

**IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT,  
IN BROWARD COUNTY, FLORIDA**

**OFFICE OF THE ATTORNEY GENERAL,  
STATE OF FLORIDA, DEPARTMENT OF  
LEGAL AFFAIRS,**

**CASE NO. CACE-18-29618**

**Plaintiff,**

**-vs-**

**UPLINE MOVING & STORAGE INC,**  
f/k/a #1 Van Lines Inc, a Florida corporation, and  
**DANESHIA L. AUGUSTIN,** Individually, and as Owner,  
Officer and/or Principal of UPLINE MOVING &  
STORAGE INC, f/k/a #1 Van Lines Inc,  
**Defendants.**

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**FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF,  
EQUITABLE RESTITUTION, CIVIL PENALTIES  
AND OTHER STATUTORY RELIEF**

The Plaintiff, OFFICE OF THE ATTORNEY GENERAL, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS (“Attorney General” and/or “Plaintiff”), by and through the undersigned Assistant Attorney General, hereby sues the Defendants UPLINE MOVING & STORAGE INC, f/k/a #1 Van Lines Inc, a Florida corporation (“UPLINE”), and DANESHIA L. AUGUSTIN, Individually, and as Owner, Officer and/or Principal of UPLINE MOVING & STORAGE, INC, f/k/a #1 Van Lines Inc. (hereafter collectively referred to as “Defendants”).

**SUMMARY OF COMPLAINT**

1. Since at least in or about April 2014 to at least in or about November 2016, Defendants have held themselves out as being professional movers staffed by well-trained employees who use the utmost care with shippers’ belongings and are scrupulous in preparing

and following estimates. The reality is far different. Defendants have regularly used unskilled, untrained laborers who often damage or steal property, and routinely provide deceptive, low ball estimates before extorting higher fees by holding shippers' property hostage. Defendants have harmed hundreds of consumers and Plaintiff respectfully asks this Court to impose civil penalties, grant restitution and permanently enjoin further abuses.<sup>1</sup>

2. This action is brought by the Attorney General based on: (1) violations of Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (hereinafter "FDUTPA"); (2) violations of the Florida Household Moving Services Act, Chapter 507, Sections 507.01-507.13, Florida Statutes (hereinafter "Florida Moving Act" or F.M.A.), constituting *per se* violations of FDUTPA; and (3) violations of Title 49 U.S.C., Subtitle IV, Part B (hereinafter the "Interstate Transportation Code" or "I.T.C.") and the regulations promulgated by the Federal Motor Carrier Safety Administration ("FMCSA") contained in Title 49 C.F.R., Chapter III, Subchapter B, Sections 350-399 (hereinafter "FMCSA Regulations" or "the Regulations"),<sup>2</sup> which constitute *per se* violations of FDUTPA.

3. At all times material hereto, the Defendants have engaged in deceptive acts and practices in connection with the transportation of household goods by shippers (who are individual consumers) either solely within the State of Florida (intrastate moves) or crossing state boundaries or involving more than one state (interstate moves).<sup>3</sup> In connection with these

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<sup>1</sup> For purposes of this Complaint, all consumers referenced herein are either actual or prospective shippers or individual shippers, as those terms are further defined herein.

<sup>2</sup> FMCSA was established within the U.S. Department of Transportation on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (Title 49 U.S.C., Subtitle I, §113).

<sup>3</sup> As used in this Complaint, the term "household goods" or "goods" shall have the same meaning as contained within Section 13102 of the I.T.C. and Section 507.01(7) of the F.M.A.,

activities, the Defendants have acted as “movers or “household goods motor carriers,” as those terms are defined by Florida and federal law.

4. While engaged in trade or commerce as movers or household goods motor carriers, the Defendants have utilized unfair and deceptive trade practices in connection with advertising, soliciting, providing, offering, selling or distributing services relating to the moving, transportation, arranging for the transportation or the physical movement and/or storage of household goods (hereinafter “Moving Services”) for consumers residing in Florida and elsewhere throughout the United States.

5. The Defendants misrepresented or deceptively represented to these consumers the price, nature, extent, qualities, timing or characteristics of the Moving Services they were offering. Essentially, the Defendants often quoted consumers an artificially low estimate for providing their Moving Services. Thereafter, in numerous instances, the Defendants then failed to honor that “low ball” estimate, but instead, substantially increased the price charged at the time the move occurred. In addition, in numerous instances, the new higher price was not disclosed to the consumer until after loading of the consumer’s household goods had been partially or fully completed.

