

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA**

STEVEN GREGORY HOLT & ROBERT	:	
ENSLLEN, ON BEHALF OF THEMSELVES	:	
AND ALL OTHERS SIMILARLY	:	
SITUATED,	:	3:17-CV-911
	:	
Plaintiffs,	:	FIRST AMENDED CLASS
	:	ACTION COMPLAINT
v.	:	JURY DEMANDED
	:	
MURPHY OIL USA, INC.	:	
	:	
Defendant.	:	
	:	

Now come Plaintiffs, Steven Gregory Holt & Robert Enslen, on behalf of themselves and all other similarly situated residents of the United States of America and allege as follows:

PRELIMINARY STATEMENT

1. This class action complaint is filed to recover damages resulting from unfair and deceptive trade practices by Defendant Murphy Oil USA, Inc. (Murphy) for improperly charging and collecting money from its customers. Specifically, Murphy charges sales tax on the full, undiscounted sales price of Murphy funded discounted or sale price items where the Murphy funded portion of the discount is not properly taxable. Plaintiffs, for themselves and all others similarly situated, bring this action for damages and injunctive relief to end Murphy’s unfair and deceptive trade practices and to prevent further losses to Plaintiffs and the classes of consumers that they seek to represent.

2. Murphy operates over one thousand retail gas stations with attached convenience stores, including operating stores in the states of Florida and Alabama, serving many thousands of customers on a daily basis.

3. Plaintiffs are Murphy customers who purchased items at Murphy stores that were marked as discounted or on sale based on Murphy funded discounts.

4. Murphy funded the discounted amount (the difference between the item's full price and its discounted price). The discounted amount, the portion of the discount that was funded by Murphy, is not taxable and Murphy customers should not have been charged for tax on that amount.

5. However, when Murphy customers purchase products that are discounted or on sale with Murphy funded discounts in whole or part during in-store purchases, Murphy charges and purports to collect "sales tax" on the full price of the item, without application of the portion of the discount that is funded by Murphy to reduce the sales price of the item.

6. The additional money that Murphy unfairly and deceptively charges its customers under the guise of collecting "sales tax" on the difference between the item's full price and the portion of the discount that is funded in whole or in part by Murphy is not actually a lawful sales tax at all, and therefore should not have been charged or collected from consumers as such.

7. The Plaintiffs have filed this action, individually and on behalf of all others similarly situated, to seek injunctive relief to stop Murphy from continuing to engage in the unfair and deceptive trade practice and separately to recover for monies improperly collected by Murphy under the guise of this unfair and deceptive trade practice.

PARTIES

8. Plaintiff Steven Gregory Holt is a resident of Covington County, Alabama and is a customer of Murphy Oil USA, Inc.

9. Plaintiff Robert Enslen is a resident of Walton County, Florida and is a customer of Murphy Oil USA, Inc.

10. Defendant, Murphy Oil USA, Inc (“Murphy”) is a Delaware corporation with a principal place of business at 200 Peach Street in El Dorado, Arkansas. Murphy is, among other things, a Fortune 200 company with over one thousand retail gas stations with attached convenience stores in 26 U.S. states.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because there are 100 or more class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs. Additionally, at least one class member is a citizen of a state different from the corporate domicile of Murphy.

12. This case is properly maintainable as a class action pursuant to and in accordance with Rule 23(a) of the Federal Rules of Civil Procedure in that the class, which includes an unknown number of persons but certainly more than 100, is so numerous that joinder of all members is impractical, there are substantial questions of law and fact common to the class, and this case is properly maintainable as a class action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

- a. questions of law and fact enumerated below, which are all common of the class, predominate over any questions of law or fact affecting only individual members of the class;
- b. a class action is superior to any other type of action for the fair and efficient adjudication of the controversy;
- c. the relief sought in this class action will effectively and efficiently provide relief to all members of the class; and
- d. there are no unusual difficulties foreseen in the management of this class action.

13. The Court has personal jurisdiction over Murphy, which has at least minimum contacts with the state of Florida because it has retail locations there, conducts business there and has availed itself of the laws of Florida.

14. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

15. Venue in the United States District Court for the Northern District of Florida is proper because Murphy has retail locations there, transacts business within this District and a substantial part of the events giving rise to the claims at issue in this Complaint occurred in this District.

16. All conditions precedent to this action have occurred, been performed, or have been waived.

FACTUAL ALLEGATIONS

17. This action arises from Murphy charging its customers “sales tax” on the full, un-discounted sales price of Murphy funded discounted or sale price items where the Murphy funded portion of the discount is not properly taxable.

