

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

**MGFB PROPERTIES, INC., FLORA-
BAMA MANAGEMENT, LLC, AND
FLORA-BAMA OLD S.A.L.T.S., INC.,**

Plaintiffs,

vs.

**VIACOM INC. F/K/A MTV
NETWORKS, 495 PRODUCTIONS
HOLDINGS LLC AND 495
PRODUCTIONS SERVICES LLC,**

Defendants.

CASE NO.:

COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT

1. **COME NOW** Plaintiffs, MGFB Properties, Inc. (hereinafter “MGFB Properties”), Flora-Bama Management, LLC (“Flora-Bama Management”), and Flora-Bama Old S.A.L.T.S., Inc. (“Flora-Bama Old S.A.L.T.S.”) (MGFB Properties, Flora-Bama Management and Flora-Bama Old S.A.L.T.S. are collectively referred to herein as “Flora-Bama” or “Plaintiffs”), by and through undersigned counsel, and hereby bring this action for damages and injunctive relief against Defendants, Viacom Inc. f/k/a MTV Networks, (“Viacom”), 495

Productions Holdings LLC (“495 Holdings”) and 495 Productions Services LLC (“495 Services”), and allege as follows:

CASE SUMMARY

2. Beginning in 1964, Flora-Bama and its predecessors-in-interest have exclusively used the trademark “FLORA-BAMA” in connection with its wide array of goods and services, including but not limited to, entertainment (e.g., televised/filmed entertainment events and live musical performances/events), marketing, media content and creation, food, beverages, merchandising, and promotion of these goods and services. Over the next 55 years, as a direct result of Flora-Bama’s activities and associated use of its trademark, the “FLORA-BAMA” trademark has acquired substantial goodwill, fame, a respected reputation and strong secondary meaning associated with Flora-Bama and its entertainment services across the country and throughout the world.

3. Flora-Bama’s iconic entertainment venue on the beaches of the Florida-Alabama state line and its famous trademark have been the source of inspiration for various performers and popular songs, featured prominently in numerous “Best of” articles, received countless awards and accolades and been the subject of substantial, positive and unsolicited media attention.

4. At least as early as 2011, Defendants became aware of the positive reputation and strong goodwill associated with Flora-Bama and the “FLORA-BAMA” trademark.

5. While Flora-Bama permitted certain representatives of Defendants to conduct a few casting calls at its venue, when Defendants sought permission to film a reality television show at Flora-Bama’s entertainment venue and related properties, Flora-Bama refused to grant permission. At no point did Flora-Bama agree to Defendants’ use of the “FLORA-BAMA” trademark, any confusingly similar mark or its venue, as the setting for or name of any reality television show.

6. Despite Defendants’ direct knowledge of Flora-Bama’s refusal to permit any reality television series produced by Defendants to be filmed at its venue, they nonetheless created and produced a reality television show entitled “Floribama Shore” that first aired in late November 2017. This television series directly and intentionally exploits the goodwill garnered by Flora-Bama and its trademark, dilutes the strength and fame of the “FLORA-BAMA” trademark in Florida and elsewhere, and unfairly and deceptively competes with Flora-Bama’s registered trademark, all for the benefit and profit of Defendants. It is readily apparent that Defendants simply took the “FLORA-BAMA” trademark and replaced the “A-” with an “i”.

7. Plaintiffs sent a cease and desist letter to Defendants in October 2017 immediately upon learning about this show and prior to the airing of the show. Through that cease and desist letter, Plaintiffs put Defendants on notice of the likelihood of confusion that would be caused by use of the confusingly similar “Floribama” trademark. Plaintiffs also notified Defendants of the extensive and irreparable harm that would occur due to the Defendants’ deliberate and willful acts.

8. These deliberate and willful acts by Defendants have caused not only a likelihood of confusion but substantial actual confusion between Flora-Bama and its “FLORA-BAMA” trademark and Defendants’ and their mark and reality show, “Floribama Shore.” Defendants and their affiliates have gone so far as to brazenly use the “FLORA-BAMA” trademark as such in their promotion and advertising of their show in an apparent effort to reap the benefit of the notoriety and goodwill of Flora-Bama’s trademark and entertainment venue. Flora-Bama has suffered substantial damages and irreparable harm and will continue to suffer damages and irreparable harm if Defendants are allowed to continue their infringing and illegal activities.

PARTIES

9. MGFB Properties is a Florida corporation having its principal place of business at 17401 Perdido Key Drive, Pensacola, Florida 32507.

10. Flora-Bama Management is a Florida corporation having its principal place of business at 17401 Perdido Key Drive, Pensacola, Florida 32507.

11. Flora-Bama Old S.A.L.T.S. is an Alabama corporation having its principal place of business at 29603 Perdido Beach Boulevard, Orange Beach, Alabama, 36561.

12. Viacom is a New York corporation having its principal place of business at 1515 Broadway, New York City, New York, 10003.

13. 495 Holdings is a Delaware limited liability company having its principal place of business at 2900 West Alameda Ave., Suite 800, Burbank, California, 91505.

14. 495 Services is a Delaware limited liability company having its principal place of business at 2900 West Alameda Ave., Suite 800, Burbank, California, 91505.

15. On information and belief, 495 Services and 495 Holdings are affiliated entities which have worked in conjunction with each other in connection with Defendants' unlawful and tortious activities alleged herein. (495 Services and 495 Holdings are jointly referred to herein as "495 Productions.")

JURISDICTION AND VENUE

16. The Court has jurisdiction under 15 U.S.C. § 1121(a), Section 39 of the Lanham Act, as well as 28 U.S.C. §§ 1331 and 1338.

17. The Court also has jurisdiction pursuant to 28 U.S.C. § 1332 because there is diversity between the parties and the matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.

18. The Court has supplemental jurisdiction over the claims herein which arise under state statutory and common law under 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendants regularly conduct business in this District and because a substantial part of the events or omissions giving rise to the claim occurred in this District.

