

COMMONWEALTH OF VIRGINIA



HENRICO CIRCUIT COURT

Civil Division
4301 PARHAM ROAD
RICHMOND VA
(804) 501-4546

Summons

To: DAVID LABRIE
NO SERVICE ADDRESS

Case No. 087CL18000180-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Thursday, January 11, 2018

Clerk of Court: HEIDI S BARSHINGER

by

Suzanne H. Beal
(CLERK/DEPUTY CLERK)

Instructions:

Hearing Official:

Attorney's name: BALDWIN, MATTHEW J
500 COURT SQUARE, SUITE 300
CHARLOTTESVILLE VA 22902

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

**INTERNATIONAL ASSOCIATION)
OF CERTIFIED HOME INSPECTORS,)**

Plaintiff,)

v.)

DAVID LABRIE)

Defendant.)

Case No. CL18-180-00

COMPLAINT

COMES NOW the Plaintiff, INTERNATIONAL ASSOCIATION OF CERTIFIED HOME INSPECTORS, (hereinafter referred to as, "InterNACHI"), by counsel, and hereby submits this Complaint against the Defendant, DAVID LABRIE (hereinafter referred to as "LaBrie" or "Defendant").

JURISDICTION AND VENUE

1. This cause of action arose in Henrico County, Virginia.
2. This court has jurisdiction over this matter pursuant to § 17.1-513 of the Code of Virginia (hereinafter, the "Code").
3. Venue is proper in this court pursuant to the Code § 8.01-262(1) and (4).

THE PARTIES

4. Plaintiff is a Colorado nonprofit corporation, with its principal place of business at 1750 30th Street, Suite 301, Boulder, Colorado 80301.
5. Defendant David LaBrie is a natural person over the age of 18 years who resides at 1426 Myradare Drive, Henrico, Virginia, in Henrico County.

GENERAL ALLEGATIONS

6. InterNACHI is a Colorado non-profit corporation and a trade association with tax-exempt status under Section 501(c)(6) of the Internal Revenue Code. InterNACHI represents the interests of more than 20,000 home inspectors including some in Virginia.

7. In the fall of 2017, Defendant LaBrie visited InterNACHI's website. After reviewing the website, he signed up for a promotion by which he could initially join for free. However, as indicated one line below, that entitled him only to "6 months free." (Exhibit 1)

8. LaBrie was then re-directed to a sign-up page. (Exhibit 2)

9. Of significance, the sign-up page breaks the process into four parts:

- a. "Apply for membership"
- b. "Access Unlimited Benefits and Training"
- c. "Complete Certification Requirements"
- d. "Become certified & listed on NACHI.org"

10. Immediately below that graphic, the sign-up page states that a member gets access to membership benefits and training resources, but will not be InterNACHI-certified until they "complete the final certification requirements".

11. By completing the sign-up, a person has applied for membership and has access to the resources and training made available on the website.

12. The next line shows that a "coupon" has been applied, and that the member will not be billed for the first six months.¹

¹ Exhibit 2 shows a "not be billed until" date of July 2018 because the website auto-populates a date 6 months in the future. At the time he signed up, LaBrie would have seen a date six months out from his sign-up.

13. The sign-up page also contains a “Terms and Conditions” section, which LaBrie would have had to affirmatively indicate that he “read, understand, and agree to these terms and conditions” before he could complete the sign-up.

14. By agreeing to the Terms and Conditions, LaBrie agreed that he “authorize[d] us to charge your credit card or bank account for membership dues and other sums you owe us.”

15. In the Paragraph labeled “Dues”, LaBrie was notified that “InterNACHI will... charge you for dues unless you notify InterNACHI in writing... at least 30 days prior to the expiration of your membership.”

16. On or about December 23, 2017, Defendant LaBrie posted on a website called “Ripoff Report”.

17. The gist of LaBrie’s complaint is that after his six month free trial expired, the credit card he had put on file with InterNACHI was charged.

18. LaBrie admitted to having completed the initial sign-up, but stated “I never received any type of notification from InterNACHI saying I would be billed for anything, either...”

19. Later in that same post, LaBrie again states that “I did not authorize these charges.”

20. While much of LaBrie’s post might be considered opinion or hyperbole, the two statements identified above are made as statements of fact, are false, and are provably false.

21. These statements were intended (and do) cast InterNACHI and its founder in a negative light, and imply that InterNACHI makes unauthorized charges, which is both a state and federal crime.

COUNT I – DEFAMATION *PER SE*

22. Plaintiff InterNACHI reasserts, and incorporates by reference, all prior and subsequent factual allegations.

23. Defendant LaBrie made the statements identified above.

24. These statements were published on the internet and are readily accessible to anyone considering becoming a member of InterNACHI.

