

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**NANCY EDER, on behalf of herself  
and all similarly-situated individuals,**

**Plaintiff,**

**v.**

**Case No.: 8:16-CV-836-T-36MAP**

**US FLOORS, INC.,**

**Defendant.**

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**SECOND AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY  
TRIAL (INJUNCTIVE RELIEF SOUGHT)**

Plaintiff, NANCY EDER, by and through her attorneys, and on behalf of herself, the Putative Classes set forth below, and in the public interest, hereby files her Second Amended Complaint against US FLOORS, INC. (“Defendant”). In support of her claims, and the claims of the putative class, Plaintiff states as follows:

**SUPPORTING FACTS AND ALLEGATIONS**

1. This is a putative class action brought by Plaintiff on behalf of herself and on behalf of a class of similarly situated persons or entities, as more fully defined below, against the Defendant, U.S. Floors, Inc., for damages, as well as injunctive and equitable relief, arising from and relating to the purchase and installation of Defendant’s wood flooring material manufactured, sourced and/or imported from China (“Chinese Flooring”).

**The Parties**

2. According to its website, Defendant “is the leading importer/producer of sustainable, eco-friendly floors including cork, bamboo, FSC®-Certified hardwood, and other

Unique and Sustainable Floors....In fact, US Floors is the only supplier of cork and bamboo flooring with manufacturing facilities operating in the United States.”<sup>1</sup> However, despite its website information to the contrary, Defendant also routinely imports, falsely advertises, and then sells poisonous imported flooring from China to unwitting consumers, like Plaintiff and the Class Members here.

3. This action arises out of Defendant’s scheme to import into the United States, and to falsely warrant, advertise and sell Chinese Flooring that fails to comply with relevant and applicable formaldehyde standards and breaches express and implied warranties.

4. Defendant manufactured, imported into the United States, and falsely warranted, advertised and sold Chinese Flooring which emits and off-gasses excessive levels of formaldehyde, which is categorized as a known human carcinogen by both the United States National Toxicology Program and the International Agency for Research on Cancer.

5. In particular, in contravention of its direct representations that its product complies with strict formaldehyde standards on product labels, website<sup>2</sup> and elsewhere, the toxic formaldehyde emissions from the Company’s Chinese Flooring are in fact multiple times the maximum permissible limits set by those standards at the time of purchase.

6. Defendant’s illegal behavior with respect to its manufacturing, marketing, and sale of Chinese Flooring has caused Plaintiff and the other Class Members to suffer direct financial harm. Plaintiff’s purchases, by failing to comply with the plain warranties of the Chinese Flooring, are markedly less valuable because of elevated levels of formaldehyde. In fact, Plaintiff never would have purchased the Chinese Flooring *but for* Defendant’s deceptive and false advertising.

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<sup>1</sup> <http://www.usfloorsllc.com/about-usf/>

<sup>2</sup> <http://www.usfloorsllc.com/about-usf/>

7. Defendant's misconduct has also caused serious damage to other property in the homes of Plaintiff and other Class Members.

8. Plaintiff purchased U.S. Floors flooring from "At Home Floors," a carpet and flooring store located in St. Petersburg, Florida, in late 2011.

9. For several years thereafter, Plaintiff and her family members were unknowingly experiencing symptoms consistent with formaldehyde exposure, including, without limitation, extreme thirst, irritated eyes, nose and throat, as well as headaches, fatigue, and dizziness.

10. Plaintiff was unaware of the cause of her symptoms until she saw an episode of "60 Minutes" on television in March of 2015 discussing the fact that another national flooring company, Lumber Liquidators, had been caught selling Chinese-made laminate flooring containing amounts of toxic formaldehyde that violated health and safety standards, and making people sick.

11. Plaintiff then elected to have her floors tested.

12. The laboratory test results confirmed that Plaintiff's flooring is not CARB 2 compliant, and showed levels of 540 parts per billion (PPB) per cubic meter by volume report in the chamber test. These levels are five times higher than what they should have been and, as a result, establish that Plaintiff's flooring contains elevated emissions rates of formaldehyde that are not safe for her or her family.