THE FLORA-BAMA TRADEMARKS

20. Since its inception in 1964, Flora-Bama and its predecessors-in-interest have used the trademark "FLORA-BAMA" in commerce as a trademark in connection with its entertainment services (e.g., televised/filmed entertainment events and live musical performances/events), food, drink, and in more recent years for video productions and audio recording (audio and video music recorded live at Flora-Bama's venue), online and digital media content, print advertising, marketing, advertising, various merchandise (e.g., t-shirts, hats, clothing, jewelry, bumper stickers, photo frames, glassware/bottles, towels,), promotion of

recreation and tourism in Florida and Alabama Gulf Coast region and promotion and marketing of the “FLORA-BAMA”-branded goods and services nationwide and throughout the world.

21. Specifically, MGFB Properties is the owner of the U.S. Trademark Registration No. 4,272,440, duly issued by the United States Patent and Trademark Office on January 08, 2013, for the trademark “FLORA-BAMA” for use in connection with the aforementioned goods and services, including others specified in the registration. This registration for the “FLORA-BAMA” mark covers goods and services in International Classes 09, 14, 16, 20, 21, 24, 25, 30, 31, 32, 34, 35, 39, 41 and 43. A true and correct copy of trademark registration No. 4,272,440 is attached hereto as Exhibit A.

22. MGFB Properties has complied with the requirements of 15 U.S.C. § 1065 and submitted the appropriate affidavits with the United States Patent and Trademark Office for Registration No. 4,272,440 to have become lawfully deemed incontestable.

23. MGFB Properties is also the owner of U.S. Trademark Registration No. 4,773,403 duly issued by the United States Patent and Trademark Office on July 14, 2015, for the trademark “FLORA-BAMA” in International Classes 28, 33 and 36 for fishing accessories, liquor and real estate investment services and

management. A true and correct copy of trademark registration No. 4,773,403 is attached hereto as Exhibit B.

24. Both of the foregoing “FLORA-BAMA” trademark registrations are valid, presently subsisting and in full force and effect.

25. MGFB Properties is also the owner of U.S. Trademark Registration No. 4,594,237, duly issued by the United States Patent and Trademark Office on August 26, 2014, for the trademark “FLORA-BAMA YACHT CLUB and design” for use in connection with beverage glassware and clothing in International Classes 21 and 25. The registration is valid, presently subsisting and in full force and effect. A true and correct copy of trademark registration No. 4,594,237 is attached hereto as Exhibit C. (The three foregoing “FLORA-BAMA” trademark registrations are referred to herein as the “‘FLORA-BAMA’ Mark.”)

26. MGFB Properties is also the owner of Florida Trademark Registration No. T19000000739, duly issued by the Department of State for the State of Florida on June 17, 2019, for the trademark “FLORA-BAMA” for use in connection with bar and restaurant services, entertainment services (including producing TV/Internet/film/media content, entertainment events, athletic competitions and live musical performances), digital media, CD cases, various foods and drinks, retail and online retail stores, clothing, merchandise, advertising real estate, real estate services, promoting recreation and tourism, transport and travel services,

and jewelry in International Classes 09, 14, 16, 18, 20, 21, 22, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 39, 41, and 43. The registration is valid, presently subsisting and in full force and effect. A true and correct copy of trademark registration No. T19000000739 is attached hereto as Exhibit D.

27. MGFB Properties licenses use of the “FLORA-BAMA” Mark to Flora-Bama Management and Flora-Bama Old S.A.L.T.S. for an annual fee for use in connection with the various “FLORA-BAMA” food, drink and entertainment establishments they operate or assist in operating and the various types of “FLORA-BAMA”-branded merchandise they sell and/or provide.

THE HISTORY OF FLORA-BAMA

28. Flora-Bama Management operates, among other entertainment establishments, the Flora-Bama Lounge, Package and Oyster Bar (the “Flora-Bama Lounge”). The Flora-Bama Lounge was established in 1964, initially as a small beachfront lounge and package store between Pensacola, Florida and Orange Beach, Alabama.

29. Over the last 55 years, the Flora-Bama Lounge has grown from a local establishment into a national and international entertainment icon. In the late 1970s, the Flora-Bama Lounge became a renowned venue for daily live music, with up-and-coming artists playing the hits of tomorrow for an ever-expanding patronage. By the mid-1980s, it began hosting events like “Frank Brown

Songwriter's Festival," a festival that allows artists to display their art in front of a captive audience, and its annual fish-throwing event, the "Interstate Mullet Toss." Originally small in size, these entertainment events now attract thousands of participants from across the country and world each and every year. Annually, Flora-Bama hosts over one million visitors at its Flora-Bama Lounge and other establishments on the premises.

30. Over the years, many distinguished musicians, athletes, and other celebrities have frequented, and provided unsolicited accolades regarding, the Flora-Bama Lounge, including Kenny Chesney, Jimmy Buffett, Blake Shelton, Taylor Hicks, Ken Stabler, John Rich, Mike Leach, Ron White, Jason Aldean, and Willy Robertson.

31. Jimmy Buffett – one of the world's most popular beach bar musicians – has also played at the Flora-Bama Lounge, and confirmed that the famous establishment was the inspiration for his song "Bama Breeze." He also sang about the Flora-Bama Lounge in his song "Ragtop Day" and wrote about the establishment in his book, "Tales from Margaritaville."

32. Similarly, Blake Shelton, a country superstar in his own right, makes reference to "hangin' out at the Flora-Bama" in his 2012 song, "Good Ole Boys." Chris Young, another country music sensation, begins his 2013 song, "Lighters in the Air," singing about a "cover band on a Flora-Bama deck," referencing one of

the many different stages the Flora-Bama Lounge provides for musicians to perform.

33. Perhaps the greatest homage to the Flora-Bama Lounge is Kenny Chesney's 2014 song entitled, "Flora-Bama," and the "Flora-Bama-Jama" beachfront concert he played at the establishment on August 16, 2014.

34. Over 40,000 fans from throughout the country and around the world flocked to what the *Rolling Stone* magazine dubbed as the "legendary Flora-Bama Lounge" to watch the country music megastar perform that day. In addition, more than 300 fan-packed boats, anchored just off the beach that comprises part of the Flora-Bama Lounge entertainment space, watched the show from the water.

35. The "Flora-Bama-Jama" was Chesney's only concert of 2014. When he opened the show with his smash hit, "Flora-Bama," he was met with the tens of thousands of fans singing back every word to his ode to the famous entertainment venue.

