

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 6<sup>TH</sup> Street, Boulder, CO 80302 (303) 441-3750</p> <hr/> <p><b>Plaintiff: International Association of Certified Home Inspectors</b></p> <p>v.</p> <p><b>Defendant: Frank Lesh</b></p> <hr/> <p>Lawyer: MARK COHEN, J.D., LL.M. Address: P.O. BOX 19192 BOULDER, CO 80308 Phone: (303) 638-3410 E-mail: MARK@COHENSLAW.COM URL: WWW.COHENSLAW.COM Atty Reg. # 13178</p>	<p style="text-align: center;"><b>Court Use Only</b></p> <hr/> <p>Case No. 18 CV 30031</p> <p>Div.:            Ctrm:</p>
<p><b>AMENDED COMPLAINT</b></p>	

**PARTIES**

1. Plaintiff, International Association of Certified Home Inspectors (“InterNACHI”) is a Colorado Nonprofit Corporation and is also a tax-exempt trade association under Section 501(C)(6) of the Internal Revenue Code. Plaintiff’s mailing address is 1750 30<sup>th</sup> Street, No. 301, Boulder, CO 80301. Plaintiff’s physical address is 4635 Nautilus Court South, Unit C, Boulder, CO 80301.
2. Defendant, Frank Lesh (“Lesh”), is the Executive Director of the American Society of Home Inspectors (“ASHI”). Lesh’s home address is 6411 Indian Head Ct, Indian Head Park, IL 60525.

**JURISDICTION AND VENUE**

3. The Court has personal jurisdiction over Defendant because he made defamatory statements about Plaintiff and, on information and belief, caused and intended them to be distributed to every state in the United States, including Colorado.
4. The Court has subject matter jurisdiction pursuant to Article VI, Section 9 of the Colorado Constitution.
5. Venue is proper in Boulder County pursuant to CRCP 98(c)(5) because Defendant

caused the statements giving rise to this action to be delivered to readers in Boulder County, and because Defendant's statements caused harm to Plaintiff and to Plaintiff's members in Boulder County. Venue is also proper because Defendant is a nonresident and the Complaint designates venue in Boulder County.

### **GENERAL ALLEGATIONS**

6. Both InterNACHI and ASHI are national trade associations of Home Inspectors.
7. Home inspectors join InterNACHI and ASHI for the purposes of education, marketing, networking, and accreditation.
8. In the field of trade associations of Home Inspectors, there are only two large, national associations: InterNACHI and ASHI. ASHI is InterNACHI's main competitor.
9. There is competition between InterNACHI and ASHI in that they compete for members.
10. There is competition between InterNACHI and ASHI in that they market their members' home inspection services to the public.
11. Both InterNACHI and ASHI offer their members various levels of membership based on successful completion of continuing education classes and exams.
12. InterNACHI has received more than 1,400 approvals of its courses from governmental bodies, boards, institutions, and commissions.
13. Lesh has been a member of ASHI since approximately 1990 and has been involved at the highest levels of ASHI for more than ten years, serving at its president in 2007.
14. Plaintiff incorporates each allegation in this Complaint into each claim for relief. Further, Plaintiff incorporates the allegations in any claim for relief into all other claims for relief.

### **STATEMENTS AND ACTIONS OF DEFENDANT**

15. In the October, 2017 issue of ASHI's official publication *The ASHI Reporter*, ASHI published an article authored by Lesh entitled "The Badges We Earn". **EXHIBIT 1.** The article included these statements ("the Statements"):
  - a. "ASHI is the only home inspector organization that is certified by a third party."
  - b. "But what inspectors need to watch out for—and savvy consumers are leery about—are 'purchased designations' that require little more effort than

paying a fee and checking a box that says, 'I fulfilled the requirements.' Especially when the same organization issues a myriad of 'certifications.' In fact, the inspector doesn't earn the recognition, he or she just buys it."

16. On information and belief, ASHI distributed the October, 2017 edition of *The ASHI Reporter* to its members, realtors, and others in all 50 U.S. states, including Colorado.
17. On information and belief, ASHI posted the contents of the October, 2017 edition of *The ASHI Reporter* on its website, which is viewed by its membership and others in the community, including people in Colorado.
18. Lesh knew of *The ASHI Reporter's* wide distribution when he submitted the Statements to it for publication or otherwise caused it to publish the Statements.
19. InterNACHI relies on its good reputation to recruit and retain members, and to market the services of its members to the public.
20. Lesh designed the Statements to be understood by the reader to mean that InterNACHI, ASHI's main competitor, is not certified by a 3<sup>rd</sup> party and that InterNACHI's certifications are "purchased designations" that require nothing more than paying a fee. Lesh's intent was to imply that InterNACHI membership means nothing.
21. All of the Statements were understood by those who read them or heard them to refer to InterNACHI and its members.
22. The Statements tend to disparage InterNACHI and the services of its members, to harm the reputation of InterNACHI and its members, to lower InterNACHI and its members in the eyes of the community, to deter existing InterNACHI members from renewing their InterNACHI memberships, to deter other home inspectors from joining InterNACHI, to deter consumers from using InterNACHI-certified inspectors, and to deter realtors from referring customers to InterNACHI and/or to InterNACHI-certified inspectors.
23. Lesh made the Statements with knowledge that they were false or with reckless disregard for whether they were false.
24. Lesh made the Statements with malice.
25. As a result of Lesh's conduct, InterNACHI has been harmed and continues to be harmed through loss of business, loss of membership, and damage to its reputation.
26. As a result of Lesh's conduct, InterNACHI's members have been harmed and continue to be harmed through loss of business and damage to their reputations.