6. In numerous instances, the Defendants’ agents have provided estimates for the transportation and other [accessorial] charges to be incurred in connection with the move, that do

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and shall include personal effects and other personal property used, to be used or commonly found in a home, personal residence, or other dwelling, including, but not limited to, household furniture. The term “motor carrier” or “carrier” shall mean any “person” (including an individual) who provides “motor vehicle” “transportation” for compensation as those terms are defined in Section 13102 of the I.T.C. (See also, Title 49 U.S.C. 13102 (14) and Title 1 U.S.C. 1). The term “shipper” shall mean a person who uses the services of a “mover” to transport or ship household goods as part of a “household move,” as those terms are defined within Section 507.01 of the F.M.A.

not comply with applicable Florida law and/or FMCSA Regulations.<sup>4</sup> For example, in numerous instances, the Defendants failed to: (1) provide a bona fide estimate to the consumer in writing; (2) base the estimate on a physical survey of the household goods when otherwise required to do so; (3) include in the estimate all of the charges for transportation and related (accessorial) services to be provided; and/or (4) clearly indicate whether a “binding” or a “non-binding” estimate was being provided.

7. The Defendants and their agents provided consumers with these deceptive, “low ball” estimates to induce the consumers to enter into a service agreement with Defendant UPLINE relating to their household move, and often to induce the consumer to pay the Defendants a portion of the anticipated fees as an up-front “deposit.”

8. In numerous instances, after the Defendants’ agents arrived and began loading the consumers’ household goods onto the moving trucks, the consumers were then confronted with a significantly higher monetary demand than previously quoted to them, in order to obtain a release of their property from the Defendants and/or their affiliates. In numerous instances, the new price demanded at the time of delivery was significantly more than the amount of the “binding estimate,” or more than 110% of the “non-binding” estimate that the Defendants previously provided to the consumer, in violation of FMCSA Regulations and Florida law.

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<sup>4</sup> As used in this Complaint, “accessorial services” means any service performed by a mover which results in a charge to the shipper and is incidental to the transportation or shipment of household goods, as described in Section 507.01(1) of the F.M.A., including, but not limited to, valuation coverage; preparation of written inventory; equipment, including dollies, hand trucks, pads, blankets, and straps; storage, packing, unpacking, or crating of articles; hoisting or lowering; waiting time; carrying articles excessive distances to or from the mover’s vehicle, which may be cited as “long carry”; overtime loading and unloading; reweighing; disassembly or reassembly; elevator or stair carrying; boxing or servicing of appliances; and furnishing of packing or crating materials.

9. The Defendants and/or their affiliates often refused to deliver the consumer's household goods notwithstanding the consumer's attempts to tender the amount specified in the service agreement or estimate they were previously provided. Instead, in numerous instances, the Defendants and their agents refused to relinquish the consumer's household goods until the consumer paid in full the new, higher amount (which the Defendants' agents often demanded be paid only in cash). If a consumer refused to pay the new higher amount, the Defendants and their agents often threatened to retain the consumer's household goods and to add "storage" or other "redelivery" fees to the amount they were demanding from the consumer. In other words, the household goods were held hostage until the consumer paid the higher fees.

10. In addition, the Defendants misrepresented or deceptively represented to consumers (in their marketing materials and otherwise) that their agents were highly trained experts and would provide exceptional care for the consumers' household goods during the move. In fact, however, the Defendants and their affiliates regularly employed unskilled and untrained laborers, who often delivered the consumers' goods in a broken or severely damaged condition, or with various items missing. The Defendants generally provided only *de minimis* compensation to the consumers (if anything at all) for the damage and/or loss resulting from the often intentional or reckless misconduct of their agents.

11. Likewise, the Defendants and their agents often misrepresented or deceptively represented the timeframe or schedule for pickup, delivery and/or storage of the household goods estimated. In numerous instances, the Defendants' agents arrived late to pick up the consumers' goods or delivered the consumers' goods well beyond (sometimes many weeks beyond) the promised delivery dates, with insufficient notice and little or no recompense provided to the consumer.