36. As a result of its popularity, a film about the "Flora-Bama-Jama" was televised in an hour-long special on CMT ("Country Music Television") -- another Viacom owned and operated network -- entitled "Kenny Chesney: Live from the Flora-Bama," and broadcasted to millions of households nationwide. The music video for Chesney's song "Flora-Bama" is composed of video clips from the

concert on the shore right outside the Flora-Bama Lounge and has reached over 3.6 million views on YouTube.

37. The Flora-Bama Lounge has also received accolades and unsolicited media attention for its quality offerings of signature foods and beverages. Its oysters have been the toast of the Travel Channel and its “Bushwacker” cocktail was ranked #1 by the People’s Choice Awards.

38. Flora-Bama Management also operates two additional “FLORA-BAMA” branded restaurants, the *Flora-Bama Yacht Club* and the *Flora-Bama Ole River Grill*, both located on the beach in close proximity to the Flora-Bama Lounge.

39. The *Flora-Bama Yacht Club* offers original menu items and local seafood to be enjoyed with music from local and visiting musicians. The *Flora-Bama Ole River Grill* is billed as “the ultimate family fun restaurant” with “fantastic seafood, burgers, po-boys and desserts.”

40. Patrons of Flora-Bama’s food and entertainment venues also frequently participate in a wide variety of water sports and activities located on Flora-Bama’s premises. Flora-Bama Old S.A.L.T.S. operates the *Flora-Bama Marina* on the beach, just outside the establishment, which offers jet ski rentals, pontoon boat rentals, kayaks, paddleboards, dolphin cruises and deep sea fishing.

41. In addition, the Flora-Bama Lounge hosts church services starting at 9 a.m. and 11 a.m. every Sunday, which services are attended by over 1,000 people every Sunday.

42. The Internet and social media platforms have helped promote and spread the fame and notoriety of the “FLORA-BAMA” branded establishments throughout Florida, the country and the entire globe. Indeed, Flora-Bama’s primary website (www.florabama.com) receives over one million page views per year from users throughout the state, country and the world, and its popularity is on the rise.

43. For at least the past decade, Flora-Bama frequently produces video and media content shared with its fans worldwide in the form of music videos, commercials, promotional advertisements, along with a variety of other content filmed on location at Flora-Bama hosted events like the Interstate Mullet Toss, Frank Brown Songwriter’s Festival, daily concerts, holiday celebrations, community outreach programs, and charitable activities.

44. Flora-Bama also has a robust social media presence on Facebook, Twitter, and YouTube. Within the last year, its Facebook page received “Likes” from fans throughout the country and the world and has over 111,000 followers and over 120,000 “Likes.”

45. Flora-Bama engages with fans through a “Flora-Bama Family” email subscription list that keeps them up to date on upcoming “FLORA-BAMA” events and discounts.

46. Flora-Bama has in recent years and is currently engaged in a widespread advertising campaign across various forms of media to promote and market its “FLORA-BAMA”-branded establishments, venues and events. Flora-Bama advertises across various forms of media including but not limited to: internet, social media, television, radio, print, billboards, text messages and through various forms of third-party sponsorships. In addition to spending over \$250,000 annually to employ Flora-Bama’s dedicated full-time marketing team, Flora-Bama spends approximately another \$250,000 annually on direct advertising expenditures to promote its “FLORA-BAMA”-branded establishments, venues and events. Flora-Bama’s advertising campaign is not only targeted to Floridians and other nearby residents, but is nationwide in scope.

47. Flora-Bama and its branded establishments have been the recipient of substantial, unsolicited and favorable media coverage, including in *The New York Times*, the *Huffington Post*, *Rolling Stone*, *CNN* and *Yahoo!* They have also been featured on CMT in music related videos/films, in a John Grisham novel (*The Pelican Brief*), and in the 2006 documentary film “The Last Great American Roadhouse,” chronicling the Flora-Bama Lounge’s immeasurable impact on

country music over the last 55 years. The Flora-Bama Lounge was voted the “Best U.S. Beach Bar” by *Playboy* magazine, “Best Beach Bar” by *Yahoo! Travel*, “One of the World’s Best Beach Bars” by *CNN Travel*, “#1 Beach Bar” in the U.S. and “#14 in the world” by Microsoft’s *MSN* search engine, and “Top 10 Beach Bar in the World” by *Momondo* travel website. Flora-Bama’s outstanding reputation has substantially contributed to Flora-Bama’s annual revenues from their “FLORA-BAMA” branded-establishments in the tens of millions of dollars.

48. Flora-Bama has expanded the scope of its activities to include giving back to communities, both local and foreign, by providing charitable services in the wake of crippling natural disasters. In October 2017, one of its owners, John McInnis III, along with other members of Flora-Bama management, teamed up with Kenny Chesney’s Foundation to deliver badly-needed disaster relief to residents of the U.S. Virgin Islands who were devastated by Hurricane Irma.

49. More recently, Flora-Bama collected and organized the delivery of supplies throughout the Florida Panhandle to those affected by Hurricane Michael. Its charitable efforts have heightened the fame, goodwill and notoriety of the “FLORA-BAMA” Mark throughout the state, country and the world and continue to make the Flora-Bama Lounge the renowned entertainment establishment it is today.

50. By virtue of all of the foregoing activities, the “FLORA-BAMA” Mark has become a famous mark that is relied upon in the entertainment industry and the public as identifying the products and services of Flora-Bama. The “FLORA-BAMA” Mark represents a vast goodwill belonging exclusively to Flora-Bama.

51. Through more than fifty-five years of continuous, extensive, and exclusive use, the “FLORA-BAMA” Mark has become widely and favorably known within the entertainment industry and to the public worldwide as distinctive of the goods and services provided by Flora-Bama.

52. Based on the foregoing, it is clear that the “FLORA-BAMA” Mark is famous, strong and has acquired substantial secondary meaning. Indeed, the Mark is well-known not only in Florida and the surrounding region, but has achieved national recognition throughout the country long before Defendants’ first use of the phonetically-identical and confusingly equivalent “Floribama” mark.

**DEFENDANTS’ UNLAWFUL CONDUCT
AND INFRINGING USE OF THE FLORA-BAMA MARK**

53. Viacom owns and operates MTV, a television network. MTV was established in 1981 and originally aired music videos targeted at young adults. This music video programming declined in the last decade, as younger viewers shifted to online and mobile media platforms for their music entertainment needs.