Plaintiff Steven Gregory Holt

18. In Alabama, “[c]ash discounts when allowed and taken are not to be included in gross proceeds of sales.” Alabama Department of Revenue - Sales and Use Tax Rules, Code of Alabama 1975, at § 810-6-1-.53 (Cash Discounts). In other words, in Alabama, Murphy is permitted to charge its customers tax only on the amount actually charged the customer, not the full, un-discounted, pre-sale amount of the product sold.

19. On October 3, 2017, Plaintiff Steven Gregory Holt entered a Murphy store #7394 in Andalusia, Alabama. Mr. Holt purchased 2 Kit Kat candy bars that were on sale as 2 for \$2,

with a full price of \$2.78 but, based on Murphy-funded “PROMOTIONAL DISCOUNTS,” were sold for \$2 total, or discounted \$.78. *See* Exhibit A.

20. Murphy funded all or part of the discounted sales price on the item purchased.

21. The “Sales Tax1” listed on the receipt was \$.26, which equates to 13% of the total discounted cost of the candy bars. Mr. Holt paid for the purchase in cash at or around 1:30 PM.

22. In Covington County, Alabama, the sales tax is 6%. *See* <http://www.sale-tax.com/CovingtonCountyAL>, last visited 10/25/2017. At 6%, the sales tax total on this discounted purchase of \$2.00 should have been \$.12. Instead, the sales tax charged Mr. Holt was \$.26, which equates to 13% of the discounted purchase of \$2.00 and approximately 9.35% of \$2.78, the full sales price of the candy.

23. Despite charging Mr. Holt the Murphy discount sale price for his purchase of the candy, Murphy improperly charged him and collected from him a charge for “Sales Tax1” on the full purchase price of the candy, as opposed to properly charging and collecting the sales tax on only the price of the candy after applying the portion of the discount that was funded or provided by Murphy.

24. Mr. Holt believes he has made numerous purchases using discounts provided or funded by Murphy and is routinely, systematically charged sales tax on the full, undiscounted price of the items.

25. Upon Plaintiff’s information and belief, it was and remains Murphy’s regular practice in its Alabama stores to improperly charge and collect from customers monies for “Sales Tax1” on the full price of otherwise Murphy discounted or funded discounts on sale items purchased in Murphy stores throughout the State of Alabama.

26. Murphy knows or should know that this practice constitutes unjust enrichment which is improper and in violation of Alabama law.

27. Murphy improperly imposes this charge uniformly on all Murphy customers purchasing discounted items which discounts Murphy funds all or in part for all items purchased at one of Murphy's 76 Alabama stores.

Plaintiff Robert Enslen

28. Fla. Admin. Code R. 12A-1.018 states that retailers like Murphy may not collect sales tax on the full price of a taxable item if the consumer purchases the item with a discount issued or provided by the dealer. Fla. Admin. Code R. 12A-1.018(2) states in relevant part: "Discounts allowed and taken at the time of sale are deducted from the selling price, and the tax is due on the net amount paid at the time of sale."

29. The Code differentiates between a coupon or refund issued directly by the manufacturer, and a discount issued or provided by the dealer, in this case, Murphy.

30. On October 20, 2017, Plaintiff Robert Enslen entered Murphy store #8702 in Santa Rosa Beach, Florida. Mr. Enslen purchased, among other things, 2 candy bars that were on sale as 2 for \$2, with a full price of \$2.78 but, based on Murphy-funded "PROMOTIONAL DISCOUNTS," were sold for \$2 total, or discounted \$.78. *See* Exhibit B.

31. Murphy funded all or part of the discounted sales price on the items purchased.

32. The total "Sales Tax1" listed on the receipt was \$.48, which equates to 8% of the total purchase, which includes the discounted cost of the candy bars. Mr. Enslen paid for the purchase in cash at or around 4:45 PM.

33. In Walton County, Florida, the sales tax is 7%. *See* <http://www.sale-tax.com/WaltonCountyFL>. At 7%, the sales tax total on Mr. Enslen's total purchase of \$6.00

should have been \$.42. Instead, the sales tax charged to Mr. Enslin was \$.48. The discount on the receipt was \$.78. If the total amount of the purchase was \$6.78, then the \$.48 charged for sales tax would have equaled just over 7% (7.079%). Instead, based on the discounted price of \$6.00, Mr. Enslin was charged an effective tax rate of 8%.