12. Numerous consumers have filed complaints with the Attorney General and/or other consumer protection agencies regarding the Defendants' deceptive and unfair business practices.

13. The Attorney General brings this action to halt the Defendants' unlawful acts and practices; to prevent consumers from suffering irreparable harm from such unlawful acts and practices; to hold the Defendants accountable; and to provide equitable relief to consumers that the Defendants have victimized.

#### **JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction pursuant to the provisions of FDUTPA, and Section 26.012, Florida Statutes. Venue is proper in the Seventeenth Judicial Circuit as the Defendants have operated either as a household goods broker or motor carrier in Broward County Florida, within the Southern District of Florida.

15. The statutory violations alleged herein occurred in or affected more than one judicial circuit in the State of Florida. The Defendants' actions material to this Complaint have occurred within four (4) years of the filing of this action.

#### **THE PLAINTIFF**

16. The Attorney General is an "enforcing authority" of FDUTPA and is authorized to bring this action and to seek injunctive relief and all other available equitable or statutory relief.

17. The Attorney General has conducted an investigation of the matters alleged herein, and Attorney General Ashley Moody has determined that this enforcement action serves the public interest, as set forth in Section 501.207(2), Florida Statutes. The interests of the residents of the State have been or are being threatened or adversely affected by the Defendants,

who are motor carriers or brokers providing transportation subject to jurisdiction under subchapters I or III of Chapter 135 of the Interstate Transportation Code and are engaged in household goods transportation that violates the I.T.C. and/or the FMCSA Regulations issued thereunder.<sup>5</sup>

### **THE DEFENDANTS**

18. Defendant UPLINE (f/k/a #1 Van Lines Inc), is a Florida for-profit corporation that has reportedly operated from several offices located within Dade and Broward Counties, including 4000 Hollywood Blvd., Suites 555S and 530S, Hollywood, FL 33021. From on or about April 23, 2014 until at least on or about November 16, 2016, Defendant DANESHIA L. AUGUSTIN was registered with the Florida Department of State, Division of Corporations (“FDOS”) as an officer (president) of UPLINE.

19. On or about November 16, 2016, UPLINE filed with FDOS amended Articles of Incorporation, which, among other things: 1) changed the company’s name from #1 Van Lines Inc to Upline Moving & Storage Inc.; and removed Defendant AUGUSTIN as the President of UPLINE. Nevertheless, on or about March 9, 2017, Defendant UPLINE filed its 2017 annual report with FDOS, again listing Defendant AUGUSTIN as being its President. Defendant UPLINE did not properly file its 2018 annual report with FDOS and accordingly, was administratively dissolved on September 28, 2018.

20. Defendant DANESHIA L. AUGUSTIN (“AUGUSTIN”) is an adult, natural person who, upon information and belief, resides within Dade County. Defendant AUGUSTIN

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<sup>5</sup> Under the I.T.C., the term “carrier” is defined to include a “motor carrier,” which is further defined to mean any “person” who provides motor vehicle transportation for compensation. (See §§13102 (3) and (14) of the I.T.C.). As used within the I.T.C., the words “person” and “whoever” include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals. (See §13102(18) of the I.T.C. and Title 1 U.S.C. §1). Accordingly, each of the Defendants are “carriers” under the I.T.C.

was registered with the FDOS, as the president and Registered Agent of UPLINE from at least on or about April 23, 2014 until at least on or about November 16, 2016, and again from on or about March 9, 2017, when UPLINE filed its annual report for 2017 with FDOS, until it was administratively dissolved on September 28, 2018.

21. As an officer, owner and/or principal of UPLINE, Defendant AUGUSTIN at all times material to the allegations in this Complaint, participated in, controlled and/or possessed the authority to control the acts and practices of Defendant UPLINE, and also possessed actual and/or constructive knowledge of all material acts and practices complained of herein.

22. The Defendants, at various times material hereto, have acted in numerous instances as interstate “household goods motor carriers,” as defined by Section 13102 (12) of the I.T.C. and Section 375.103 of the Regulations (see paragraphs 28 through 41, below). In numerous other instances, the Defendants have acted as intrastate “movers” as defined in Section 507.01(9) of the F.M.A. (see paragraphs 42 through 49, below).