54. MTV's programming now primarily consists of reality, comedy and drama television series. Upon information and belief, in or about 2016, Defendants decided to create a southern-based reality TV show, which 495 Productions wanted to set during spring break in the Florida area.

55. Defendants were familiar with Flora-Bama long before they "greenlit" their new show. Besides the casting calls conducted at the Flora-Bama Lounge by Defendants or their agents or representatives in 2011, 2013, 2014 and 2017, Viacom had direct knowledge of Flora-Bama after broadcasting the CMT special, "Kenny Chesney: Live from the Flora-Bama." Viacom initially aired "Kenny Chesney: Live from the Flora-Bama" on CMT on November 14, 2014.

56. On January 23, 2017, 495 Productions reached out by email to Flora-Bama personnel specifically "about the prospective [sic] of shooting a show at Flora-Bama." The 2017 email from 495 Productions accurately boasts that Flora-Bama is on many "Best of" lists, is a "Southern 'hotspot'" and "looks like the perfect location" to shoot a show.

57. Flora-Bama's Marketing Director, Jenifer Surface, responded to 495 Productions two days later, explaining that Flora-Bama has "had a lot of production companies approach [it] about different kinds of reality shows," but that while it was "open" to potential licensing possibilities with the right opportunity, "so far [it had] not moved forward with any of them." Ms. Surface

spoke by phone with 495 Productions' producers in early February 2017 and confirmed in a February 24, 2017 email that Flora-Bama was not interested in moving forward with the show in any respect.

58. Additionally, the foregoing 2017 emails between 495 Productions and Flora-Bama personnel clearly and indisputably establish that: Defendants had direct knowledge of the Flora-Bama Lounge in early 2017; it was a "favorite"; and that Defendants were actively pursuing obtaining rights from Flora-Bama for a reality television show.

59. Flora-Bama rejected 495 Productions' offer to participate in the filming of a reality television series because, among other reasons, Flora-Bama had been coordinating with a Nashville producer to air a television series of its own. Flora-Bama's potential for its own television series has been severely harmed by Defendants' willful and unlawful infringement of the "FLORA-BAMA" Mark

60. Despite Flora-Bama declining to license its venue, brand, and/or the "FLORA-BAMA" Mark to 495 Productions in February 2017, it was alerted months later that a show produced by 495 Productions and bearing a confusingly similar and phonetically identical name was set to air on MTV.

61. Upon learning of the unauthorized use in late October 2017, Flora-Bama caused its trademark counsel to send a letter to Viacom, dated October 30, 2017, demanding that Viacom cease and desist from using the "FLORA-BAMA"

Mark or any confusingly-similar trademark in connection with its entertainment services. Flora-Bama's counsel also informed Defendants of the extensive and irreparable harm that would occur if Defendants proceeded with their infringing behaviors.

62. On November 2, 2017, Viacom's counsel responded that it would not cease and desist from its infringing use of the "FLORA-BAMA" Mark.

63. Defendants, without Flora-Bama's consent and despite its continuing objection, adopted and began using the confusingly similar names and marks, "Floribama" and "Floribama Shore," in connection with their own entertainment services originating in Florida.

64. Upon information and belief, Defendants have never held a lawfully registered federal or state trademark for "Floribama," "Floribama Shore," or any other confusingly similar mark, but instead, by pattern and conduct, misappropriated the "FLORA-BAMA" Mark and held it out to be their own.

65. Since October 30, 2017 when the Defendants first started to market and promote their existing entertainment services using the names and marks, "Floribama" and "Floribama Shore," members of the public and Flora-Bama's customers have been confused and deceived by the marketing, promotion and broadcast of Defendants' television show.

66. On November 27, 2017, nine months after 495 Productions had reached out to Flora-Bama to film at its location, “Floribama Shore” premiered on MTV. The show followed eight young adults partying in Panama City Beach, Florida, a town over 125 miles east of the Florida-Alabama state line, where Flora-Bama’s various establishments are located. Among other activities, the cast of the show, as televised, takes part in binge drinking, public urination, and barroom brawls.

67. The series premiere of “Floribama Shore” drew 846,000 total viewers with a 0.94 rating in the core adults 18-34 year old demographic. According to MTV, this marked the “network’s highest rated new series premiere in over three years.” The second episode retained 93% of its viewership.

68. Its second season premiere, in July 2018, was the show’s highest rated episode ever, with total viewership over a million people, up 16% from the series premiere and 34% from the season one average. Season two also consists of 26 episodes, more than triple “Floribama Shore’s” eight-episode first season. Season two introduced the series’ theme song, “Sweet Home Floribama,” which lyric as sung is phonetically identical and indistinguishable from “Sweet Home Flora-Bama.”

69. On or about June 11, 2019, MTV announced that it would air a third season of its infringing show, this time set in St. Petersburg, Florida, instead of Panama City.

70. Despite Flora-Bama's clear lack of authorization and objections, Defendants knowingly and willfully used the confusingly similar and phonetically equivalent names and marks "Floribama" and "Floribama Shore" in connection with their entertainment services and television show. These infringing marks have and continue to appear in commercials for the show, on MTV's website and social media outlets, and in print and digital marketing, promotional and advertising materials across various forms of media. Defendants have knowingly and willfully used the confusingly similar and phonetically equivalent names and marks "Floribama" and "Floribama Shore" in efforts to promote other shows and services from their affiliate networks.

71. Defendants have wrongfully used the "FLORA-BAMA" Mark to drive substantial internet and social media traffic to the "Floribama Shore" webpages on their respective websites and social media outlets by, among other things, enabling various internet search engines to locate "Floribama Shore" on the internet with the unauthorized use of the metatags and keywords such as "Flora bama" and "florabama," and the hashtags "#florabamashore" and "#florabama."

72. Defendants' unlawful usage of the "FLORA-BAMA" Mark has caused, and will continue to cause, numerous consumers on a wide range of different platforms, including but not limited to television, Internet, and social media, to believe wrongly that Flora-Bama licensed, sponsored, endorsed, or is affiliated or associated with or otherwise connected to, Defendants' infringing series.

73. Upon information and belief, the foregoing extensive use of the "FLORA-BAMA" Mark and other confusingly similar and infringing names and marks by Defendants is a deliberate attempt to redirect viewers seeking information on the Flora-Bama Lounge and Flora-Bama's other branded establishment to Defendants' affiliated websites and social media outlets, thereby misappropriating and wrongfully reaping the benefits of the valuable goodwill and reputation of Flora-Bama and the "FLORA-BAMA" Mark by unfairly bolstering Defendants' product.

