

JUDGE HELLERSTEIN

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

19 CV 6655

NINGBO MIZHIHE I&E CO., LTD,

Plaintiff,

C.A. No. _____

v.

COMPLAINT

Jury Trial Requested

DOES 1-200; DRESHOW; YOUNGER-TREE;
SIQK US; SIMPLECC; TOPGALAXY.Z;
SHINELICIA; RHCPFOVR; 4MEMORYS;
YOOCOOL; YISI; DANBALLETO;
FANOVO; AMEOLELA; BOHRPETER;
QUNAN; YIWU YALINDY IMPORT &
EXPORT CO., LTD.; SHENZHEN KRS
BUILDING MATERIAL CO., LTD.; YIWU
YUEWEI IMPORT & EXPORT CO., LTD.;
SHENZHEN EBRAIN GIFTS LTD.; V-FOX
CHINA INDUSTRIAL LIMITED;
HANGZHOU HONGRUI IMPORT &
EXPORT TRADING CO., LTD.; PANAN
HONGRUI ARTS & CRAFTS FACTORY;
PARTYFIESTA; SAEEDALFAR;
ALITTLEABOUT4_3; LIFESTYLE_LOOT;
BMUK17; GERNE2ALL;
OBSERVABLEUNIVERSE;
HOME*EXPRESS*;
ULTIMATEDISCOUNTOUTLET; NAABOY;
COOLANDCOOLER;
THIRDEYECOLLECTION; TRANGC70;
SASAE_52; PINIFR72; UNICORN_DEALES;
CHRIRA_0; KAHOLWA;
MARKET_PLACE; ABOOD.AV; JUVY97;
E_BAYSELLER007; SHINESUN STORE;
and DENG KAI

Defendants



Plaintiff Ningbo Mizhihe I&E Co., Ltd. (hereinafter, “Mizhihe” or “Plaintiff”), for its Complaint against defendants Does 1-200 (the “Doe Defendants”), Dreshow, Younger-Tree, Siquk US, SimpleCC, Topgalaxy.Z, Shinelicia, RHCPFOVR, 4MEMORYS, Yoocool, yisi, Danballeto, FANOVO, Ameolela, bohrpeter, Qunan, Yiwu Yalindy Import & Export Co., Ltd., Shenzhen KRS Building Material Co., Ltd., YiWu Yuewei Import & Export Co., Ltd., Shenzhen Ebrain Gifts Ltd., V-Fox China Industrial Limited, Hangzhou Hongrui Import & Export Trading Co., Ltd., Panan Hongrui Arts & Crafts Factory, partyfiesta, saeedalfar, alittleabout4_3, lifestyle_loot, bmuk17, gerne2all, observableuniverse, home*express* ultimatediscountoutlet, naaboy, coolandcooler, thirdeyecollection, trangc70, sasae_52, pinifr72, unicorn_deales, chrira_0, kaholwa, *market_place*, abood.av, juvy97; e_bayseller007, ShineSun Store, and Deng Kai (collectively, “Defendants”), alleges, on knowledge as to itself and otherwise on information and belief, as follows:

NATURE OF THE ACTION

1. Defendants create, and/or import, distribute, advertise, offer for sale, and sell infringing products bearing Mizhihe’s copyrighted designs to consumers in this District, primarily through the online marketplaces Amazon.com, Alibaba.com, Aliexpress.com, and Ebay.com (collectively, the “Online Marketplaces”). Mizhihe does not authorize the sale of Defendants’ infringing products.

2. Defendants advertise, promote, and sell their products in this District at prices substantially below the normal market price for Mizhihe’s products. In so doing, Defendants greatly undercut sales of authorized and legitimate Mizhihe products bearing the copyrighted designs. Many of the products sold by Defendants are low-quality copies of Mizhihe’s products, resulting in substantial damage to Mizhihe’s reputation.