23. At all times while acting as an intrastate “mover” in connection with the transportation or shipment of household goods originating and terminating in the State of Florida, the Defendants were required to comply with the Florida Moving Act.

24. At all times while acting as “household goods motor carriers” in connection with the transportation or shipment of household goods that cross state boundaries or involve more than one state, the Defendants were “carriers” subject to jurisdiction under subchapter I of Chapter 135 of the I.T.C. and FMCSA Regulations, and were required (under Section 375.101 of the Regulations) to follow all FMCSA Regulations as set forth in Title 49 C.F.R., Subtitle B, Chapter III, Subchapter B, Part 375.

25. The Defendants, at all times material hereto, have solicited “consumers” within



the definition of Section 501.203(7) of FDUTPA. Those persons who used the Defendants' Moving Services as part of a household move were "shippers" or "individual shippers" within the meaning of the Florida Moving Act (Section 507.01(12)) and/or the I.T.C. (Section 13102(13)), as well as being "consumers" under FDUTPA.<sup>6</sup>

26. The Defendants, at all times material hereto, have engaged in a "trade or commerce" within the definition of Section 501.203(8), Florida Statutes.

27. The Defendants, at all times material hereto, have advertised, offered, solicited, and/or provided Moving Services to consumers, which constitute "goods, services and/or property" within the meaning of Section 501.203(8), Florida Statutes, in Florida and elsewhere throughout the United States.

28. Since the inception of this proceeding, Defendant AUGUSTIN appears to have become a non-resident and has concealed her whereabouts in order to evade service. Thus, Plaintiff has been unable to serve Defendant AUGUSTIN both personally and in her capacity as the President of UPLINE.

### INTERSTATE TRANSPORTATION OF HOUSEHOLD GOODS

#### **A. Transportation of Household Goods (Part 375)**

29. Title 49 C.F.R., Subtitle B, Chapter III, Subchapter B, Part 375 sets for the FMCSA Regulations relating to the Transportation of Household Goods in Interstate Commerce by household goods motor carriers, and related consumer protection regulations. Section 375.101 specifically provides that a household goods motor carrier engaged in the interstate

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<sup>6</sup> Pursuant to Section 13102(13) of the I.T.C., the term "individual shipper" means any person who— (A) is the shipper, consignor, or consignee of a household goods shipment; (B) is identified as the shipper, consignor, or consignee on the face of the bill of lading; (C) owns the goods being transported; and (D) pays his or her own tariff transportation charges.

transportation of household goods must follow all of the regulations set forth in Part 375.<sup>7</sup>

30. Section 375.103 of the Regulations (and Section 13102 (12) of the I.T.C.) generally define a “household goods motor carrier” as a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services: (1) binding and nonbinding estimates; (2) inventorying; (3) protective packing and unpacking of individual items at personal residences; (4) loading and unloading at personal residences.

31. Section 375.207 permits a household goods motor carrier to publish and use advertisements, but requires that any such advertisements be “truthful, straightforward, and honest.”<sup>8</sup>

32. Pursuant to Section 375.217 the household goods motor carrier is required to specify the form of payment required when the estimate is prepared, and that same form of payment must be specified in the order for service and bill of lading. Thereafter, the household goods motor carrier and its agents must honor that form of payment at delivery, except when a shipper agrees to a change in writing.

33. Section 375.401(a) of the Regulations (and Section 14104(b) of the I.T.C.)

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<sup>7</sup> The term “transportation” is defined in §13102 (23) of the I.T.C. to include:

(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

<sup>8</sup> Section 375.103 defines the term “advertisement” to mean, “any communication to the public in connection with an offer or sale of any interstate household goods transportation service.” This includes written or electronic database listings [other than in a telephone directory or similar publication] of your name, address, and telephone number in an on-line database or displayed on an Internet web site.

requires that the household motor carrier conduct a physical survey of the household goods to be transported and provide the prospective individual shipper with a written estimate, based on the physical survey, of the charges for the transportation of the household goods and all related services. This Section provides the following two exceptions to the requirement to conduct a physical survey:

- (1) If the household goods are located beyond a 50-mile radius of the location of the household goods motor carrier's agent preparing the estimate, the requirement to base the estimate on a physical survey does not apply.
- (2) An individual shipper may elect to waive the physical survey, provided that the waiver agreement is in writing; it is signed by the shipper before the shipment is loaded; and the household goods motor carrier retains a copy of the waiver agreement as an addendum to the bill of lading.