### **JURISDICTION and VENUE**

13. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act and 28 U.S.C. § 1332(d)(2) in that (i) there is complete diversity; exclusive of interests and costs, and (iii) there are more than one hundred (40) members of the

proposed Class.

14. This Court has jurisdiction over Defendant because it transacts business in the Middle District of Florida, advertises and markets products in the Middle District of Florida, disseminated the representations and deceptions throughout in the Middle District of Florida, and derives a substantial income from the sale of products in the Middle District of Florida, giving rise to personal jurisdiction over Defendant.

15. Venue is proper in this District under 28 U.S.C. § 1391 (a)-(d) because, among other things, Plaintiff resides in this District and substantial parts of the events or omissions giving rise to Plaintiff's claims occurred in this District and/or a substantial part of property that is the subject of the action is situated in this District.

### **FACTUAL ALLEGATIONS**

16. Defendant is one of the largest specialty retailers of hardwood flooring in the United States. Ironically, Defendant prides itself on selling "Green" and environmentally-safe flooring products when, in fact, its products are actually poisonous to its customers.

17. Defendant has a mill in and buys many of its source wood flooring material from China.

18. Contrary to its representations to Plaintiff and the other Class Members, Defendant has knowingly and intentionally sourced, manufactured, sold, and distributed falsely advertised Chinese Flooring that emits excessively high levels of formaldehyde.

19. Defendant manufactured, marketed, labeled and sold, during the Class Period, toxic Chinese Flooring containing Formaldehyde (CH<sub>2</sub>O).

20. Formaldehyde is a naturally occurring chemical that can be synthesized and used in certain industrial processes. Formaldehyde is classified as a volatile organic compound

(“VOC”), which is a chemical that becomes a gas at room temperature. It is listed as a known human carcinogen by the National Toxicology Program and the International Agency for Research on Cancer and is associated with myriad other adverse medical conditions even in short term exposure, including asthma and rheumatoid arthritis.

21. According to the U.S. Occupational Safety & Health Administration (“OSHA”), “[t]he concentration of formaldehyde that is immediately dangerous to life and health is 100 ppm. Concentrations above 50 ppm can cause severe pulmonary reactions within minutes. These include pulmonary edema, pneumonia, and bronchial irritation which can result in death. Concentrations above 5 ppm readily cause lower airway irritation characterized by cough, chest tightness and wheezing.”<sup>3</sup> Long term exposure has been linked to an increased risk of cancer of the nose and accessory sinuses, nasopharyngeal and oropharyngeal cancer, and lung cancer in humans. The risk of these health problems is significantly greater for children, including Plaintiff’s three-year old daughter.

22. The United States statute that governs permissible formaldehyde emissions, the Formaldehyde Standards for Composite Wood Products Act of 2010, 15 U.S.C. § 2697 (the “Formaldehyde Standards Act”), was signed into law on July 7, 2010. The Formaldehyde Standards Act adopted the standards established by CARB as a nationwide standard.

23. Defendant’s Chinese Flooring is not what it purports to be. The Chinese Flooring contains a dangerous level of formaldehyde gas which exceeds the CARB regulations and the standards promulgated in the Toxic Substance Control Act, 15 U.S.C. § 2601 *et seq.*, and the Formaldehyde Standards Act, 15 U.S.C. § 2697. Thus, it is hazardous to human

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<sup>3</sup> Occupational Safety & Health Administration, Standard 1910.1048 App. C (Medical surveillance – Formaldehyde), [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=standards&p\\_id=10078](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10078)

health.

24. The Chinese Flooring Defendant sold to Plaintiff and other customers poses great health risks.

25. Because the Chinese Flooring emits excessive formaldehyde levels, the Chinese Flooring violates federal, state, and local law, as well as industry standards, CARB standards, and Defendant's express representations and warranties.

26. The defects and deficiencies in the Chinese Flooring are due to fundamental design, engineering and manufacturing errors well within Defendant's business.

27. As such, Defendant negligently manufactured, marketed, labeled and sold the Chinese Flooring.

28. Moreover, when selling the Chinese Flooring, Defendant concealed its knowledge of defects in the Chinese Flooring.

29. Further, Defendant's marketing materials for the Chinese Flooring contain false and misleading information relating to compliance and was designed to increase sales of the product.