74. Defendants' misuse of the "FLORA-BAMA" Mark has blurred and diluted the uniqueness and distinctiveness of the "FLORA-BAMA" Mark. Flora-Bama has spent multiple decades, substantial efforts, and millions of dollars to establish, promote, advertise and protect the fame and reputation of the "FLORA-BAMA" Mark. Defendants' misuse of the "FLORA-BAMA" Mark has diminished Plaintiffs' capacity to use the "FLORA-BAMA" Mark to identify and distinguish

Flora-Bama's products and services in Florida as well as throughout the nation and globe.

75. Upon information and belief, Defendants' unauthorized use of the "FLORA-BAMA" Mark and confusingly similar variations thereof is not only likely to cause confusion, but has already caused substantial actual confusion nationwide (including in Florida) by falsely suggesting an affiliation, sponsorship, endorsement, license, association, or other connection between Flora-Bama/"FLORA-BAMA" Mark and "Floribama Shore" and their respective entertainment-related goods and services.

76. Since the initial release of Defendants' infringing series, numerous consumers have been actually confused regarding the relationship between Flora-Bama, its services, and trademark, and the infringing MTV series. The actual confusion has been demonstrated in many forms, including but not limited to, photographs on social media platforms of Defendants' cast members or television series accompanied by "FLORA-BAMA" metatags and commentary, articles that explicitly attribute the name of the show to be based on the Flora-Bama Lounge, photographs on social media platforms of the Flora-Bama Lounge being labeled with "MTV" and/or "Floribama Shore" metatags, letters intended for Defendants' cast members being sent to the Flora-Bama Lounge, and online complaints to the Flora-Bama Lounge expressing negative and critical views toward what was

mistakenly perceived as Flora-Bama's involvement with the Defendants' infringing series.

77. Even sophisticated media outlets have been actually confused as evidenced by their print and digital content about Defendants' infringing series. Numerous articles and on-line posts have been published wrongfully associating Flora-Bama and the "FLORA-BAMA" Mark with Defendants' Floribama show, including one article incredibly displaying a photo of the Flora-Bama Lounge and labeling it "*Jersey Shore: Redneck Edition!*"

78. To further exacerbate this actual and likelihood of confusion, Defendants' own employees and representatives have intentionally published dozens, if not hundreds, of misleading posts in which Defendants use the "FLORA-BAMA" Mark (or slight variations such as "florabama," "Flora-bama," etc.) in the marketing, advertising or promoting of goods and services provided by Defendants, thereby demonstrating their deliberate and willful infringement of Flora-Bama's trademark, reputation, and goodwill.

79. Such wrongful and false association and exploitation is causing and will continue to cause irreparable harm to Flora-Bama's trademark, brand, reputation and goodwill for which there is no adequate remedy at law.

80. At no time did Defendants license or otherwise obtain any rights or authorization from Flora-Bama to use the "FLORA-BAMA" Mark in any manner.

81. To the contrary, Defendants were clearly aware of Flora-Bama and the “FLORA-BAMA” Mark from the “Kenny Chesney: Live from the Flora-Bama” show broadcast on CMT in 2014, from 495 Productions’ 2013 and 2017 communications with Flora-Bama about potential reality television shows set at the Flora-Bama Lounge, from conducting certain casting calls there and from Plaintiffs’ repeated refusal to participate in the filming of any reality television series produced and broadcast by Defendants at its venue.

82. Flora-Bama has put Defendants on actual notice of Flora-Bama’s registrations of the “FLORA-BAMA” Mark and requested that Defendants cease and desist in their misuse and infringement of Flora-Bama’s trademark. Defendants have refused to comply with Flora-Bama’s request to cease their unlawful activities.

83. Defendants’ infringement and misuse of the “FLORA-BAMA” Mark have been with intentional and willful disregard of Flora-Bama’s established and federally and state protected rights in the “FLORA-BAMA” Mark.

84. Defendants’ intentional and willful actions of illegally appropriating Plaintiffs’ famous trademark, goodwill, and reputation for Defendants’ own use in commerce has caused actual confusion and irreparable harm to Plaintiffs.

85. Flora-Bama has no control over the quality of Defendants' goods or services, and, through Defendants' illegal acts, Defendants are being unjustly enriched at Flora-Bama's expense.

86. Flora-Bama has no adequate remedy at law.

COUNT I
VIOLATION OF FEDERAL TRADEMARK INFRINGEMENT
UNDER SECTION 32 OF THE LANHAM ACT

87. Plaintiff MGFB Properties re-alleges and incorporates by reference all of the allegations in paragraphs 1-86 as if full set forth herein.

88. MGFB Properties owns three federal registrations for the "FLORA-BAMA" Mark. (See Exhibits A, B & C).

89. Defendants' infringement and unauthorized use of the "FLORA-BAMA" Mark in the manner set forth above is wrongfully trading on the "FLORA-BAMA" Mark and the goodwill of Flora-Bama, and has caused and is likely to continue to cause confusion, deception, and mistake by creating a false and misleading impression that Defendants' products and services originate from MGFB Properties.

90. Defendants' use of "Floribama," and other colorable imitations of the "FLORA-BAMA" Mark are confusingly similar with the "FLORA-BAMA" Mark.

91. The actions of Defendants complained of herein have caused, and are intended to cause, confusion, mistake, and/or deception of others into erroneously

believing that Defendants' show and related materials, websites, social media outlets, products, and services are authorized, licensed, sponsored or endorsed by, or are otherwise associated, affiliated or connected with, MGFB Properties and its "FLORA-BAMA" Mark.

92. MGFB Properties has placed Defendants on written notice of their infringement and unlawful conduct, but Defendants have failed to terminate their wrongful conduct.

93. The foregoing acts of Defendants constitute willful and deliberate infringement of MGFB Properties' federally registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

94. Plaintiff MGFB Properties has a substantial likelihood of success stemming from a demonstrably clear legal right, and Defendants' acts have caused and will continue to cause irreparable injury to and damage to MGFB Properties.