25. These statements were statements of fact that were provably false when made.

26. Defendant LaBrie knew the statements he made were false at the time he made them.

27. Plaintiff InterNACHI suffered actual damages as a result of these statements being made to third parties, including damages to its membership and professional reputation.

28. These damages are in an amount to be determined at trial, but not less than \$50,000.00.

29. As a result of the Defendant's tortious behavior, he are also liable for punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff hereby requests that this honorable Court grant the following relief:

- A. Enter judgment in favor of the Plaintiff on Count I;
- B. Award compensatory damages against the Defendants in an amount to be determined at trial, but not less than \$50,000.00;
- C. Award punitive damages against the Defendants pursuant to Count I; and
- D. Such further relief as this Court deems appropriate.

TRIAL BY JURY DEMANDED.

Respectfully Submitted,
INTERNATIONAL ASSOCIATION OF
CERTIFIED HOME INSPECTORS

By Counsel



David W. Thomas, Esq. (VSB #73700)

Jordan E. McKay, Esq. (VSB # 80681)

MICHIEHAMLETT PLLC

500 Court Square, Suite 300

Charlottesville, VA 22903

Phone: (434) 951-7200

Fax: (434) 951-7240

dthomas@michiehamlett.com

jmckay@michiehamlett.com

EXHIBIT 1

Click Below

[CLICK HERE TO JOIN FOR FREE \(https://www.nachi.org/apply/?type=free\)](https://www.nachi.org/apply/?type=free)

(new to InterNACHI inspectors only please, 6 months free)

ssshhhh... you get so much free! www.nachi.org/benefits.htm
(<https://www.nachi.org/benefits.htm>).

InterNACHI
1750 30th St Ste 301
Boulder, CO 80301

[Contact InterNACHI \(https://www.nachi.org/contact.htm\)](https://www.nachi.org/contact.htm)

The entire contents of this site © 2006-2018 InterNACHI. All rights reserved.
InterNACHI is a registered trademark of the International Association of Certified Home Inspectors, Inc.
[Terms of Use \(/termsofuse.htm\)](#) | [Find an Inspector \(http://www.inspectorseek.com\)](http://www.inspectorseek.com)

EXHIBIT 2

APPLY FOR MEMBERSHIP

ACCESS UNLIMITED BENEFITS & TRAINING



COMPLETE CERTIFICATION REQUIREMENTS

BECOME CERTIFIED & LISTED ON NACHI.ORG



InterNACHI Membership Application

Fill out the form below to apply for InterNACHI membership. Once your email is confirmed and you have selected your billing plan, you will have immediate access to most membership benefits and training resources. Whenever you're ready, you can complete the final certification requirements and become InterNACHI-certified.

Coupon applied: you will not be billed until July 2018

If you have already signed up for an InterNACHI account to take our online exam or one of InterNACHI's free courses, you can **log in with that account** (<https://www.nachi.org/auth/login>) to apply for membership.

Your Country

United States ✓

Please select the country you are applying in first, as this will change certain aspects of the application process.

Your Contact Information

Your email address

You will have to confirm your email address before finishing. Please double-check to ensure proper spelling, etc.

I would like to subscribe to the InterNACHI newsletter (sent about twice per month)

Your phone number

Your Name & Company

Your first (given) name

Your last (family) name

Your company name (if you have one)

Your Address

Your address

Start typing address...

Line two of address (optional)

City

State/province

Zip/postal code

Your Inspection Experience

- I have not performed any fee-paid inspections yet
- I have performed less than 100 fee-paid inspections
- I have performed between 100 and 999 fee-paid inspections
- I have performed 1,000 or more fee-paid inspections

Your Account Password

Choose a password

Retype your password

TERMS AND CONDITIONS

This is an Agreement between you (the inspector) and us (InterNACHI). We are a Colorado nonprofit corporation and 501(c)(6) trade association representing the interests of more than 20,000 home inspectors. You want to join InterNACHI or obtain free access to certain parts of InterNACHI's website. In consideration of our willingness to approve your application for membership if you qualify or free access to certain parts of InterNACHI's website, you agree to these terms:

This is an Agreement between you (the inspector) and us (InterNACHI). We are a Colorado nonprofit corporation and 501(c)(6) trade association representing the interests of more than 20,000 home inspectors. You want to join InterNACHI or obtain free access to certain parts of InterNACHI's website. In consideration of our willingness to approve your application for membership if you qualify or free access to certain parts of InterNACHI's website, you agree to these terms:

1. **Dues.** If you become a paying member, you authorize us to charge your credit card or bank account for membership dues and other sums you owe us, and to sign any required forms for us to do this. You understand InterNACHI may terminate your membership if you do not pay all sums owed when due. You understand InterNACHI will automatically renew your membership and charge you for dues unless you notify InterNACHI in writing that you no longer wish to be a member at least 30 days prior to the expiration of your membership. If you elect not to renew, you must send your notice to InterNACHI, 1750 30th Street Ste 301, Boulder, CO 80301 or to the main email contact listed on [our contact page](#).
2. **Code of Ethics.** You represent you have read our [Code of Ethics](#) and agree to abide by it while you are an InterNACHI member. You understand InterNACHI may terminate your membership if InterNACHI determines you violated the Code of Ethics. InterNACHI may modify its Code of Ethics from time to time and such changes will be binding on you.
3. **Standards of Practice.** You represent you have read our [Residential Standards of Practice](#) and [Commercial Standards of Practice](#), and you will perform all inspections in accordance with them while you are an InterNACHI member, as they may be modified from time to time, except where your jurisdiction requires a different standard.
4. **Legal Protection of InterNACHI / Duty to Include Language in Your Inspection Agreement.** To protect InterNACHI, it is important for your customers to know that InterNACHI does not supervise you. It is also important that you not put InterNACHI in a situation where your client sues InterNACHI in your state. Therefore, you agree to require each client to sign a written inspection agreement prior to performing your inspection. We encourage you to use InterNACHI's [Plain English Agreement](#), subject to your lawyer's revisions. No matter what agreement you use, you must include this language in your agreement:

"You understand that InterNACHI is not a party to this Agreement, has no control over us, and does not supervise us. You agree that any legal action against InterNACHI itself, allegedly arising out of this Agreement or our membership in InterNACHI, must be brought only in the District Court of Boulder County, Colorado. Before bringing any such action, you must provide InterNACHI with 30 days' written notice of the nature of the claim with sufficient supporting documentation that InterNACHI can intelligently evaluate it. In any action against InterNACHI, you waive trial by jury. In any

such action, the court must award the prevailing party attorney's fees and costs."

If you fail to include this language in your agreement, you must defend and indemnify InterNACHI in connection with any claim made against InterNACHI or lawsuit filed against InterNACHI arising out of any inspection you performed.

5. **Use of Intellectual Property / Benefits.** InterNACHI allows its paying members to use some of its logos and other intellectual property as a benefit of membership on such terms as InterNACHI deems appropriate. Those rights terminate when membership terminates. All benefits of membership terminate when membership terminates. InterNACHI may change the terms on which it allows use of its intellectual property and its benefits at any time.
6. **No Guarantees or Warranties.** InterNACHI membership offers many benefits, including marketing your business and helping potential clients find you. However, InterNACHI makes no representations that joining InterNACHI will increase your revenue or generate more clients.
7. **Disputes.** InterNACHI strives to improve each day. If you have a complaint or concern arising out of your InterNACHI membership, you will promptly email it to us at fast-reply@internachi.org. Similarly, if you have feedback or suggestions on how InterNACHI can improve, please email those to us at fast-reply@internachi.org.
8. **Mediation.** If you notify InterNACHI of a complaint and we are unable to resolve it, you agree to participate in non-binding mediation with us before filing any action. The mediation will take place in Boulder, Colorado, and each side will pay 1/2 the mediator's fees. The mediator will be Steve Clymer of Accord Dispute Resolution in Boulder. If he cannot serve, the mediator will be Steve Meyrich of Boulder. If he cannot serve, InterNACHI's General Counsel will appoint the mediator.
9. **Venue / Waiver of Jury / Attorney's Fees.** The exclusive venue for any dispute arising out of your InterNACHI membership shall be in Boulder, Colorado, unless federal jurisdiction is mandatory, in which case the exclusive venue will be the U.S. District Court in Denver. In any such action, both parties waive trial by jury. In any such action, the court must award the prevailing party their actual attorney's fees and costs.
10. **Severability.** If a court invalidates any provision of this Agreement, the remaining provisions shall remain in effect
11. **Not Assignable.** You may not assign your membership in InterNACHI.
12. **Waiver.** Failure to invoke any right in this Agreement by either party shall not be a waiver of that right.
13. **Governing Law.** Colorado law governs this Agreement.

14. **Reading / Review of Counsel.** You have carefully read this Agreement. You had the opportunity to have qualified counsel review this Agreement before agreeing to it.
15. **Voluntary Agreement.** You enter into this Agreement voluntarily, free of any duress.
16. **Entire Agreement.** This Agreement contains all representations by InterNACHI to you and expresses the entire understanding between the parties with respect to the transaction at issue. All prior communications are merged into this Agreement, and there are no terms or conditions other than those set forth herein.
17. **Modification.** No alleged promise or representation of InterNACHI shall be binding unless reduced to writing and signed by an authorized officer of InterNACHI.