30. Despite knowing of the defects in the Chinese Flooring, Defendant has not notified all purchasers, homeowners, builders or contractors with the Chinese Flooring of the defect, nor provided uniform relief. To the contrary, as of the date of this filing, Defendant's website continues to maintain that its flooring is safe and meets all-required standards.

31. Plaintiff and the putative Class Members have not received the value for which they bargained when the Chinese Flooring was purchased. There is a substantial difference in value between the Chinese Flooring as warranted and the Chinese Flooring containing toxic levels of formaldehyde.

32. Plaintiff and the putative Class have been damaged by Defendant's dangerous Chinese Flooring and deceptive acts. Plaintiff and the Class are entitled to a return of the full purchase price paid for the Chinese Flooring and other damages to be proven at trial.

### **CLASS ACTION ALLEGATIONS**

33. Plaintiff brings this putative class action pursuant to Fed. R. Civ. P. 23.

34. The requirements of Fed. R. Civ. P. 23(a), (b)(2), (b)(3) and (c)(4) are met with respect to the class defined below:

**NATIONAL CLASS:** All persons and entities who purchased and installed wood flooring from Defendant either directly or through an agent, that was sourced, manufactured or processed in China during the applicable statute of limitations.

**FLORIDA FDUPTA SUB-CLASS:** All members of the Class who were residents of Florida at the time of their purchases during the applicable statute of limitations.

35. Numerosity: The Class is composed of thousands of persons geographically dispersed, the joinder of whom in one action is impractical. Moreover, upon information and belief, the Class Members are ascertainable and identifiable from Defendant's records or documents.

36. Commonality: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class.

37. These common legal and factual issues include without limitation, the following:

- a. Whether Defendant's Chinese Flooring products emit excessive levels of formaldehyde;
- b. Whether Defendant represented and warranted that its Chinese Flooring products complied with its label descriptions;

- c. Whether Defendant knew or should have known that its Chinese Flooring did not conform to its label description;
- d. Whether Defendant omitted and concealed material facts from communications and disclosures to Plaintiff and other Class Members regarding the illegal sourcing of its Chinese Flooring products;
- e. Whether Defendant breached its express or implied warranties to Plaintiff and other Class Members with respect to its Chinese Flooring products;
- f. Whether, as a result of Defendant's conduct, Plaintiff and the other Class Members have suffered damages; and, if so, the appropriate measure of damages to which they are entitled;
- g. Whether, as a result of Defendant's conduct, Defendant was unjustly enriched; and
- h. Whether, as a result of Defendant's misconduct, Plaintiff and the other Class Members are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

38. Typicality: Plaintiff's claims are typical of the claims of the other Class Members. Plaintiff and each of the other Class members have been injured by the same wrongful practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct that give rise to the other Class members' claims and are based on the same legal theories.

39. Adequate Representation: Plaintiff will fully and adequately assert and protect the interests of the other Class Members and have no interests antagonistic to those of the Class. In addition, Plaintiff has retained class counsel who are experienced and qualified in prosecuting class action cases. Neither Plaintiff nor her attorneys have any interests contrary to or conflicting with the interests of other Class Members.

40. Predominance and Superiority: This matter is appropriate for class certification because questions of law and fact common to the members of the Class predominate over

questions affecting only individual members, and Class action practice is superior to other available methods for the fair and efficient adjudication of this controversy, since, among other reasons, individual joinder of all members of the Class is impracticable.

**COUNT I**  
**(Negligence/Gross Negligence)**

41. Defendant owed a duty to Plaintiff and all Class Members to manufacture and sell flooring that was free of excessive formaldehyde levels that would cause damage to Plaintiff's person and property.

42. Defendant had a duty to Plaintiff and all Class Members to test the Chinese Flooring to ensure safe levels of formaldehyde.

43. Defendant had a duty to Plaintiff and to all Class Members to ensure that the Chinese Flooring complied with all industry standards and all applicable building codes throughout Florida.

44. Defendant designed, manufactured, imported, marketed, labeled, advertised and sold the Chinese Flooring.

45. Defendant failed to exercise ordinary and reasonable care in the design, manufacture, import, marketing, labeling, advertising and sale of the Chinese Flooring.

