis for Plaintiff's Claim. Plaintiff claims that he "ultimately ingested" the Product, which "unknowingly to Plaintiff, contained THC." (Compl. ¶ 28.) Plaintiff also claims to have "appeared for a regularly scheduled parole appointment where he submitted to a urine sample test" that ultimately "came back positive for THC." (Compl. ¶ 29.) Plaintiff alleges this was "extremely shocking" to him, (Compl. ¶ 30), and that a positive THC test "would have been in violation of the terms and conditions of his parole thereby potentially subjecting Plaintiff to jail and/or prison time." (Compl. ¶ 27.) Plaintiff notes that he was "given a period of time to confirm his suspicions [about the Product] without penalty." (Compl ¶ 31.) Plaintiff alleges that he and his counsel commissioned laboratory tests that purportedly showed that the Product contained what would amount to – at best – trace amounts of THC (less than 0.0%). Yet, Plaintiff further concedes that his drug screen test was "not. . . considered a violation of his parole as the THC content in Plaintiff's urine sample ***did not meet the standard for it to be correlated to Plaintiff having swallowed or inhaled THC.***" (Compl. ¶ 34) (emphasis added.)[4] Plaintiff

[4] Plaintiff claims that he and his attorneys subsequently engaged a laboratory to test the Product for THC and it came back with 700 parts per million and 800 parts per million (Compl. ¶¶ 33-35), but Plaintiff provides no factual allegations or detail concerning the meaning of those purported results. In any event, those allegations

admits he enjoyed the Product as a detox tea, having recommended to his parole officer "that she also should start using the tea product." (Compl. ¶ 31.)

Plaintiff's Causes of Action. Based on these allegations, Plaintiff seeks redress for supposed violations of the Magnuson Moss Warranty Act ("MMWA"), Breach of Express Warranty, Breach of Implied Warranty of Merchantability, Breach of Implied Warranty of Fitness for a Particular Purpose, Unjust Enrichment, "Deceptive Trade Practices," and Negligent Misrepresentation. (Complaint ¶¶ 37-104.) Plaintiff also seeks to represent a class of "all individuals who have purchased the [Product] anywhere throughout the United States of America." (Compl. ¶ 11.)

ARGUMENT

I. Plaintiff Lacks Article III Standing to Bring His Claims

Federal Rule of Civil Procedure Rule 12(b)(1) allows a defendant to seek dismissal of a complaint for lack of subject matter jurisdiction based on a lack of Article III standing. *See e.g. New Jersey Physicians, Inc. v. Obama*, 757 F. Supp. 2d 502, 505-08 (D.N.J. 2010), *aff'd sub nom. New Jersey Physicians, Inc. v. President of U.S.*, 653 F.3d 234 (3d Cir. 2011) (Wigenton, J.). A Rule 12(b)(1) jurisdictional attack may be facial or factual. *Id*. A facial attack is based on the challenger's assertion that the allegations in the complaint are insufficient on their

are contradicted and mooted by Plaintiff's admission that his purported positive test for THC "did not meet the standard for it to be correlated to Plaintiff having swallowed or inhaled THC." (Compl. ¶ 34.)

face to invoke federal jurisdiction. *See e.g. Kaeun Kim v. Giordano*, No. 19-21564 (SDW) (LDW), 2020 WL 2899498, at *2 (D.N.J. June 3, 2020) (Wigenton, J.).

"To establish Article III standing, a plaintiff must show: (1) injury in fact, (2) causation, and (3) redressability." *Brown v. Hyundai Motor America*, Case No. 18-11249 (SDW) (JAD), 2019 WL 4126710, at *2 (D.N.J. Aug. 30, 2019) (Wigenton, J.) (granting motion to dismiss for lack of subject matter jurisdiction where plaintiff's economic harm was "either too speculative or inadequately pleaded"); *Hein v. Freedom From Religion Found., Inc*., 551 U.S. 587, 598 (2007) ("A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.") (citation omitted). To satisfy the "irreducible constitutional minimum" of Article III standing, (*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)), "the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Maniscalco v. Brother Int'l Corp*. (USA), No. CIV.A. 06-CV-4907(FLW), 2008 WL 2559365, at *9 (D.N.J. June 26, 2008). Where a case is at the pleading stage, the plaintiff must clearly allege facts demonstrating each element necessary to satisfy the standing inquiry. *Warth v. Seldin*, 422 U.S. 490, 518 (1975). The Court should dismiss a plaintiff's Complaint where the plaintiff fails to allege the "concrete," "real harm" required by *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540

(2016). *Id.* at 1547 ("The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements [of Article III standing].").