34. Despite charging Mr. Enslin the Murphy discounted sale price for his purchase of the candy, Murphy improperly charged him and collected from him a charge for “Sales Tax1” on the full purchase price of the candy, as opposed to properly charging and collecting the sales tax on only the price of the candy after applying the portion of the discount that was funded or provided by Murphy.

35. Mr. Enslin believes he has made numerous purchases using discounts provided or funded by Murphy and is routinely, systematically charged sales tax on the full, undiscounted price of the items.

36. Upon Plaintiff’s information and belief, it was and remains Murphy’s regular practice in its Florida stores to improperly charge and collect from customers monies for “Sales Tax1” on the full price of otherwise Murphy discounted or funded discounts on sale items purchased in Murphy stores throughout the state of Florida.

37. Murphy knows or should know that this practice constitutes unjust enrichment and is an unfair and deceptive trade practice, which is improper and in violation of Florida law.

38. Murphy improperly imposes this improper charge uniformly on all Murphy customer purchasing discounted items which discounts Murphy provides or funds all or in part for all items purchased in store at one of Murphy’s many Florida stores.

CLASS ALLEGATIONS

A. Class Definitions

39. Plaintiffs bring this action against Murphy pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all other persons similarly situated. Plaintiffs seek to represent the following classes:

Nationwide Class:

All Murphy customers who made in store purchases and were improperly charged and paid monies as a “sales tax” on the full, undiscounted price of products purchased with a discount funded all or in part by Murphy, within the statutory period(s).

Florida Sub-Class:

All Murphy customers who made in store purchases at any Murphy location in the state of Florida and were improperly charged and paid monies as a “sales tax” on the full, undiscounted price of products purchased with a discount funded all or in part by Murphy, within the statutory period(s).

40. Excluded from these classes are Defendant, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees, counsel for the Plaintiffs in this matter, and the Court personnel in this matter.

41. Plaintiffs reserve the right to modify or amend the definitions of the proposed classes before the Court determines whether certification is appropriate.

42. Murphy subjected Plaintiffs and the respective class members to the same unfair, unlawful, and deceptive practices and harmed them in the same manner.

B. Numerosity

43. The proposed classes are so numerous that joinder of all members would be impracticable. Murphy operates well over a thousand retail locations nationwide. The precise number of class members for each class numbers at least in the thousands, but the numbers are

clearly more than can be consolidated in one complaint such that it would be impractical for each member to bring suit individually. Plaintiffs do not anticipate any difficulties in the management of the action as a class action.

C. Commonality

44. Common questions of law and fact predominate in this matter because Murphy's conduct towards the members of the classes is identical. Murphy uniformly and systematically, through its centralized managed pricing system and cash register software, imposes on all defined class members a charge on the full, undiscounted price of discounted items, which discounts Murphy provides or funds all or in part for all items purchased in store at any of its retail locations.

45. Plaintiff shares a common interest with all members of the putative class in the objectives of the action and the relief sought.

46. Because Murphy's conduct was uniform as to all class members, the material elements of Plaintiffs' claims and those of class members are subject to common proof, and the outcome of Plaintiffs' actions will be dispositive for the class.

47. Questions of law and fact that are common to the class include, but are not limited to, the following:

- a. Whether Murphy's practice of collecting sales tax on the full, undiscounted purchase price of taxable products purchased with discount funded whole or in part by Murphy violates Alabama law.
- b. Whether Murphy's practice of collecting sales tax on the full, undiscounted purchase price of taxable products purchased with discount funded whole or in part by Murphy violates Florida law.
- c. Whether Plaintiffs and the classes are entitled to injunctive relief to prevent Murphy from continuing its practice of improperly imposing and collecting a charge as a "sales tax" on the full, undiscounted price of taxable products purchased with a discount funded whole or in part by Murphy;
- d. Whether the named Plaintiffs and the class are entitled to recover damages, for Murphy's practice of improperly imposing and collecting a charge as a

“sales tax” on the full, undiscounted price of taxable products purchased with a discount funded whole or in part by Murphy; and

- e. Whether the named Plaintiffs and the class are entitled to declaratory relief regarding Murphy’s practice of improperly imposing and collecting a charge as a “sales tax” on the full, undiscounted price of taxable products purchased with a discount funded whole or in part by Murphy.

D. Typicality

48. Plaintiffs are members of the class(es) they seek to represent. Plaintiffs’ claims are typical of the respective classes’ members’ claims because of the similarity, uniformity, and common purpose of Murphy’s unlawful conduct. Each class member has sustained, and will continue to sustain, damages in the same manner as Plaintiffs have as a result of Murphy’s conduct.