34. Before executing an order for service for a shipment of household goods for an individual shipper, Section 375.401(b) of the Regulations (and Section 14104(b)(1)(C) of the I.T.C.) requires that the household goods motor carrier provide the shipper with a written estimate of the total charges for the transportation and all related services (including accessorial services such as elevators, long carries, etc.) and indicate whether it is a binding or a non-binding estimate. Both the household goods motor carrier and the shipper must sign the estimate of charges, and a dated copy of the estimate of charges must be provided to the shipper at the time it is signed. Thereafter, Section 375.401(i) provides that the estimate of charges may only be amended upon mutual agreement of the parties before loading a household goods shipment.

#### **Use of Binding Estimates**

35. Section 375.403 of the Regulations requires that a “binding estimate” clearly indicate on its face that the estimate is binding upon the household goods motor carrier and the individual shipper, and that the charges shown apply only to those services specifically identified in the estimate.

36. If it appears an individual shipper has tendered additional household goods or requires additional services not identified in the binding estimate, and an agreement as to those additional goods or services cannot be reached, Section 375.403(6) provides that the motor carrier is not required to service the shipment. However, if the motor carrier does service the shipment, before loading the shipment the motor carrier must either: (1) do one of the following three things: (i) reaffirm the prior binding estimate; (ii) negotiate a revised written binding estimate accurately listing, in detail, the additional household goods or services; or (iii) agree with the individual shipper, in writing, that they will both consider the original binding estimate as a non-binding estimate subject to Section 375.405 of the Regulations. *Id.*<sup>9</sup>

37. A household goods motor carrier is required to relinquish possession of a shipment of household goods upon the individual shipper's offer to pay the binding estimate amount (plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for "impracticable operations" not to exceed 15 percent of all other charges due at delivery).<sup>10</sup> *Id.* The failure to relinquish such household goods under these circumstances constitutes a failure to transport with "reasonable dispatch" under 375.403(a)(10), and a violation of the I.T.C. (Section 13707(b)(3))<sup>11</sup> and FMCSA Regulations (Sections 375.403(7) and/or 375.703(a))<sup>12</sup>

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<sup>9</sup> Once the motor carrier loads a shipment, failure to execute a new binding estimate or a non-binding estimate signifies they have reaffirmed the original binding estimate, and the motor carrier may not collect more than the amount of the original binding estimate, except as specifically provided in Section 375.403(a)(8) and (9). (§375.403(7)).

<sup>10</sup> "Impracticable operations" are defined within the carrier's tariff and generally refer to services required when operating conditions make it physically impossible for the carrier to perform pickup or delivery with its normally assigned road-haul equipment.

<sup>11</sup> Section 13707(b)(3) of the I.T.C. provides, in pertinent part, that: "**(A)In general.**—A carrier providing transportation of a shipment of household goods shall give up possession of the household goods being transported at the destination upon payment of— **(i)** 100 percent of the

### Use of Non-Binding Estimates

38. If a “binding” written estimate is not provided to an individual shipper, Section 375.405(a) of the Regulations requires that the household goods motor carrier provide the shipper with a “non-binding” written estimate. The “non-binding” estimate must be “reasonably accurate,” provided without charge, based on the estimated weight or volume of the shipment and services required (and the physical survey of the household goods if required), and clearly describe the entire shipment and all services being provided. *Id.*, at Section 375.405(b)

39. Section 375.405(b)(5) further provides that the “non-binding” estimate must clearly indicate on its face that the estimate is not binding on the household goods motor carrier, that the charges shown are the approximate charges to be assessed for the service identified in the estimate, and that the shipper will not be required to pay more than 110 percent of the “non-binding” estimate at the time of delivery.

40. Once a shipment of household goods is loaded, Section 375.405(8) provides that a household goods motor carrier may not collect at delivery more than 110 percent of the amount of the original non-binding estimate at destination, except as provided in Section 375.405(b)(9) and (10), relating to “impracticable operations” not to exceed 15 percent of all other charges due

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charges contained in a binding estimate provided by the carrier; [or] (ii) not more than 110 percent of the charges contained in a nonbinding estimate provided by the carrier; ...” Pursuant to Section 13707(b)(3)(D), the carrier may also collect at delivery charges for “impracticable operations” not to exceed 15 percent of all other charges due at delivery.