46. Defendant failed to exercise ordinary and reasonable care to ensure that the Chinese Flooring did not contain a latent defect that would result in dangerous and potentially life threatening levels of formaldehyde emissions.

47. Defendant breached its duties to Plaintiff and other Class Members by, but not limited to, the following particulars:

- a. In failing to ensure safe levels of formaldehyde emissions;
- b. In failing to test the Chinese Flooring or in failing to verify third-

party test results;

- c. In failing to ensure the Chinese Flooring complied with industry standards and the applicable building codes;
- d. In failing to forewarn Plaintiff and other purchasers, installers and users regarding the known risk of formaldehyde emissions in the Chinese Flooring; and
- e. In concealing information concerning the dangerous levels of formaldehyde emissions in the Chinese Flooring from Plaintiff and Class Members while knowing that the Chinese Flooring was defective, unsafe, and not in conformance with accepted industry standards.

48. Plaintiff and the Class Members have been damaged because the Chinese Flooring does not perform its ordinary purpose and emits high levels of formaldehyde gas.

49. As a direct, foreseeable and proximate cause of Defendant's negligence, gross negligence, willful and wanton conduct, Plaintiff and Class Members have been damaged and are entitled to an award of all actual, consequential, direct, indirect, special and punitive damages against Defendant.

## **COUNT II** **(Breach of Express Warranty)**

50. Defendant warranted that their flooring was free of defects when they sold its Chinese Flooring products to Plaintiff and Class Members. Defendant further represented that their flooring products complied with CARB and EU formaldehyde standards and all applicable laws and regulations. Plaintiff and the Class Members reasonably relied upon these express warranties.

51. Defendant's warranties became part of the basis of the bargain.

52. Defendant breached the warranties by, but not limited to, the following particulars:

- a. Manufacturing, selling and/or distributing flooring that exceeds the CARB and EU formaldehyde standards;
- b. Manufacturing, importing, selling and/or distributing flooring that fails to comply with all applicable laws and regulations; and
- c. Refusing to honor the express warranty by refusing to properly repair or replace the defective flooring.

53. Defendant was on notice regarding the excessively high levels of formaldehyde in its flooring from Plaintiff as well as complaints and requests for refunds received from Class Members and media reports with respect to similar issues another company had, called “Lumber Liquidators” a case in which, basically, the defendant was accused of the same thing the Defendant is accused of in this lawsuit.

54. As a direct and proximate result of Defendant’s misconduct, Plaintiff and Class Members have suffered damages and continue to suffer damages, including economic damages at the point of sale. Additionally, Plaintiff and Class Members have either incurred or will incur economic damages at the point of repair in the form of the cost of repair and/or the cost of purchasing non-defective flooring to replace the Defendant’ flooring and the cost of repair of other components of their homes damaged by the removal of the defective Chinese Flooring.

55. Plaintiff and Class Members are entitled to legal and equitable relief against Defendant, including damages, consequential damages, specific performance, rescission, attorneys’ fees, costs of suit, and other relief as appropriate.

56. Any limitations in the published warranty should be deemed void as unconscionable, in violation of law, in violation of public policy and/or should be reformed.

**COUNT III**  
**(Breach of Implied Warranties)**

57. At all times relevant hereto, by operation of law, Defendant owed a duty to

Plaintiff and Class Members that their products be adequately contained, packaged, and labeled and conform to the promises or affirmations of fact made on the container or label.

58. At all times relevant hereto, by operation of law, Defendant owed a duty to Plaintiff and Class Members that their products be reasonably fit for the purposes for which such products are used and that the product be acceptable in the trade for the product description.

59. Defendant breached these duties owed to Plaintiff and the Class by selling flooring that was not merchantable and could not pass without objection in the trade at the time of sale.

60. Defendant was notified that its product was not merchantable within a reasonable time after the defect manifested itself to Plaintiff and Class Members, including via a pre-suit demand letter from Plaintiff's counsel.

61. As a result of the non-merchantability of Defendant's Chinese Flooring, Plaintiff and Class Members sustained a loss or damages, entitling Plaintiff and Class Members to injunctive relief, compensatory damages, equitable and declaratory relief, costs, reasonable attorneys' fees and rescission.