E. Adequacy of Representation

49. Plaintiffs are adequate representatives of the class(es) they seek to represent and will fairly and adequately protect the interests of the classes. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in litigation of this nature, to represent them. There is no hostility between Plaintiffs and the unnamed class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

50. To prosecute this case, Plaintiffs have chosen the undersigned law firms, which are very experienced in class action litigation and have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

51. Specifically, the undersigned counsel Golomb & Honik and Aughtman Law Firm, proposed co-lead class counsel, have extensive experience in complex commercial litigation, class actions, and have adequate financial resources to ensure that the interests of the prospective class will not be harmed.

F. Requirements of Fed. R. Civ. P. 23(b)(3)

46. The questions of law or fact common to Plaintiffs and each class member's claims predominate over any questions of law or fact affecting only individual members of the classes. All claims by Plaintiffs and the unnamed class members are based on the misapplication of excess mortgage payments.

47. Common issues predominate when, as here, liability can be determined on a class-wide basis, even if there will be some individualized damage determinations.

48. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class as is the case at bar, common questions will be held to predominate over individual questions.

G. Superiority

49. A class action is superior to individual actions in part because of the non-exhaustive factors listed below:

- a. Joinder of all class members would create extreme hardship and inconvenience for the affected customers as they reside all across the states;
- b. Individual claims by class members are impractical because the costs to pursue individual claims may exceed the value of what any one class member has at stake. As a result, individual class members may have no interest in prosecuting and controlling separate actions;
- c. There are no known individual class members who are interested in individually controlling the prosecution of separate actions;
- d. The interests of justice will be well served by resolving the common disputes of potential class members in one forum;
- e. Individual suits would not be cost effective or economically maintainable as individual actions; and
- f. The action is manageable as a class action.

50. The class is not so large that it would be unmanageable, and no difficulties are foreseen providing notice to individual claimants because Murphy keeps records of purchases made by prospective class members during the class period. Plaintiffs will be able to ascertain, through Murphy records and well-implemented claims processes, all discounts used by the class members, including those discounts provided or funded all or in part by Murphy itself, and the amount of sales tax charged to the putative class members on each purchase. Therefore, both the membership of the class and the amount of individual damages will be readily ascertainable.

H. Requirements of Fed. R. Civ. P. 23(b)(1) & (2)

51. There is an inherit risk that the prosecution of separate actions by individual members of the class may lead to inconsistent outcomes that would confront Murphy with potentially incompatible standards of conduct. Either Murphy's alleged practice is wrong for every one of its customers who uses a discount provided by and funded whole or in part by Murphy or it is right for every one of its customers; making this action appropriate for class certification.

52. Because Murphy has acted consistently towards all members of the class, final equitable and injunctive relief is appropriate with respect to both the class and Plaintiffs claims and is likewise subject to common proof and adjudication.

53. Based on the foregoing, class treatment is the most fair and efficient form of adjudication for this matter.

COUNT I
UNJUST ENRICHMENT
(NATIONWIDE CLASS)

54. Plaintiffs, on behalf of themselves and the Class Members, re-allege and incorporate every paragraph of this Complaint and further allege:

55. Murphy received from Plaintiffs and Class Members benefits, in the form of money paid to it, that it has held and earned on interest on, and continues to hold.

56. To the extent Murphy failed to remit improperly charged sales taxes, or otherwise benefited from the sales taxes improperly charges to Plaintiffs and Class Members in any way, it has been unjustly enriched, to the deprivation of the Plaintiffs and Class Members.

57. Further, Murphy received financial benefits not just in the improper sales tax charged and not remitted to the state taxing authorities, but also in the form of increased interest income on those funds.

58. As a result, Plaintiffs and the Class have conferred a benefit on Murphy.

59. Murphy had knowledge of this benefit and voluntarily accepted and retained the benefit conferred on it.

60. Murphy will be unjustly enriched if it is allowed to retain the aforementioned benefits, and each Class Member is entitled to recover the amount by which Murphy was unjustly enriched at his or her expense.

COUNT II
NEGLIGENCE
(NATIONWIDE CLASS)

61. Plaintiffs, on behalf of themselves and the Class Members, re-allege and incorporate every paragraph of this Complaint and further allege:

62. Murphy is under a duty to provide truthful, accurate information regarding discounts and pricing regarding matters and transactions with the scope of its relationship with the Plaintiffs and the classes. It also has a duty to collect, report and pay sales tax.