Here, Plaintiff's allegations do not demonstrate any injury that could support Article III standing. Rather, Plaintiff's allegations confirm that he did not suffer any injury at all. Plaintiff alleges that he wanted to purchase a detox tea and he received a detox tea. (Compl. ¶¶ 21, 22.) He does not allege that the Product did not work as the detox tea he was looking for, but, to the contrary, *admits* the he enjoyed the detox tea Product by conceding that he "recommended" that his parole officer "should start using the product." (Compl. ¶¶ 21, 31.) Plaintiff suffered no injury at all, let alone the "concrete" injury required to maintain a federal lawsuit. *Spokeo*, 136 S. Ct. at 1540.

Moreover, even crediting Plaintiff's alleged testing of the Product, which purportedly showed trace amounts of THC, there is no injury. This is because Plaintiff *admitted* that his parole officer told Plaintiff that his alleged positive test for THC was ***not*** a violation of his parole as the alleged THC content in Plaintiff's urine sample did ***not*** meet the standard for it to be correlated to Plaintiff having swallowed or inhaled THC. (Compl. ¶ 34.) Whatever "shock[]" Plaintiff claims to have experienced does not amount to the invasion of any legally protected interest or concrete injury where his Complaint admits that he did not ingest or inhale a product containing THC that would violate his parole conditions. (Compl. ¶ 30.)

Similarly, although Plaintiff alleges, in a conclusory fashion (Compl. ¶¶ 46, 56, 65, 73, 82, 85, 89), that he overpaid for the Product, conclusory allegations of economic harm and overpayment are insufficient to establish standing. *See e.g. James v. Johnson & Johnson Consumer Co., Inc.*, No. 10-cv-03049 (DMC) (JAD), 2011 WL 198026, at *2 (D.N.J. Jan. 20, 2011); *Estrada v. Johnson & Johnson*, No. 16-7492 (FLW), 2017 WL 2999026, at *15 (D.N.J. July 14, 2017). Thus, Plaintiff's allegations fail to establish standing for his claims and the Court should dismiss the Complaint. *Maniscalco*, 2008 WL 2559365, at *7-9 (holding that certain plaintiffs lacked standing because they did not allege that were injured by the warranty at issue).

James v. Johnson & Johnson Consumer Companies, Inc. is instructive here. In *James*, purchasers of baby shampoo filed an action against the product's manufacturer, alleging that the manufacturer included a toxic ingredient in the shampoo. 2011 WL 198026, at *2. The purchasers did not allege that their children suffered any physical harm because of the shampoo, but attempted to establish Article III standing by alleging that they suffered economic harm. *Id.* The alleged harm was predicated on allegations that they would not have purchased the shampoo had they known of its alleged toxicity. *Id.* The court rejected the purchasers' theory of standing, holding that the plaintiffs did not have standing because the product did not cause any adverse health consequences and worked as intended. *Id*; *see also*

Estrada v. Johnson & Johnson, 2017 WL 2999026, at *15 (holding that the "threadbare allegation" that Plaintiff purchased product at premium was insufficient to support Article III injury-in-fact requirement). In other words, "[s]imply put, [p]laintiffs bought and used shampoo, and subsequently wished that they had not done so[.]" *James*, 2011 WL 198026, at *2. Here, Plaintiff's Complaint should similarly be dismissed—on this basis alone—because Plaintiff admits that the Product worked as a detox tea—the purpose for which he purchased it.