3. Founded in 2018, Mizhihe is a company with offices in Zhejiang, China that specializes in children's apparel, bags, and luggage products that conducts substantial business in New York and in this District. All the products marketed and sold by Mizhihe are designed in-house. Because these designs are so critical to its business, most of Mizhihe's designs are copyright-protected. The desire to create unique and creative patterns and prints for children and inspire is the driving force behind all of Mizhihe's design and marketing efforts. Producing high-quality goods at a reasonable price is one of Mizhihe's core values. To that end, Mizhihe expends great effort to ensure that all its products pass all United States Consumer Product Safety Commission testing and receive a Children's Product Certificate.

4. Mizhihe brings this action against Defendants for (i) direct, vicarious, and contributory infringement of Mizhihe's registered copyrights, in violation of the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act"); and (ii) related state common law claims. Mizhihe seeks to recover damages for Defendants' intentional and willful infringement of Mizhihe's intellectual property, including without limitation, monetary damages and a preliminary and permanent injunction, to prevent Defendants from further unlawful actions against Mizhihe in the future.

THE PARTIES

5. Mizhihe is a Chinese company with a place of business located in the Zhejiang, China. Mizhihe holds valid copyrights to its designs. Among others, the following designs are registered to Mizhihe with the United States Copyright Office Registration Nos. VA 2-147-182 and VA 2-147-230 (collectively, the "Copyrighted Works"). Plaintiff is, in part, engaged in the business of manufacturing and distributing throughout the world, including within this district, products bearing the Copyrighted Works through online marketplaces. Defendants, through the

sale and offer to sell products that infringe the Copyrighted Works, are directly, and unfairly competing with Plaintiff's economic interest in the Southern District of New York and causing Plaintiff harm within this jurisdiction.

6. Plaintiff suffers ongoing daily and sustained violations of their rights at the hands of infringers, such as Defendants herein, who wrongfully use Plaintiffs' copyrighted images for the purposes confusing consumers and earning substantial profits. The natural and intended byproduct of Defendants' actions is the erosion and destruction of the goodwill associated with Plaintiff's products and the destruction of the legitimate market sector in which Plaintiff operates.

7. The true names and capacities of Defendants Does 1 through 200 (collectively, the "Doe Defendants") are unknown to Mizhihe at this time. The Doe Defendants are individuals and/or business entities of unknown makeup, each of whom, upon information and belief, either reside or operate in foreign jurisdictions, or redistribute products from the same or similar sources in those locations.

8. The Doe Defendants conduct business through one or more of the Online Marketplaces through various anonymous storefronts, including those named as Defendants in this action, namely, Dreshow, Younger-Tree, Siquk US, SimpleCC, Topgalaxy.Z, Shinelicia, RHCPFOVR, 4MEMORYS, Yoocool, yisi, Danballeto, FANOVO, Ameolela, bohrpeter, Qunan, Yiwu Yalindy Import & Export Co., Ltd., Shenzhen KRS Building Material Co., Ltd., YiWu Yuewei Import & Export Co., Ltd., Shenzhen Ebrain Gifts Ltd., V-Fox China Industrial Limited, Hangzhou Hongrui Import & Export Trading Co., Ltd., Panan Hongrui Arts & Crafts Factory, partyfiesta, saeedalfar, alittleabout4_3, lifestyle_loot, bmuk17, gerne2all, observableuniverse, home*express* ultimatediscountoutlet, naaboy, coolandcooler, thirdeyecollection, trange70,

sasae_52, pinifr72, unicorn_deales, chrira_0, kaholwa, *market_place*, abood.av, juvy97; e_bayseller007, ShineSun Store (the “Storefronts”).

9. The Doe Defendants sell products that infringe one or more of Mizhihe’s copyrights as more fully described herein. The Doe Defendants operate Storefronts on online marketplaces through which they market and sell products that infringe Mizhihe’s copyrighted designs at prices far below the normal market price Mizhihe sells its products. Mizhihe believes that information obtained in discovery will lead to the identification of the Doe Defendants’ true names and permit Mizhihe to amend this Complaint to state the same.

10. Upon information and belief, Yiwu Yalindy Import & Export Co., Ltd. is a Chinese entity with a place of business at Chengbei Road 201-209 Zhejiang, China in addition to operating an eponymous Storefront on Alibaba which sells and/or distributes products that infringe one or more of Mizhihe’s copyrights in the United States.