<sup>12</sup> Section 375.703(a) of the FMCSA Regulations provides that, with respect to a binding estimate, the maximum amount that a household goods motor carrier may collect-on-delivery is “the exact estimate of the charges, plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for impracticable operations as defined in [the carrier’s] tariff. The maximum amount of charges for impracticable operations [the carrier] may collect on delivery is an amount equal to 15 percent of all other charges due at delivery.”

at delivery.<sup>13</sup> The failure of a household goods motor carrier to relinquish possession of a shipment upon the individual shipper's payment (or offer to pay) up to 110 percent of the approximate costs of a non-binding estimate (plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for "impracticable operations" not to exceed 15 percent of all other charges due at delivery) constitutes a failure to transport with "reasonable dispatch" under Section 375.407(b), and a violation of the I.T.C. (Section 13707(b)(3)) and FMCSA Regulations (Sections 375.405(8), 375.407(a) and/or 375.703(b)).<sup>14</sup>

41. Section 375.603 of the Regulations provides that the household goods motor carrier must tender a shipment for delivery for an individual consumer on the agreed delivery date or within the period specified on the bill of lading. When a carrier is unable to perform either the pickup or delivery of a shipment on the dates or during the periods specified in the order for service, as soon as the delay becomes apparent, the carrier must notify the individual shipper of the delay, at the carrier's expense, and advise the individual shipper of the dates or periods when the carrier expects to be able to pick up and/or deliver the shipment, as set forth in Section 375.605.

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<sup>13</sup> As with a binding estimate, Section 375.405(8) provides that, once a motor carrier loads a shipment, failure to execute a new non-binding estimate (when an individual shipper tenders additional household goods or requires additional services not identified in the original non-binding estimate), signifies the motor carrier have reaffirmed the original non-binding estimate; the motor carrier may not collect more than 110 percent of the amount of the original non-binding estimate at destination, except as provided in Sections 375.405 (b)(9) and (10).

<sup>14</sup> Section 375.703(b) of the FMCSA Regulations provides that, with respect to a non-binding estimate, the maximum amount that a household goods motor carrier may collect-on-delivery is "110 percent of the non-binding estimate of the charges, plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for impracticable operations as defined in [the carrier's] tariff. The maximum amount of charges for impracticable operations [the carrier] may collect on delivery is an amount equal to 15 percent of all other charges due at delivery."

42. Pursuant to Section 375.901, the penalty provisions of 49 U.S.C. Chapter 149 apply to this part. Section 14911 of the I.T.C. further provides that: "An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier providing transportation or service subject to jurisdiction under chapter 135 that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual."<sup>15</sup>

### **FLORIDA HOUSEHOLD MOVING SERVICES ACT**

43. The Florida Moving Act sets forth the law in Florida governing the loading, transportation or shipment, unloading, and affiliated storage of household goods as part of household moves.<sup>16</sup>

44. Section 507.01(9) of the F.M.A. defines a "mover" as a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move.

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<sup>15</sup> Likewise, Section 13907 of the I.T.C. provides that: "Each motor carrier providing transportation of household goods shall be responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services (including accessorial or terminal services) and which are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier."

<sup>16</sup> The term "household move" or "move" is defined in Section 507.01(8) of the Florida Moving Act as "the loading of household goods into a vehicle, moving container, or other mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations... :

- (a) From one dwelling to another dwelling;
- (b) From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agents; or
- (c) From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling."

45. Section 507.01(10) of the F.M.A. defines a “moving broker” or “broker” as a person who, for compensation, arranges for another person to load, transport or ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, Internet website, or other means.

46. The Florida Moving Act also requires that before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include, among other things, “an itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading and accessorial services to be provided during a household move or storage of household goods.” (See §507.05(5) of the F.M.A.)

47. Section 507.05(5) of the F.M.A. further requires that the contract and estimate must clearly and conspicuously disclose to the shipper the acceptable forms of payment, and requires that a mover accept a minimum of two of the three following forms of payment: (a) cash, cashier’s check, money order, or traveler’s check; (b) valid personal check, showing upon its face the name and address of the shipper or authorized representative; or (c) valid credit card, which shall include, but not be limited to, Visa or MasterCard.