II. Plaintiff Fails to Plead the Elements of His Claims

Notwithstanding Plaintiff's failure to maintain Article III standing, his Complaint also should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). "In considering a Motion to Dismiss under Rule 12(b)(6), the Court must 'accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.'" *McGill v. Lynch*, No. 15-00031 (SDW) (SCM), 2017 WL 4475979, at *1 (D.N.J. Jan. 23, 2017) (quoting *Phillips v. Cty. Of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (Wigenton, J.)). However, '"the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions" and "'[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.'" *McGill*, 2017 WL 4475979, at *1 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662,

678 (2009)). Thus, to survive a motion to dismiss, Plaintiff is required to allege sufficient factual matter that establishes that he has a plausible claim for relief. *See e.g. Hughes v. Panasonic Consumer Elecs. Co.*, No. 10-846 (SDW), 2011 WL 2976839, at *7–8 (D.N.J. July 21, 2011) (citation omitted) (Wigenton, J.) A claim is plausible when the plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at *8. The Complaint fails to meet these well-established pleading requirements.

A. Plaintiff Fails to State a Claim for Breach of Warranty

i. Plaintiff's Breach of Warranty Claims Fail For Lack of Pre-Suit Notice

As a threshold issue, pre-litigation notice is required for Plaintiff to maintain his New Jersey warranty claims, as well as his MMWA claims (Counts I – V). *See* 15 U.S.C. § 2310(e); *see also Livingston v. Trane Inc*., No. 17-6480(ES)(MAH), 2019 WL 397982, at *13 (D.N.J. Jan. 31, 2019) (applying North Carolina law but noting that MMWA claims require pre-suit notice); *Hammer v. Vital Pharm., Inc.*, No. 11-4124, 2012 WL 1018842, at *11 (D.N.J. Mar. 26, 2012) ("Accordingly, because Plaintiff has failed to allege that the condition precedent has been met—sending a pre-litigation notice—Plaintiff's express and implied warranty claims necessarily fail."); *Luppino v. Mercedes-Benz USA, LLC*, No. 09-5582 (DMC)(JAD), 2011 WL 2470625, at *3 (D.N.J. June 20, 2011) (dismissing breach

of express warranty and MMWA claim for failure to allege notice); *Kury v. Abbott Labs., Inc.*, No. 11-803 (FLW), 2012 WL 124026, at *7 (D.N.J. Jan. 17, 2012) (dismissing express warranty claim because plaintiff failed to provide pre-litigation notice to Defendants regarding the alleged breach); *C. F. Seabrook Co. v. Beck*, 174 N.J. Super. 577, 593 (App. Div. 1980) ("New Jersey law on sales requires notice as a prerequisite to the buyer's assertion that the seller breached an implied warranty of merchantability."). Plaintiff has not alleged that he sent a *pre*-litigation notice to TLC that any alleged warranty was breached, and his after-the-fact "notice" sent after the Complaint was filed does not cure the defect. Thus, Plaintiff's state law warranty claims and MMWA claims must be dismissed due to Plaintiff's failure to provide the requisite pre-suit notice.

ii. There is No Breach of Express Warranty

Plaintiff's claim for breach of express warranty based on New Jersey law and the MMWA (Counts I and III) also fail because the THC content of the Product was not a basis of the bargain and Plaintiff admits the Product conforms to its description. Plaintiff alleges that TLC violated an express warranty that the Product contained 0.0% THC when, according to Plaintiff, it contained trace amounts less than 0.0%. To state a claim for breach of express warranty under New Jersey law, "Plaintiff[] must properly allege: (1) that Defendant made an affirmation, promise or description about the product; (2) that this affirmation, promise or description became part of