WHEREFORE, Plaintiff MGFB Properties demands the following relief:

A. Awarding Plaintiff MGFB Properties damages in an amount to be proven at trial, including but not limited to the cost of corrective advertising, disgorgement of Defendants' profits, payment of licensing fees/royalties, and any other appropriate damages, together with prejudgment interest, and trebled pursuant to 15 U.S.C. § 1117.

B. An injunction ordering Defendants and all those acting in concert with them to cease and desist from all use of, and to promptly remove all display and broadcast of, the “FLORA-BAMA” Mark, or any confusingly similar trademarks, from all materials in any form or media (including as televised and as displayed on the internet and in social media outlets) owned or operated by, or authorized on behalf of, Defendants, their parents, subsidiaries, and affiliated companies, their respective officers, agents, servants, employees, dealers, licensees, and attorneys and those persons in active concert or participation with them.

C. Awarding Plaintiff MGFB Properties the costs and fees, including reasonable attorneys’ fees, incurred by them in bringing and maintaining this action.

D. Awarding Plaintiff MGFB Properties such other and further relief as the court deems just and proper given the facts and circumstances herein.

COUNT II
VIOLATION OF FEDERAL UNFAIR COMPETITION
UNDER SECTION 43(a) OF THE LANHAM ACT

95. Plaintiffs re-allege and incorporate by reference all of the allegations of paragraphs 1-94 as if fully set forth herein.

96. The “FLORA-BAMA” Mark is distinctive and has acquired substantial secondary meaning in the entertainment community.

97. Defendants' actions complained of herein using the "FLORA-BAMA" Mark and confusing imitations thereof constitute false designations of origins, false representations and false descriptions that have caused, and are likely to continue to cause, confusion and deception as to the source, affiliation, connection, or association of the "FLORA-BAMA" Mark with the Defendants and as to the origin, sponsorship, or approval of Defendants, their internet and social media presence, and products and services.

98. Plaintiffs have placed Defendants on written notice of their infringement and unlawful conduct, but Defendants have failed to terminate their wrongful conduct.

99. The foregoing acts of Defendants constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

100. By reason of all the foregoing, Plaintiffs are being damaged by Defendants' willful use of the "FLORA-BAMA" Mark in the manner set forth above and will continue to be damaged unless Defendants are enjoined from using the "FLORA-BAMA" Mark.

101. Plaintiffs have a substantial likelihood of success stemming from a demonstrably clear legal right, and Plaintiffs will be irreparably injured by the continued acts of Defendants, unless such acts are enjoined.

WHEREFORE, Plaintiffs demand the following relief:

A. Awarding Plaintiffs damages pursuant to 15 U.S.C. § 1117 in an amount to be proven at trial, including but not limited to the cost of corrective advertising, disgorgement of Defendants' profits, payment of licensing fees/royalties, and any other appropriate damages, together with prejudgment interest.

B. An injunction ordering Defendants and all those acting in concert with them to cease and desist from all use of, and to promptly remove all display and broadcast of, the "FLORA-BAMA" Mark, or any confusingly similar trademarks, from all materials in any form or media (including as televised and as displayed on the internet and in social media outlets) owned or operated by, or authorized on behalf of, Defendants, their parents, subsidiaries, and affiliated companies, their respective officers, agents, servants, employees, dealers, licensees, and attorneys and those persons in active concert or participation with them.

C. Awarding Plaintiffs the costs and fees, including reasonable attorneys' fees, incurred by them in bringing and maintaining this action.

D. Awarding Plaintiffs such other and further relief as the Court deems just and proper given the facts and circumstances herein.

COUNT III
VIOLATION OF FLORIDA'S REGISTRATION AND PROTECTION OF
TRADEMARKS ACT, FLORIDA STATUTE § 495.131

102. Plaintiff MGFB Properties re-alleges and incorporates by reference all of the allegations in paragraphs 1-101 as if full set forth herein.

103. MGFB Properties has duly registered "FLORA-BAMA" as a trademark with the State of Florida. (See Exhibit D).

104. Defendants' infringement of the Florida trademark registration for "FLORA-BAMA" in essentially the same manner as they have infringed the federally registered "FLORA-BAMA" Mark, has caused, and is likely to cause, confusion, deception, and mistake by creating a false and misleading impression that Defendants' products and services originate with MGFB Properties, or are associated or connected with, or have the sponsorship, endorsement or approval of, MGFB Properties and the "FLORA-BAMA" Florida trademark.

105. The actions of Defendants complained of herein have caused and will continue to cause confusion, mistake, and/or deception of Florida residents and others into erroneously believing that Defendants and their show, website, social media presence, products, and services are authorized by, licensed by, sponsored by, endorsed by, or otherwise associated with MGFB Properties and the "FLORA-BAMA" Mark.

106. MGFB Properties has placed Defendants on written notice of their infringement and unlawful conduct, but Defendants have failed to terminate their wrongful conduct.

107. Plaintiff MGFB Properties has a substantial likelihood of success stemming from a demonstrably clear legal right, and Defendants' acts have caused and will continue to cause irreparable injury to and damage to MGFB Properties.

108. The foregoing acts of Defendants constitute willful and deliberate infringement of MGFB Properties' Florida registered trademark in violation of Florida's Registration and Protection of Trademarks Act, Fla. Stat. § 495.131 *et seq.*

WHEREFORE, Plaintiff MGFB Properties demands the following relief:

A. Awarding Plaintiff MGFB Properties damages in an amount to be proven at trial, including but not limited to the cost of corrective advertising, disgorgement of Defendants' profits, payment of licensing fees/royalties, and any other appropriate damages, together with prejudgment interest, and trebled pursuant to Florida Statute § 495.141.

B. An injunction ordering Defendants and all those acting in concert with them to cease and desist from all use of, and to promptly remove all display and broadcast of, the "FLORA-BAMA" Mark, or any confusingly similar trademarks, from all materials in any form or media (including as televised and as displayed on the internet and in social media outlets) owned or operated by, or authorized on behalf of, Defendants, their parents, subsidiaries, and affiliated companies, their

respective officers, agents, servants, employees, dealers, licensees, and attorneys and those persons in active concert or participation with them.

C. Awarding Plaintiff MGFB Properties the costs and fees, including reasonable attorneys' fees, incurred by bringing and maintaining this action.

D. Awarding Plaintiff MGFB Properties such other and further relief as the Court deems just and proper given the facts and circumstances herein.