62. Any attempts by Defendant to disclaim or limit these implied warranties should be deemed void as unconscionable, in violation of law, in violation of public policy and/or should be reformed.

**COUNT IV**  
**(Strict Liability)**

63. At all times relevant herein, Defendant was in the business of designing, engineering, manufacturing, marketing, labeling, distributing and/or selling products and owed a statutory duty of care to Plaintiff and Class Members.

64. In designing, engineering, manufacturing, marketing, labeling, distributing and/or selling the Chinese Flooring, Defendant placed the Chinese Flooring into the stream of commerce.

65. Defendant defectively designed, engineered, manufactured, marketed, labeled, distributed and/or sold a product that is unreasonably dangerous to persons and property in that their product emits unsafe and toxic levels of formaldehyde gas.

66. The Chinese Flooring posed a substantial likelihood of harm to Plaintiff and Class Members at the time it was sold. Plaintiff and Class Members could not have discovered the defects nor perceived the Chinese Flooring's defective and dangerous condition through the exercise of reasonable care.

67. Were the defects known at the time of engineering, design and manufacture, a reasonable person would conclude that the utility of the product did not outweigh the risk inherent in marketing and selling a product designed and manufactured in that manner.

68. Feasible alternatives existed to make the Chinese Flooring safer for intended use at the time of engineering, design and manufacture. Defendant was aware or should have been aware that feasible alternatives existed which would maintain the utility of the product and eliminate the harm.

69. The Chinese Flooring reached Plaintiff and Class Members, and were intended and expected to reach Plaintiff and Class Members, without substantial change in the condition in which it was sold.

70. Defendant, engineered, designed, manufactured, marketed, labeled, sold and otherwise placed into the stream of commerce the Chinese Flooring, which was defective and dangerous to Plaintiff and Class Members and their property.

71. As a direct, foreseeable and proximate result of the sale of defective Chinese Flooring, Plaintiff and Class Members have suffered damages including but not limited to physical damage to their properties, other contamination and deterioration as well as diminution in value of their properties, entitling Plaintiff and Class Members to damages in an amount to be shown at trial.

**COUNT V**  
**(Fraudulent Misrepresentation)**

72. Defendant was in a position of superiority over Plaintiff and Class Members with respect to knowledge of the unacceptably high formaldehyde levels in the Chinese Flooring, which it failed to disclose to Plaintiff and other Class Members.

73. Defendant affirmatively and falsely misled Plaintiff and Class Members by representing that their Chinese Flooring met the highest standards for formaldehyde compliance, and was free from defects and fit for its customary and normal use as flooring installed inside a dwelling.

74. At all relevant times, Defendant continuously and consistently failed to correct their misrepresentations concerning the formaldehyde levels in their Chinese Flooring when they knew those representations to be false and Defendant willfully, wantonly and recklessly disregarded whether the representations were true. Defendant's failure persisted despite countless opportunities to correct its misrepresentations through its employees, sales literature, advertising, and its website.

75. Upon information and belief, these representations were made by Defendant with the intent of defrauding and deceiving Plaintiff, the Class Members and the consuming public, all of which evinced reckless, willful indifference to the safety and welfare of Plaintiff and the Class Members.

76. In at least one instance Defendant was informed of third-party testing that identified excessive levels of formaldehyde in a particular product and, instead of offering to correct or resolve the issue, simply ignored the information and carried on as if things were “business as usual.”

77. Defendant failed to disclose material facts and correct material misrepresentations and, as a proximate result, Plaintiff and the Class have been damaged because they purchased defective Chinese Flooring that cause damage to other property and they have suffered and continue to suffer other financial damage and injury.

**COUNT VI**  
**(Unjust Enrichment)**

78. Plaintiff and Class Members conferred a benefit on Defendant when they purchased the Chinese Flooring.

79. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff and Class Members’ purchases of the Chinese Flooring, the retention of which under these circumstances is unjust and inequitable because of the defective Chinese Flooring that has caused Plaintiff and Class Members’ damages.