63. Murphy has a duty to have, maintain, and supervise an effective and functioning accounting, pricing and/or billing system regarding matters and transactions with the scope of its relationship with the Plaintiffs and the classes.

64. Murphy holds itself out, either implicitly or explicitly, as a trustworthy and dependable retailer with an accurate and functioning accounting, pricing and/or billing system.

65. Murphy has a duty to create and maintain invoices which accurately reflect the charges billed to clients and the correct and proper taxes that result therefrom.

66. In light of Murphy's implicit or explicit assertions, the Plaintiffs reposed confidence in Murphy and reasonably relied on it to provide reliable, dependable and accurate accounting and/or billing information.

67. Murphy breached the above-mentioned duty by negligently failing to have, maintain and/or supervise an effective and functioning accounting and /or billing system.

68. Murphy breached the above-mentioned duty by negligently holding itself out as a company with an effective and functioning accounting, pricing and/or billing system when, in fact, it had no such system in place.

69. Murphy breached the above-mentioned duty by failing to create and maintain invoices which accurately reflect the charges billed to clients and the correct and proper sales taxes that result therefrom on a pre-discount basis.

70. Murphy has failed or refused to correct the "system issue" and Plaintiffs and the Class have and continue to suffer damages a result of Murphy's negligence that they otherwise would not have suffered.

71. Murphy's breach proximately caused the Plaintiffs and the classes to suffer these damages.

72. Murphy failed to exercise reasonable care to avoid this harm to Plaintiffs and the classes.

73. Murphy's failures constitute negligence such that Plaintiffs and class members have suffered damages as a result thereof.

COUNT III
FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
ACTUAL DAMAGES
(FLORIDA CLASS)

74. Plaintiffs, on behalf of themselves and the class members, re-allege and incorporate every paragraph of this Complaint and further allege:

75. FDUTPA, section 501.201, *et seq.*, Florida Statutes, prohibits “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” § 501.204, Fla. Stat.

76. Murphy’s business practices are conduct in trade or commerce as defined by FDUTPA, § 501.201, *et seq.*

77. Plaintiff and the Florida Class are “consumers” as that term is defined in § 501.203(7), Florida Statutes. Plaintiff is an aggrieved consumer and has standing to bring this claim.

78. Specifically, Murphy uniformly imposes and collects from all class members a charge as a “sales tax” on the full, undiscounted price of taxable products purchased with a discount funded in whole or in part by Murphy. This practice constitutes an unfair or deceptive act or practice in trade or commerce prohibited under Fla. Stat. § 501.201.

79. Plaintiff and each member of the class have sustained actual damages resulting from Murphy’s practices alleged herein.

80. Murphy’s practice of imposing and collecting a charge as a “sales tax” on the full, undiscounted price of taxable products purchased with a discount funded in whole or in part by Murphy is improper and unlawful and deceptive, in that Murphy is uniformly imposing a charge that it is not legally entitled to collect.

81. Murphy's deceptive, systematic practice of imposing and collecting a charge as a "sales tax" on the full, undiscounted price of taxable products purchased with a discount funded in whole or in part by Murphy is a practice that is likely to mislead a consumer acting reasonably under the circumstances, to the consumer's detriment.

82. Specifically, a reasonable consumer is led to believe that the charge imposed by Murphy is legal, justified, and appropriate "sales tax." However, Murphy deceptively imposes charges on the full, undiscounted price of taxable products purchased with a discount funded whole or in part by Murphy without informing its consumers.

83. Plaintiffs and the Florida Class have sustained damages as a direct and proximate result of Murphy's unfair and unconscionable practices. Section 501.211(2), Florida Statutes, provides Plaintiff and the Florida Class a private right of action against Murphy and entitles them to recover their actual damages, plus attorneys' fees and costs.

84. It is unfair and unconscionable for Murphy to collect amounts that it is not legally entitled to under the guise of charging a legal and appropriate "sales tax."

85. As a direct and proximate result of Murphy's practices, Plaintiffs and those similarly situated have been harmed and have sustained damages.

COUNT IV
INJUNCTIVE RELIEF
(NATIONWIDE AND FLORIDA CLASSES)

86. Plaintiffs, on behalf of themselves and the class members, re-allege and incorporate every paragraph of this Complaint and further allege:

87. This is an action for permanent injunctive relief seeing to enjoin Murphy from imposing and collecting a charge as a "sales tax" on the full, undiscounted price of taxable products purchased with a discount funded in whole or in part by Murphy.