COUNT IV
VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE
PRACTICES, FLORIDA STATUTE § 501.204

109. Plaintiffs re-allege and incorporate by reference all of the allegations of the paragraphs 1-108 as if fully set forth herein.

110. The actions of Defendants complained of herein constitute a misuse and misappropriation of Plaintiffs' rights by the unlawful use by Defendants of the "FLORA-BAMA" Mark (as federally registered and registered in Florida) and trade name and goodwill associated therewith.

111. Defendants' actions were willful and wanton, constituting intentional misconduct or gross negligence, and Defendants' acts constitute unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Florida Deceptive and Unfair Trade Practices Act, Florida Statute § 501.204 *et seq.*

112. Plaintiffs have a substantial likelihood of success stemming from a demonstrably clear legal right. Defendants' acts have caused and will continue to cause irreparable injury and damage to Plaintiffs.

WHEREFORE, Plaintiffs demand the following relief:

A. Awarding Plaintiffs damages in an amount to be proven at trial, including but not limited to the cost of corrective advertising, disgorgement of Defendants' profits, payment of licensing fees/royalties, and any other appropriate damages, including punitive damages, together with prejudgment interest.

B. An injunction ordering Defendants and all those acting in concert with them to cease and desist from all use of, and to promptly remove all display and broadcast of, the "FLORA-BAMA" Mark, or any confusingly similar trademarks, from all materials in any form or media (including as televised and as displayed on the internet and in social media outlets) owned or operated by, or authorized on behalf of, Defendants, their parents, subsidiaries, and affiliated companies, their respective officers, agents, servants, employees, dealers, licensees, and attorneys and those persons in active concert or participation with them.

C. Awarding Plaintiffs the costs and fees, including reasonable attorneys' fees, incurred by bringing and maintaining this action.

D. Awarding Plaintiffs such other and further relief as the Court deems just and proper given the facts and circumstances herein.

COUNT V
VIOLATION OF FLORIDA'S REGISTRATION AND PROTECTION OF
TRADEMARKS ACT, FLORIDA STATUTE § 495.151

113. Plaintiff MGFB Properties re-alleges and incorporates by reference all of the allegations of paragraphs 1-112 as if fully set forth herein.

114. The "FLORA-BAMA" mark is distinctive and famous, and has been used and advertised continuously throughout Florida and the United States of America for many years.

115. The "FLORA-BAMA" mark has received extensive publicity in Florida and nationwide as a result of the efforts of Plaintiffs and through third party recognition. The "FLORA-BAMA" mark is famously associated and extensively recognized with the products and services of Flora-Bama.

116. Defendants advertise and promote their infringing use of the "FLORA-BAMA" mark for their Floribama Shore television show in Florida and through many of the same channels of advertising as Plaintiffs use to promote their "FLORA-BAMA" branded goods and services, including through websites and various social media outlets.

117. Throughout Florida, by reason of Flora-Bama's substantial advertising, marketing, revenue generation and popularity of its "FLORA-BAMA" branded goods and services (as alleged more fully herein), the "FLORA-BAMA"

mark has become a “household name” associated with MGFB Properties and its “FLORA-BAMA” branded goods and services.

118. Defendants’ unauthorized use of the “FLORA-BAMA” mark in entertainment services and in any other capacity is diluting by blurring the distinctive quality of MGFB Properties’ trademark and is likely to continue diluting the mark in a way that will diminish the capacity of the famous “FLORA-BAMA” mark to uniquely identify and distinguish the goods and services of the Plaintiffs throughout Florida (if not elsewhere as well).

119. Defendants’ use of the “FLORA-BAMA” mark in the manner set forth above undermines the uniqueness and distinctiveness of the “FLORA-BAMA” mark and causes irreparable dilution of the distinctive quality of the “FLORA-BAMA” mark.

120. By reason of all the foregoing, Plaintiff MGFB Properties is being damaged by Defendants’ willful use of the “FLORA-BAMA” mark in the manner set forth above and will continue to be damaged unless Defendants are enjoined from using the same.

121. Plaintiff MGFB Properties has a substantial likelihood of success stemming from a demonstrably clear legal right, and will be irreparably injured by the continued acts of Defendants, unless such acts are enjoined.

122. The foregoing acts of Defendants constitute willful and deliberate dilution of Flora-Bama's registered trademark in violation of Florida's Registration and Protection of Trademarks Act, Fla. Stat. § 495.151 *et seq.*

WHEREFORE, Plaintiff MGFB Properties demands the following relief:

A. Awarding Plaintiff MGFB Properties damages in an amount to be proven at trial, including but not limited to the cost of corrective advertising, disgorgement of Defendants' profits, payment of licensing fees/royalties, and any other appropriate damages, together with prejudgment interest, and trebled pursuant to Florida Statute § 495.141.

B. An injunction ordering Defendants and all those acting in concert with them to cease and desist from all use of, and to promptly remove all display and broadcast of, the "FLORA-BAMA" mark, or any confusingly similar trademarks, from all materials in any form or media (including as televised and as displayed on the internet and in social media outlets) owned or operated by, or authorized on behalf of, Defendants, their parents, subsidiaries, and affiliated companies, their respective officers, agents, servants, employees, dealers, licensees, and attorneys and those persons in active concert or participation with them.

C. Awarding Plaintiff MGFB Properties the costs and fees, including reasonable attorneys' fees, incurred by bringing and maintaining this action.

D. Awarding Plaintiff MGFB Properties such other and further relief as the Court deems just and proper given the facts and circumstances herein.

COUNT VI
VIOLATION OF COMMON LAW TRADEMARK INFRINGEMENT

123. Plaintiff MGFB Properties re-alleges and incorporates by reference all of the allegations of paragraphs 1-122 as if fully set forth herein.

124. By reason of all of the foregoing, Plaintiff MGFB Properties has acquired common law trademark rights in the “FLORA-BAMA” mark.

125. The actions of Defendants complained of herein have caused and are likely to continue to create confusion, mistake, and deception of consumers into believing that Defendants are authorized by, licensed by, sponsored by, or otherwise associated with the common law trademark rights in the “FLORA-BAMA” mark and trade name.