the basis of the bargain for the product; and (3) that the product ultimately did not conform to the affirmation, promise or description." *Snyder v. Farnam Cos., Inc.*, 792 F. Supp. 2d 712, 721 (D.N.J. 2011); *Mendez v. Shah*, 94 F. Supp. 3d 633, 639 (D.N.J. 2015) (dismissing breach of express warranty claim for failure to show causation). Plaintiff's own pleading avers that the THC content was *not* a basis of the bargain for the product. Plaintiff informed Ms. Valdez—an independent contractor—that he wanted a detox tea; this was the sole basis of the bargain identified by Plaintiff. (Compl. ¶ 21.) Ms. Valdez informed Plaintiff that he should purchase the Product for his detox tea needs. (Compl. ¶ 22.) There are no further statements or representations that form the basis of the bargain as Plaintiff admits that he did not even view any representation about THC until *after* he bought and received the Product. (Comp. ¶¶ 21-23.) Neither Ms. Valdez nor TLC were ever informed by Plaintiff that he required a product without THC, nor were they informed that Plaintiff was a parolee. *See Mladenov v. Wegmans Food Markets, Inc.*, 124 F. Supp. 3d 360, 378 (D.N.J. 2015) (noting that the plaintiff must allege to have purchased a product based on a particular promise that ultimately proved false).

Second, Plaintiff states that he purchased the product for its detox qualities, and thereafter – obviously pleased with the Product – recommended it to his parole officer. (Compl. ¶ 31.) Even if Plaintiff had relied on a representation that led him to believe he would not fail a drug screen, Plaintiff's admission that his urine sample

"did not meet the standard for it to be correlated to Plaintiff having swallowed" THC dooms his claim that he was injured by the alleged misrepresentation regarding THC content. (Compl. ¶ 34.) *See Marquez v. IMER USA, Inc.*, No. 16-5013 (KM) (JBC), 2019 WL 8226021, at *10 (D.N.J. July 11, 2019) (dismissing claim where plaintiffs failed to allege that the product was not in conformity with the affirmation, promise, or description).

iii. There is No Breach of Implied Warranty of Merchantability

Plaintiff's claims for beach of the implied warranty of merchantability under New Jersey law and the MMWA (Counts II and IV) fail for similar reasons. Plaintiff alleges that TLC breached the implied warranty of merchantability on the theory that the product was not merchantable because it was not a 0.0% THC product, despite the representation of such on its label and, thus, the product was not free from defects. (Compl. ¶¶ 66-74.) "[T]o state a claim for breach of the implied warranty of merchantability . . . a plaintiff must allege (1) that a merchant sold goods, (2) which were not 'merchantable' at the time of sale, (3) injury and damages to the plaintiff or its property, (4) which were was (sic) caused proximately and in fact by the defective nature of the goods, and (5) notice to the seller of the injury." *In re Ford Motor Co. E-350 Van Prods. Liab. Litig.* (No. 11), No. 03-4558 (HAA), 2008 WL 4126264, at *19 (D. N.J. Sept. 2, 2008). Merchantable goods must be fit for the *ordinary* purpose for which is it used. *Crozier v. Johnson & Johnson Cons Cos.*,

Inc., 901 F. Supp. 2d 494, 508 (D.N.J. 2012). As Plaintiff himself describes in his Complaint, the Product is a detoxification tea – used for an ordinary purpose of such products. Plaintiff purchased the Product because he sought a detox tea. (Compl. ¶ 21.) The Product was recommended to Plaintiff as a detox tea. (Compl. ¶ 22.) Plaintiff, indeed, enjoyed the Product as a detox tea. (Compl. ¶ 31.) Plaintiff does not contest the detoxification properties of the Product. The implied warranty of merchantability does not impose a general requirement that the goods precisely fulfill the unique expectation of the buyer. *Hammer*, 2012 WL 1018842, at *10, citing *Hughes*, 2011 WL 2976839, at *22. Rather, this implied warranty provides for a *minimum level of quality*. *Hughes*, 2011 WL 2976839, at *22. Here, even assuming Plaintiff's conclusory assertions about the Product containing what would at best amount to traces of THC are correct (which is disputed) there was no reason for Ms. Valdez nor TLC to suspect that Plaintiff had idiosyncratic fears about consuming a detox tea with such barely detectable, trace amounts of THC. The Product is clearly merchantable as it is fit for its ordinary use.