11. Upon information and belief, Shenzhen KRS Building Material Co., Ltd. is a Chinese entity with a place of business at Futian District, Hongshufuyuan 5C2208 Guangdong, Shenzhen, China in addition to operating an eponymous Storefront on Alibaba which sells and/or distributes products that infringe one or more of Mizhihe’s copyrights in the United States.

12. Upon information and belief, Shenzhen Ebrain Gifts Ltd. is a Chinese entity with a place of business at Room 1021 Chuangke Building, Huanguan nan Road, Guanlan Longhua, Shenzhen, China in addition to operating an eponymous Storefront on Alibaba which sells and/or distributes products that infringe one or more of Mizhihe’s copyrights in the United States.

13. Upon information and belief, V-Fox China Industrial Limited is a Chinese entity with a place of business at RM1515A, WDL Business Mall, MeiLong RD, Longhua New Zone

China 518110 in addition to operating an eponymous Storefront on Alibaba which sells and/or distributes products that infringe one or more of Mizhihe's copyrights in the United States.

14. Upon information and belief, Hangzhou Hongrui Import & Export Trading Co., Ltd. is a Chinese entity with a place of business at Room 1601, Beicheng Center, No. 1165, Moganshan Road, Gongshu District, China in addition to operating an eponymous Storefront on Alibaba which sells and/or distributes products that infringe one or more of Mizhihe's copyrights in the United States.

15. Upon information and belief, Panan Hongrui Arts & Crafts Factory is a Chinese entity with a place of business at Bldg. 19-20, Zone D, Houwu, Anwen Town, Panan County, Jinhua, Zhejiang, China in addition to operating an eponymous Storefront on Alibaba which sells and/or distributes products that infringe one or more of Mizhihe's copyrights in the United States.

16. Deng Kai is an individual who listed his address as Rm 20F, Shuipingzuo, Bldg.2 No.2088, Nantai Blvd. Nanshan, Shenzhen China 518054 when challenging Plaintiff's request to take down Defendant Dreshow's infringing products sold on Amazon.com. In a declaration filed in connection with this take down request, Deng Kai "consent[ed] to the jurisdiction of any United States federal district court in which Amazon.com may be found" and agreed to accept service of process from Mizhihe. Upon information and belief, Deng Kai also improperly filed a trademark application using one of Mizhihe's copyrighted designs in a bad faith and unlawful attempt to further misappropriate Mizhihe's intellectual property. When faced with complaints of copyright infringement, Deng Kai and Dreshow also maliciously and illegitimately made complaints against Mizhihe, leading to three of Mizhihe's best-selling products to be improperly delisted from the Amazon marketplace. *See Exhibit 1.*

17. Defendants have the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b). Defendants target their business activities toward consumers throughout the United States, including within this District, and conduct pervasive business through the operation of, at least, one fully interactive commercial Internet based e-commerce store via online marketplaces, such as Amazon.com, eBay.com, Alibaba.com, and aliexpress.com.

18. Defendants are the past and present controlling forces behind the sale of products bearing and/or using infringements of Plaintiff's federally-registered copyrights using at least the Storefronts.

19. Upon information and belief, Defendants directly engage in unfair competition with Plaintiff by advertising, offering for sale and selling goods bearing and/or using infringements of Plaintiff's federally-registered copyrights using at least the Storefronts, and any additional domain names, websites and corresponding website URLs or seller identifiers and store URL aliases not yet known to Plaintiff. Defendants have purposefully directed some portion of their illegal activities towards consumer in New York through the advertisement, offer to sell, sale, and/or shipment of infringing products in New York.

20. Upon information and belief, Defendants have engaged in fraudulent conduct with respect to the registration of the Storefronts by providing false and/or misleading information to the Internet based e-commerce platforms where they offer for sale and/or sell, during the registration or maintenance process related to their respective Storefront. Upon information and belief, Defendants have anonymously registered and maintained some of the Storefronts for the sole purpose of engaging in illegal infringing activities.

21. Upon information and belief, Defendants will continue to register or acquire new seller identification aliases for the purpose of selling and offering for sale goods that infringe Plaintiffs' federally-registered copyrights unless preliminarily and permanently enjoined.