126. Upon information and belief, the acts and conduct of Defendants complained of constitute willful and deliberate misuse and infringement of Plaintiff MGFB Properties’ common law rights in the “FLORA-BAMA” mark and trade name and will continue in willful and wanton disregard of MGFB Properties’ valuable rights.

127. The foregoing acts of Defendants constitute misuse and infringement of the “FLORA-BAMA” mark in violation of the common law of the State of Florida.

128. By reason of all the foregoing, Plaintiff MGFB Properties is being damaged by Defendants' willful use of the "FLORA-BAMA" mark and trade name in the manner set forth above and will continue to be damaged unless Defendants are enjoined from using the trademark and trade name.

129. Plaintiff MGFB Properties has a substantial likelihood of success stemming from a demonstrably clear legal right, and will be irreparably injured by the continued acts of Defendants, unless such acts are enjoined.

WHEREFORE, Plaintiff MGFB Properties demands the following relief:

A. Awarding Plaintiff MGFB Properties damages in an amount to be proven at trial, including but not limited to the cost of corrective advertising, disgorgement of Defendants' profits, payment of licensing fees/royalties, and any other appropriate damages, including punitive damages, together with prejudgment interest.

B. An injunction ordering Defendants and all those acting in concert with them to cease and desist from all use of, and to promptly remove all display and broadcast of, the "FLORA-BAMA" mark, or any confusingly similar trademarks, from all materials in any form or media (including as televised and as displayed on the internet and in social media outlets) owned or operated by, or authorized on behalf of, Defendants, their parents, subsidiaries, and affiliated companies, their respective officers, agents, servants, employees, dealers,

licensees, and attorneys and those persons in active concert or participation with them.

C. Awarding Plaintiff MGFB Properties such other and further relief as the Court deems just and proper given the facts and circumstances herein.

COUNT VII
VIOLATION OF COMMON LAW UNFAIR COMPETITION

130. Plaintiffs re-allege and incorporate by reference all of the allegations of paragraphs 1-129 as if fully set forth herein.

131. The actions of Defendants complained of herein constitute a misuse and misappropriation of Plaintiffs' rights by the unlawful use by Defendants of the "FLORA-BAMA" mark and trade name and the goodwill associated therewith, all of which constitute unfair competition and trade practices, false advertising, and passing off under the common law of the State of Florida.

132. The acts and conduct of Defendants complained of are willful and wanton, constituting intentional misconduct or gross negligence.

133. By the reason of the foregoing, Plaintiffs are being damaged by Defendants' willful use of the "FLORA-BAMA" mark and trade name in the manner set forth above and will continue to be damaged unless Defendants are enjoined from using the "FLORA-BAMA" mark.

134. Plaintiffs have a substantial likelihood of success stemming from a demonstrably clear legal right, and Plaintiffs will be irreparably injured by the continued acts of Defendants, unless such acts are enjoined.

WHEREFORE, Plaintiffs demand the following relief:

A. Awarding Plaintiffs damages in an amount to be proven at trial, including but not limited to the cost of corrective advertising, disgorgement of Defendants' profits, payment of licensing fees/royalties, and any other appropriate damages, including punitive damages, together with prejudgment interest.

B. An injunction ordering Defendants and all those acting in concert with them to cease and desist from all use of, and to promptly remove all display and broadcast of, the "FLORA-BAMA" mark, or any confusingly similar trademarks, from all materials in any form or media (including as televised and as displayed on the internet and in social media outlets) owned or operated by, or authorized on behalf of, Defendants, their parents, subsidiaries, and affiliated companies, their respective officers, agents, servants, employees, dealers, licensees, and attorneys and those persons in active concert or participation with them.

C. Awarding Plaintiffs such other and further relief as the Court deems just and proper given the facts and circumstances herein.

COUNT VIII
UNJUST ENRICHMENT UNDER STATE LAW

135. Plaintiffs re-allege and incorporate by reference all of the allegations of paragraphs 1-134 as if fully set forth herein.

136. The actions of Defendants complained of herein constitute a misuse and misappropriation of Plaintiffs' rights by the unlawful use by Defendants of the "FLORA-BAMA" mark and trade name and goodwill associated therewith.

137. Defendants' use of the "FLORA-BAMA" mark and trade name have conferred a benefit upon Defendants, which Defendants have retained and which benefits would be inequitable to retain without payment of the value thereof to Plaintiffs.

138. Defendants have been unjustly enriched under Florida law and should be required to make restitution to Plaintiffs in an amount to be determined at trial.

139. Defendants' acts have caused and will continue to cause irreparable injury and damage to Plaintiffs.

WHEREFORE, Plaintiffs demand the following relief:

A. Awarding Plaintiffs damages in an amount to be proven at trial, including but not limited to the cost of corrective advertising, disgorgement of Defendants' profits, payment of licensing fees/royalties, and any other appropriate damages, including punitive damages, together with prejudgment interest.

B. An injunction ordering Defendants and all those acting in concert with them to cease and desist from all use of, and to promptly remove all display and broadcast of, the “FLORA-BAMA” mark, or any confusingly similar trademarks, from all materials in any form or media (including as televised and as displayed on the internet and in social media outlets) owned or operated by, or authorized on behalf of, Defendants, their parents, subsidiaries, and affiliated companies, their respective officers, agents, servants, employees, dealers, licensees, and attorneys and those persons in active concert or participation with them.

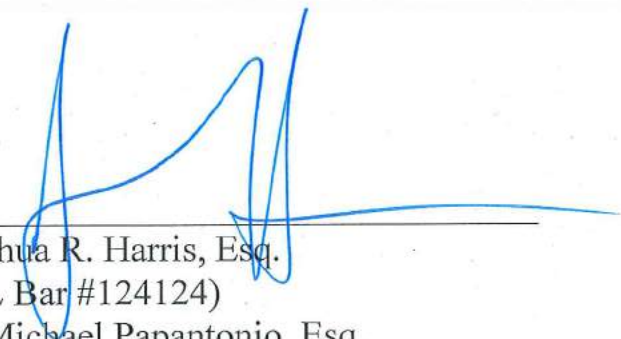
C. Awarding Plaintiffs the costs and fees, including reasonable attorneys’ fees, incurred by bringing and maintaining this action.

D. Awarding Plaintiffs such other and further relief as the Court deems just and proper given the facts and circumstances herein.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury as to all claims in this litigation.

Date: 8/6/19



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