27. As a result of Lesh's conduct, InterNACHI has suffered monetary damages on each count in this Complaint.

**FIRST CLAIM FOR RELIEF: DEFAMATION pursuant to C.R.S. §13-25-125.5**

28. Defendant defamed Plaintiff by publishing in *The ASHI Reporter* an article containing defamatory Statements about Plaintiff.

29. Defendant presented the Statements as fact, not as opinion.

30. The Statements were not true and are not true.

31. Defendant knew or should have known the Statements were not true.

32. The Statements were communicated to thousands of third parties across the United States, including people in Colorado.

33. The Statements were likely repeated by readers of *The ASHI Reporter* and those repetitions were foreseeable by Defendant.

34. Defendant's conduct damaged Plaintiff in an amount to be proven at trial.

35. WHEREFORE, Plaintiff asks for judgment against the Defendant for such damages as may be proven at trial, for costs and attorney's fees as allowed by law, and such other relief as the Court deems just.

**SECOND CLAIM FOR RELIEF - INJURIOUS FALSEHOOD / TRADE LIBEL /  
COMMERCIAL DISPARAGEMENT**

36. Defendant disparaged Plaintiff by publishing in *The ASHI Reporter* an article containing false Statements about Plaintiff.

37. The Statements were communicated to thousands of third parties across the United States.

38. The Statements were derogatory to Plaintiff's business in general.

39. Defendant intended by his Statements to cause harm to Plaintiff's pecuniary interests, or Defendant knew or should have known that his Statements would cause harm to Plaintiff's pecuniary interests. Defendant intended to imply that ASHI is the only organization approved by a third party, which is false and misleading. Defendant intended to imply that InterNACHI's tiered membership structure is somehow questionable even though ASHI also has a tiered membership structure.

40. Defendant made his statements with malice.
41. Defendant knew or should have known the Statements were not true.
42. Defendant's conduct damaged Plaintiff in an amount be proven at trial.
43. WHEREFORE, Plaintiff asks for judgment against Defendant for such damages as may be proven at trial, for costs and attorney's fees as allowed by law, and such other relief as the Court deems just.

**THIRD CLAIM FOR RELIEF – TORTIOUS INTERFERENCE WITH EXISTING AND PROSPECTIVE BUSINESS RELATIONS**

44. Defendant's Statements were false and misleading, and therefore they were and are improper.
45. Because Defendant's Statements are false they are not justifiable as an exercise of business competition.
46. Defendant intended his Statements to cause InterNACHI members to abandon their memberships in InterNACHI, to cause ASHI members who are also InterNACHI members to abandon their memberships in InterNACHI, to cause prospective InterNACHI members to abandon their applications or planned applications to join InterNACHI, and to cause consumers not to choose InterNACHI members.
47. Defendants intended his Statements to cause potential students of InterNACHI's classes to abandon or lessen their interest in taking InterNACHI's classes, and abandon or lessen their interest in seeking InterNACHI certifications.
48. Defendant's Statements did cause and will cause InterNACHI members to abandon their InterNACHI memberships, cause ASHI members to abandon their joint InterNACHI memberships, and cause prospective InterNACHI members to abandon their applications or planned applications to join InterNACHI, and cause consumers not to choose InterNACHI members.
49. Defendant's Statements did cause and will cause potential students of InterNACHI's classes to abandon or lessen their interest in taking InterNACHI's classes, and to abandon or lessen their interest in seeking InterNACHI certifications.
50. Defendant knew or should have known that his Statements were certain or substantially certain to induce InterNACHI members and joint ASHI and InterNACHI members to abandon their InterNACHI memberships; and to induce prospective InterNACHI members to abandon their applications or planned applications to join InterNACHI.

51. Defendant knew or should have known that his Statements were certain or substantially certain to induce potential students of InterNACHI's classes to abandon or lessen their interest in taking InterNACHI's classes or seeking InterNACHI certifications.

WHEREFORE, Plaintiff asks for judgment against Defendant for such damages as may be proven at trial, for costs and attorney's fees as allowed by law, and such other relief as the Court deems just.

**FOURTH CLAIM FOR RELIEF – DECEPTIVE TRADE PRACTICES**

52. Defendant violated Section 6-1-105, CRS, by disparaging InterNACHI and its services by false or misleading representations of fact.

WHEREFORE, Plaintiff asks for judgment against Defendant for such damages as may be proven at trial, for costs and attorney's fees as allowed by law, for statutory damages, and such other relief as the Court deems just.

**JURY DEMAND**

Plaintiff demands a jury trial.

International Association of Certified  
Home Inspectors, Plaintiff

s/ Mark Cohen

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MARK COHEN, J.D., LL.M. - # 13178