JURISDICTION AND VENUE

22. This Court has personal jurisdiction over Defendants in this District, because Defendants have committed acts of copyright infringement within this State and in this District, and have committed acts of copyright infringement outside the State, which caused injury to Mizhihe within the State, and Defendants expected and should reasonably have expected such acts to have consequences in this State and to derive substantial revenue from interstate or international commerce. Defendants have advertised and distributed, and offered to distribute over the Internet through the Online Marketplaces, including in this District, unauthorized copies of Mizhihe's copyright-protected works. Defendants' actions have caused injury to Mizhihe within this District. There is also personal jurisdiction over Defendant Deng Kai as he "consent[ed] to the jurisdiction of any United States federal district court in which Amazon.com may be found" and agreed to accept service of process from Mizhihe when he challenged takedown proceedings initiated by Mizhihe against products listed on Dreshow's Amazon storefront.

23. This action arises under the Copyright Act. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form part of the same case or controversy.

24. This Court may exercise personal jurisdiction over a non-resident of the State in which the Court sits to the extent authorized by the state's laws. Fed. R. Civ. P. 4(e).

25. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Mizhihe's claims occurred in this District.

COMMON FACTUAL ALLEGATIONS

I. Plaintiff's Business

26. Founded in 2018, Mizhihe is a company with offices in Zhejiang, China that specializes in children's apparel, bags, and luggage products. All the products marketed and sold by Mizhihe are designed in-house. Because these designs are so critical to its business, most of Mizhihe's designs are copyright-protected. The desire to create unique and creative patterns and prints for children and inspire is the driving force behind all of Mizhihe's design and marketing efforts. Producing a high quality and a reasonable price is also one of Mizhihe's core values. To that end, Mizhihe expends great effort to ensure that all its products pass all United States Consumer Product Safety Commission testing and receive a Children's Product Certificate. Mizhihe generally markets its products that display its designs on various online marketplaces like Amazon.com.

II. Plaintiff's Copyrights



27. Mizhihe holds valid copyrights to its designs. Among others, the following designs are registered to Mizhihe with the United States Copyright Office (collectively, the "Copyrighted Works")

Registration No.	Title of Work	Registration Date	First Publication Date
VA 2-147-182	Flower Unicorn	March 7, 2019	August 1, 2018

VA 2-147-230	Star Unicorn	March 7, 2019	September 10, 2018
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28. True copies of these registrations are attached as **Exhibit 2**.

29. Below are copies of these registered designs:

Flower Unicorn	Star Unicorn
	

30. The Copyrighted Works constitute copyrightable subject matter under the laws of the United States. Mizhihe owns or controls the copyrights and/or the relevant exclusive rights in the Copyrighted Works under U.S. copyright laws. The certificates of registration for the Copyrighted Works were issued within five years of first publication of each of the works, and therefore constitute *prima facie* evidence of copyright validity.

III. Defendants Unlawful Conduct

31. Defendants are comprised of entities and individuals who are involved in creating products that infringe the Copyrighted Works and distributing, marketing, and selling those products in the United States through the Storefronts, and likely other storefronts.

32. Examples of Defendants’ blatant copyright infringement are attached as **Exhibit 3**. As an example, below is a comparison of Mizhihe’s product bearing its copyrighted design and Defendant Topgalaxy.Z’s infringing product, which it sells for substantially less than Mizhihe.

Mizhihe’s Product	TopGalaxy.Z’s Infringing Product
	

33. In addition to the 46 storefronts identified as Named Defendants, Defendants may be operating other storefronts on the Online Marketplaces of which Mizhihe is not yet aware that sell products that contain Mizhihe’s copyrighted designs. Defendants may also be operating on other websites or selling products to brick and mortar stores. Defendants may also be involved in the manufacture, importation, distribution, and/or sale of other products that infringe other copyrights owned by Mizhihe.

34. Defendants operate the Storefronts through various anonymous seller accounts. They have established these seller accounts to hide their identities and to facilitate the sale of products which infringe one or more of Mizhihe's copyrighted designs.

35. Many Defendants appear to be working collectively because many of the infringing products exhibit the same inferior qualities. Further, many of the Storefronts seem to offer similar inventories of other products.