Crozier is instructive here. In *Crozier*, Plaintiffs purchased a spray (Neosporin NEO TO GO!), an over-the-counter medication to protect against infection and to help with pain relief. *Crozier*, 901 F. Supp. 2d at 497, 509. Plaintiffs then alleged that the spray misleads consumers into believing that they have purchased a product that contains antibiotics. *Id.* at 497. The Court held that

Plaintiffs had not alleged that the spray was defective or that it failed to "provide infection protection and pain relief, the purposes for which it is intended." *Id.* at 509. The same is true for Plaintiff here; Plaintiff did not allege that the detox tea did not work as a detox tea. Indeed he recommended the Product to his parole officer to try for that very purpose. It is evident from the Complaint that the Product worked for Plaintiff as intended. This Court, therefore, should dismiss Plaintiff's implied warranty of merchantability claims.

iv. There is No Breach of Implied Warranty of Fitness For A Particular Purpose

Plaintiffs' claims for breach of the implied warranty of fitness for a particular purpose under New Jersey law and the MMWA (Counts II and V) also fail as a matter of law.

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose.

Crozier, 901 F. Supp. 2d 494, 509 (quoting N.J.S.A. § 12A:2-315). "To establish a breach of either [implied] warranty, Plaintiffs 'must show that the equipment they purchased from defendant was defective." *Id.* (quotation omitted). TLC has not breached the implied warranty of fitness for a particular purpose. Plaintiff alleges that TLC breached the implied warranty of fitness for a particular purpose because

it contained trace amounts of THC, despite the representations that it contained 0.0%. Here, Plaintiff cannot show that TLC had any reason to know that Plaintiff has peculiar conditions on the use of the Product beyond its use as a detox tea.

Plaintiff never informed Ms. Valdez, or anyone else for that matter, that the reason he was purchasing a detox tea was for any other purpose than detoxification. As discussed above, TLC had no reason to know of Plaintiff's unique fears associated with consuming THC. As evident from the face of the Complaint, Plaintiff only informed Ms. Valdez that he wished to purchase a detox tea. (Compl. ¶ 21.)

In *Crozier*, the Court noted that to establish a breach of implied warranty of fitness for a particular purpose, the plaintiff was required to make a "showing regarding the product's functionality, not the advertisements that allegedly induced a customer to purchase it." *Crozier*, 901 F. Supp. 2d at 509 (dismissing both implied warranty claims based on a lack of showing that "the spray was defective or that it operated improperly"). Here, Plaintiff does not allege that the Product was defective or that it failed to provide detoxification, the purpose for which it was intended. Accordingly, his implied warranty of fitness for a particular purpose claims should be dismissed.

v. Plaintiff's Magnuson-Moss Warranty Act Claims Fail Because His State Law Warranty Claims Fail.

For the same reasons that Plaintiff's New Jersey warranty claims fail, his MMWA claims fail. MMWA "claims based on breaches of express and implied warranties under state law depend upon those state law claims." *Tatum v. Chrysler Grp. LLC*, No. 10-4269 (ES), 2012 WL 6026868, at *8 (D.N.J. Dec. 3, 2012); *Russo v. Thor Indus., Inc.*, No. 20-10062 (SDW)(LDW), 2020 WL 5868801, at *3 (D.N.J. Oct. 1, 2020) ("Since Plaintiffs' state law warranty claims fail, so too must their MMWA claim."); *Cooper v. Samsung Elecs. Am., Inc.*, No. 07-3853, 2008 WL 4513924, at *6 (D.N.J. Sept. 30, 2008) (dismissing MMWA claim where state law warranty claim failed because the MMWA claims are "dependent on state law claims."). For this additional reason, this Court should dismiss Plaintiff's MMWA claims.

B. Plaintiff's Deceptive Trade Practices Claim Should Be Dismissed

Plaintiff's Complaint asserts, in Court 7, a purported claim for "Deceptive Trade Practices." But there is no cause of action recognized in New Jersey for Deceptive Trade Practice. This claim must be dismissed as such "catch all" pleadings do not meet the federal pleading standards. *See e.g. In re Toshiba Am. HD DVD Mktg. & Sales Practices Litig.*, No. 08-939 (DRD), 2009 WL 2940081, at *14 (D.N.J. Sept. 11, 2009) (dismissing deceptive trade practice claims and noting that "catch all pleading" does not satisfy basic pleading requirements); *see also*

Colony Ins. Co. v. Kwasnik, Kanowitz & Assoc., P.C., 288 F.R.D. 340, 344 (D.N.J. 2012) (dismissing "deceptive trade practices" claims because it is "not viable" as a cause of action in New Jersey).