80. Plaintiff and Class Members have suffered a monetary loss as a result of Defendant’s unjust enrichment because: (a) they would not have purchased the Chinese Flooring on the same terms if the true facts concerning the unsafe condition had been known; (b) they paid a price premium due to the fact that the Chinese Flooring would be free from defects and met stringent CARB and other standards; (c) Defendant charged a higher price than the true value of the Chinese Flooring; and (d) the Chinese Flooring did not perform as promised.

81. Because Defendant's retention of the non-gratuitous benefit conferred on them by Plaintiff and Class Members is unjust and inequitable, Defendant must pay restitution to Plaintiff and Class Members for its unjust enrichment.

82. Plaintiff and Class Members did not confer these benefits gratuitously and it would be inequitable and unjust for Defendant to retain the wrongfully obtained profits. Plaintiff and Class Members are entitled to restitution of, disgorgement of, and/or the imposition of a construction trust upon all profits, benefits and other compensation obtained by Defendant from its deceptive, misleading and unlawful conduct.

**COUNT VII**  
**(FDUPTA as to Florida Sub-Class Only)**

83. This is an action for declaratory and injunctive relief pursuant to FDUTPA.

84. Plaintiff is a "person" within the meaning of FDUTPA, including Fla. Stat. § 511.211(2).

85. Defendant is engaged in "trade or commerce" within the meaning of FDUTPA.

86. In violation of FDUTPA, Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of its trade and commerce, including false advertising of its Chinese Flooring.

87. As a result of the foregoing, Plaintiff and the putative class members suffered damages.

**COUNT VIII**  
**(Violation of F.S § 817.41 as to Florida Sub-Class Only)**

88. Defendant is engaged in the business of advertising, soliciting, providing, offering, distributing and selling flooring, including the flooring sold to Plaintiff.

89. Defendant advertised, branded and labeled its flooring as "quality" flooring that

“meets or exceeds rigorous emissions standards such as California CARB” and that is California CARB Phase 2 compliant.

90. In response and reliance upon Defendant’s assertions and statements regarding the flooring, Plaintiff purchased and installed the flooring in her home.

91. Defendant falsely advertised the qualities of the flooring to Plaintiff because the flooring did not meet or exceed rigorous standard and the flooring was not compliant with California CARB Phase 2 as the flooring contained unsafe and toxic levels of formaldehyde.

92. Defendant knew or should have known that its statements and advertisements were false but intentionally and purposefully withheld this information from consumers, including Plaintiff.

93. Defendant falsely advertised and solicited its products for the purpose of selling them to consumers, including Plaintiff, in order to increase profits.

94. As a result of Defendant’s misrepresentations, Plaintiff has suffered and continues to suffer damages.

95. Plaintiff has hired the services of the undersigned law firm to protect her legal rights and has agreed to pay its reasonable attorneys’ fees.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests that this Honorable Court inquire into the matters set forth herein and award judgment for Plaintiff and the Class and against Defendant, as follows:

- a. For an order certifying this case as a Class action pursuant to Fed. R. Civ. P. 23, appointing Plaintiff as representatives of the Class, and appointing the undersigned Plaintiff’s counsel as Class Counsel;
- b. For compensatory damages sustained by Plaintiff and the Class;

- c. For all actual damages, direct damages, consequential damages, specific performance, restitution, rescission sustained by Plaintiff and the Class;
- d. For declaratory relief as requested herein;
- e. For injunctive relief enjoining Defendant from further deceptive sales practices with respect to the Company's flooring;
- f. For all costs associated with prosecuting this action;
- g. For both pre-judgment and post-judgment interest;
- h. For punitive damages;
- i. For reasonable attorneys' fees and expert fees; and
- j. For all such other relief as this Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiff, on behalf of herself and on behalf of the Class Members, hereby demands a trial by jury as to all issues so triable.

Dated this 20<sup>th</sup> day of January, 2017.

Respectfully Submitted,



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**Felipe B. Fulgencio, Esq.**  
Florida Bar No. 95961  
**FULGENCIO LAW, P.L.L.C.**  
105 S. Edison Avenue  
Tampa, FL 33603  
Phone: 813.463.0123  
Fax: 813.670.1288  
[felipe@fulgenciolaw.com](mailto:felipe@fulgenciolaw.com)  
**Attorneys for Plaintiff**