36. Mizhihe's investigation confirmed that numerous Defendants operating on the Online Marketplaces sell infringing products, for prices well below the price for genuine Mizhihe products.

37. For example, Defendant Siquk US sells its infringing product for \$8.99 through its Amazon storefront, nearly half the price of a comparable Mizhihe product that it sells for \$16.99. A price comparison of a recent purchase of Siquk US and Mizhihe products is attached as **Exhibit 4**.

38. Mizhihe has suffered and will continue to suffer serious injury due to Defendants' infringement of its copyrights. Defendants' unlawful actions could cause Mizhihe to cease creating designs enjoyed by many children throughout the United States.

39. Moreover, it is unclear whether Defendants' infringing products meet the rigorous consumer product safety standards that Mizhihe ensures its products meet. Mizhihe suspects this may be the case because the Defendants products are of low quality and because they are not certified by the United States Consumer Product Safety Commission. An example of a complaint about the Defendants' low-quality products is attached as **Exhibit 5**. In addition, many of the product reviews for the Defendants' products are significantly lower than the ratings of Mizhihe's

products have earned. Failure to meet these requirements can put the public, and specifically children who these products are marketed to, in danger.

40. Defendants' copying of the Copyrighted Works is completely unauthorized and without Mizhihe's consent or authorization.

41. Defendants' importation, distribution, marketing, and sale of infringing products has caused and will continue to cause irreparable injury to the reputation and goodwill of Mizhihe and its brand, while Defendants benefit from the labor and intellectual capital that Mizhihe invested in the creation of its products and designs.

FIRST CLAIM FOR RELIEF
(Copyright Infringement in Violation of the Copyright Act, 17 U.S.C. § 501)

42. Mizhihe realleges and incorporates herein the allegations set forth in the foregoing paragraphs of this Complaint.

43. Mizhihe enjoys exclusive rights with respect to the Copyrighted Works, including the exclusive right to copy, reproduce, distribute, display, and create derivative works based on the same.

44. Defendants had direct access to the Copyrighted Works through Mizhihe's Amazon storefront or other online retail stores, which allow for the purchase of genuine Mizhihe products bearing the copyrighted designs.

45. Beginning on an unknown date, but at least as early as 2019 and continuing to the present, Defendants have copied the Copyrighted Works and/or have distributed, or displayed infringing copies of those works without Mizhihe's consent or authorization. The content of Defendants' products is substantially similar to the Copyrighted Works.

46. Defendants know or have reason to know that: (i) the Copyrighted Works are protected by the Copyright Act; (ii) Defendants are not authorized to copy, or to display and

distribute infringing copies of, the Copyrighted Works without Mizhihe's consent, (iii) Defendants do not have Mizhihe's consent to copy, or to display and distribute infringing copies of, the Copyrighted Works; and (iv) Defendants' actions constitute copyright infringement under the Copyright Act.

47. Defendants have knowingly, intentionally, and willfully engaged in unauthorized copying of Mizhihe's Copyrighted Works and displaying, distributing, and/or selling infringing copies of those works with the intent to deprive Mizhihe of the revenues that it would have otherwise earned from selling genuine Mizhihe products, and with the intent to wrongfully benefit from the labor and intellectual capital that Mizhihe invested in the creation of the Copyrighted Works.

48. The natural and foreseeable result of Defendants' wrongful conduct has been and will continue to be to deprive Mizhihe of the benefits of its sale of products bearing the Copyrighted Works. Mizhihe has lost and will continue to lose revenues from Defendants' continued unauthorized use of the Copyrighted Works, including without limitation, its distribution and sale of infringing products, and has sustained and will continue to sustain damage as a result of Defendants' wrongful conduct.

49. Defendants have been unjustly enriched by its wrongful use of Mizhihe's Copyrighted Works and infringement of those works.

50. Defendants' unauthorized copying, reproducing, distributing, displaying, and use of the Copyrighted Works without consent or authorization constitutes copyright infringement pursuant to 17 U.S.C. § 101 *et seq.* because Defendants' products incorporate unauthorized copies of the Copyrighted Works and/or derivative works. Moreover, Defendants' products are virtually identical or substantially similar to the Copyrighted Works.