C. Plaintiff's Claim for Negligent Misrepresentation Should Be Dismissed

Plaintiff's claim for negligent misrepresentation should be dismissed because it is barred by the economic-loss rule.[5] The New Jersey Supreme Court has held that purely economic losses allegedly caused by a product are not subject to tort remedies absent a physical injury. *See e.g. Alloway v. General Marine Indus., L.P.*, 149 N.J. 620, 628 (N.J. 1997); *AgroLabs, Inc. v. Innovative Molding, Inc.*, No. 2:13-6169(KM)(MC), 2014 WL 3535560, at *3 (D.N.J. July 16, 2014) (dismissing negligence claim because Plaintiff only alleged that it purchased a defective product which resulted in economic loss). Here, Plaintiff seeks to recover money damages that are not related to any physical injury. (Compl. ¶ 104.). Plaintiff's claim for

[5] Plaintiff's claim for negligent misrepresentation is also subject to the heightened pleading standards of Rule 9(b). *See Gray v. Bayer Corp.*, No. 08-4716 (JLL), 2009 WL 1617930, at *2-3. Plaintiff fails to meet the particularity requirement of Rule 9(b).

negligent misrepresentation, therefore, is subject to dismissal on this independent ground.

D. Plaintiff's Unjust Enrichment Claim Should Be Dismissed

Plaintiff's unjust enrichment claim (Count VI) should be dismissed for the same reasons as his other claims – Plaintiff suffered no injury.[6] To claim unjust enrichment, a plaintiff must allege that: (1) at plaintiff's expense; (2) defendant received benefit; and (3) under circumstances that would make it unjust for defendant to retain the benefit without paying for it. *See e.g. Mason v. Coca-Cola Co.*, No. 09-0220-NLH-JS, 2010 WL 2674445, at *7 (D.N.J. June 30, 2010). Plaintiff fails to allege the required elements to maintain an unjust enrichment cause of action. In fact, he does nothing more than recite the elements of that cause of action without plausibly pleading any facts to support such a claim. This is insufficient. *See Iqbal*, 566 U.S. at 678 (holding that a formulaic recitation of the elements of a cause of action and the "unadorned, the-defendant-unlawfully-harmed-me accusation" is insufficient under federal pleading standards).

As discussed above, Plaintiff received exactly what he purchased—a detox

[6] Plaintiff's claim for unjust enrichment is also subject to the heightened pleading standards of Rule 9(b). *See Crete v. Resort Condominiums Int'l, LLC*, No. 09-5665, 2011 WL 666039, at *6 (D.N.J. Feb. 14, 2011) ("Because Plaintiffs' unjust enrichment claim is squarely premised on Defendants' allegedly fraudulent actions, Plaintiffs must plead Plaintiffs' unjust enrichment claim with the particularity required by Rule 9(b)"). Plaintiff fails to meet the particularity requirement of Rule 9(b).

tea. In fact, Plaintiff was so pleased with the Product that he recommended it to his parole officer. Plaintiff, thus, confirms in his own pleading that TLC was not unjustly enriched by Plaintiff's purchase of the Product. *See Hoffman v. Nordic Naturals, Inc*., No. 12-cv-05870 (SDW)(MCA), 2014 WL 1515602, at *6 (D.N.J. Apr. 17, 2014) (holding that unjust enrichment is not a viable theory "in circumstances in which a consumer purchases specific goods and receives those specific goods"). As such, Plaintiff's unjust enrichment claim should be dismissed.

CONCLUSION

For the foregoing reasons, TLC respectfully requests that this Court grant its motion to dismiss Plaintiff's Class Action Complaint with prejudice.

Dated this 4th day of February, 2021

Respectfully submitted,

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