88. This action is brought in part pursuant to 501.211 (1), Florida Statutes, concerning Murphy's violations of Florida Deceptive and Unfair Trade Practices Act, Stat. 501.201 ("FDUTPA").

89. Specifically, Murphy uniformly imposes and collects from all class members a charge as a "sales tax" on the full, undiscounted price of taxable products purchased with a discount funded in whole or in part by Murphy. This practice constitutes an unfair or deceptive act or practice in trade or commerce prohibited under Fla. Stat. 501.201

90. Plaintiff and other class members are persons aggrieved in part by a violation of FDUPTA and are entitled (a) to seek an injunction against Defendant, pursuant to 501.211(1), Florida Statutes, to permanently enjoin Murphy; and (b) to recover their reasonable attorneys' fees and court costs pursuant to 501.211(2) and 501.2105, Florida Stat.

91. The foregoing actions and conduct by Murphy continue at present, and will continue unabated, unless and until prohibited by this Court and constitute a violation of law.

92. Plaintiffs and the class have no adequate remedy at law and they - and the consuming public - will or are likely to suffer irreparable harm unless Murphy's practices alleged herein are enjoined.

93. Plaintiffs and the class will suffer irreparable harm if an injunction is not granted as monetary damages cannot force Murphy to correct its improper conduct, change its improper practices or enjoin it from continuing its improper practice.

94. The requested injunction promotes the public interest by furthering the proper application of law and preventing the improper collection of improper charges from unknowing consumers.

95. Accordingly, on behalf of themselves and those similarly situated, Plaintiffs asks this Court to enjoin Murphy from imposing and collecting a charge as a “sales tax” on the full, undiscounted price of taxable products purchased with a discount funded in whole or in part by Murphy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated individuals, demands judgment against Murphy as follows:

1. Declaring this action to be a proper class action maintainable pursuant to Rule 23(a) and Rule 23(b)(1) and (2), or Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiffs and their counsel to be representatives of the classes;
2. Enjoining Murphy from continuing the acts and practices described above;
3. Awarding damages sustained by Plaintiffs and the Classes as a result of Murphy’s practices, together with pre-judgment interest;
4. Awarding punitive damages because Murphy’s practices rise to the level of willfulness, maliciousness and recklessness that requires strong punishment and deterrent to a company of the size and stature as Murphy.
5. Finding that Murphy has been unjustly enriched and requiring it to refund all unjust benefits to Plaintiffs and the classes, together with pre-judgment interest;
6. Finding that Murphy has been negligent and requiring it to pay all the damages proximately caused by its negligence, together with pre-judgment interest;
7. Awarding Plaintiffs and the classes costs and disbursements and reasonable allowances for the fees of Plaintiffs’ and the classes’ counsel and experts, and reimbursement of litigation expenses.

8. Awarding Plaintiff Enslin and the Florida Class damages, injunctive relief, declaratory relief, attorneys' fees, and costs under FDUTPA; and

9. Awarding such other and further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs and the Classes request a jury trial for any and all Counts for which a trial by jury is permitted by law.

/s/ Jay Aughtman

Joseph "Jay" H. Aughtman, Esquire (*pro hac vice*)

Aughtman Law Firm, LLC

1722 Platt Place

Montgomery, AL 36117

Phone: (334) 215-9873

Fax: (334) 213-5663

Email: jay@aughtmanlaw.com

John R. Dowd, Jr. (FL Bar No. 83267)

Dowd Law Firm

Regions Bank Building

25 Beal Parkway, SE, Suite 230

Fort Walton Beach, Florida 32548

Phone: (850) 650-2202

Fax: (850) 650-5808

E-mail: john@dowdlawfirm.com

michelle@dowdlawfirm.com

Kenneth J. Grunfeld, Esquire (*pro hac vice*
admission pending)

Golomb & Honik, P.C.

1835 Market Street, Suite 2900

Philadelphia, PA 19103

Phone: (215) 985-9177

Fax: (215) 985-4169

Email: kgrunfeld@golombhonik.com

Dated: May 16, 2018

Attorneys for Plaintiffs and the Classes

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May 2018, I caused a true and correct copy of the foregoing First Amended Class Action Complaint, along with Exhibits, to be filed and served on all counsel of record via the court's CM/ECF filing system.

/s/ Jay Aughtman

Joseph "Jay" H. Aughtman, Esquire (*pro hac vice*)