51. Mizhihe has suffered and will continue to suffer irreparable harm as a result of Defendants' activities. Unless permanently enjoined, Defendants will continue to act in the unlawful manner complained of herein, to Mizhihe's irreparable harm. Mizhihe's remedy at law is not adequate to compensate it for the injuries suffered and threatened. Mizhihe is accordingly entitled to injunctive relief restraining Defendants from further infringement.

SECOND CLAIM FOR RELIEF
(Unfair Competition in Violation of State Common Law)

52. Mizhihe realleges and incorporates herein the allegations set forth in the foregoing paragraphs of this Complaint.

53. Defendants' aforesaid conduct is false, deceitful, and misleading, and constitutes unfair or deceptive trade practice as prohibited by New York common law.

54. Mizhihe has suffered and will continue to suffer irreparable harm as a result of Defendants' activities. Unless permanently enjoined, Defendants will continue to act in the unlawful manner complained of herein, to Mizhihe's irreparable harm. Mizhihe's remedy at law is not adequate to compensate it for the injuries suffered and threatened. Mizhihe is accordingly entitled to injunctive relief restraining Defendants from further infringement.

WHEREFORE, Plaintiff demands judgment as follows:

1. Enter judgment in favor of Plaintiff on all counts;
2. Enter a preliminary and permanent injunction pursuant to 17 U.S.C. § 502, enjoining and prohibiting Defendants and their officers, directors, employees, agents, affiliates, successors, assigns, licensees, and entities owned or controlled by Defendant, and all those in privity or acting in concert with them, and each of them who receives notice directly or otherwise of such injunction from:

- a. Manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling, and/or otherwise dealing in infringing products;
 - b. Copying, reproducing, making derivative works of, distributing, or displaying the Copyrighted Works or any substantially similar materials, including the infringing products;
 - c. Directly or indirectly infringing in any manner any of Mizhihe's copyrights, or other rights (whether now in existence or hereafter created) including, without limitation the Copyrighted Works; and
 - d. Instructing, assisting, aiding, or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (c) above.
3. Order that Defendants be required to deliver up for destruction all materials in their possession, custody or control, or the possession, custody or control of any of their agents, distributors, and representatives, including the Online Marketplaces, embodying or displaying the Copyrighted Works, including without limitation all unsold inventory of infringing products, and all pictures, promotional materials, and any and all packaging, labels, tags, advertising and promotional materials, online materials, and any other materials, pursuant to 17 U.S.C. § 503;
4. Order an accounting and disgorgement of Defendants' profits, gains, and advantages realized from its manufacturing, importing, exporting, distributing, advertising, marketing, promoting, offering for sale, selling, and otherwise dealing in infringing products as described herein, including a reconciliation of all

purchases and sales of the infringing products with documents relating to all such purchases and sales;

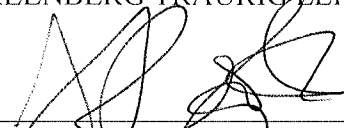
5. Order that Defendants pay Plaintiff its actual damages, plus the amount of Defendants' profits attributable to the conduct alleged herein, pursuant to 17 U.S.C. § 504(b), and other applicable law;
6. Order that, in the alternative to Plaintiff's actual damages and Defendants' profits, Defendants pay Plaintiff statutory damages for willful copyright infringement in the amount of \$150,000 per Copyrighted Work, as authorized by 17 U.S.C. § 504(c);
7. Order that Defendants pay Plaintiff damages to be proven at trial for common law unfair competition;
8. Order that Defendants pay Plaintiff punitive damages as a remedy for common law unfair competition;
9. Order that Defendants pay Plaintiff, as the prevailing party, reasonable attorneys' fees, costs, and expenses pursuant to 17 U.S.C. § 505 and other applicable law;
10. Order that Defendants pay Plaintiff pre-judgment and post-judgment interest on Plaintiff's damages at the applicable rate;
11. Order the cancellation and/or suspension of Deng Kai's unlawful trademark application (Serial No 88472774).
12. Grant such other and further relief as is just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby respectfully demands a jury trial on all claims so triable.

Dated: July 16, 2019

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