48. Pursuant to Section 507.06 (1), “[a] mover must relinquish household goods to a shipper and place the goods inside a shipper’s dwelling...., unless the shipper has not tendered payment in the amount specified in a written contract or estimate signed and dated by the shipper.” Nor may a mover refuse to relinquish prescription medicines and goods for use by children, including children’s furniture, clothing, or toys, under any circumstances. [Id.].

49. Likewise, pursuant to Section 507.06(2), “[a] mover may not refuse to relinquish household goods to a shipper or fail to place the goods inside a shipper’s dwelling...., based on



the mover's refusal to accept an acceptable form of payment."

50. The Florida Moving Act, Section 507.07, expressly provides, among other things, that:

**"Violations.--** It is a violation of this chapter to: ...

- (3) Misrepresent or deceptively represent:
  - a. The contract for services, bill of lading, or inventory of household goods for the move estimated.
  - b. The timeframe or schedule for delivery or storage of household good estimated.
  - c. The price, size, nature, extent, qualities, or characteristic of accessorial or moving services offered.
  - d. The nature or extent of other goods, services, or amenities offered.
  - e. A shipper's rights, privileges, or benefits.
- (4) Fail to honor and comply with all provisions of the contract for services or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder.
- (5) Withhold delivery of household goods or in any way hold goods in storage against the express wishes of the shipper if payment has been made as delineated in the estimate or contract for services.

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- (6) a. Include in any contract any provision purporting to waive or limit any right or benefit provided to shoppers under this chapter.
- b. Seek or solicit a waiver or acceptance of limitation from a shipper concerning rights or benefits provided under this chapter.

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- d. Commit any other act of fraud, misrepresentation, or failure to disclose a material fact.

**STATEMENT OF FACTS AND  
DEFENDANTS' DECEPTIVE COURSE OF CONDUCT**

**Deceptive Marketing Activities**

51. At all times material hereto, the Defendants deceptively solicited consumers to

purchase their Moving Services, by making materially false and/or misleading representations to shippers and potential shippers concerning, among other things, the nature and quality of those services. In that regard, the Defendants utilized various marketing methods to advertise their Moving Services to consumers, including but not limited to, Internet websites, social media and telemarketing. In connection with these solicitations, the Defendants have, among other things, deceptively promised (expressly and implicitly) to provide honest, reliable and professional moving services to consumers in Florida and elsewhere throughout the United States.<sup>17</sup>

52. The Defendants' marketing materials repeatedly represented to consumers that their Moving Services would be provided by highly trained, knowledgeable, and experienced, professional movers who would load, transport and unload the consumers' household goods with the utmost care. In reality, the Defendants have often employed inexperienced, unskilled and/or untrained laborers who are not properly supervised or monitored and who regularly damage, destroy and/or misappropriate the consumers' property. Defendants' marketing materials have failed to disclose the substantial risk of loss and/or damage to consumers' property that exists from these acts and practices.

53. For example, to induce potential shippers to purchase their Moving Services, the Defendants have made numerous false and/or misleading representations throughout their website pages (at [www.onevanlines.com](http://www.onevanlines.com)) regarding the nature and quality of Moving Services their agents would provide, including, among others:

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<sup>17</sup> Section 375.207 of the FMCSA Regulations permits a household goods motor carrier to publish and use advertisements, but requires that any such advertisements be "truthful, straightforward, and honest." The term "advertisement" is defined in Section 375.103 to mean, "any communication to the public in connection with an offer or sale of any interstate household goods transportation service." This includes written or electronic database listings [other than in a telephone directory or similar publication] of your name, address, and telephone number in an on-line database or displayed on an Internet web site. *Id.*

a. Welcome to #1 Van Lines

“We all know moving is a stressful time, but with the help of **our knowledgeable relocation specialists**, we will assist you with planning your move from beginning to end! We call ourselves #1 Van Lines for a reason – to give you #1 service in every aspect of your move and the individual attention you deserve! ... From free in-home estimates by one of **our experienced surveyors** to **meticulous blanket wrapping and packing furniture** and other fragile items, we are dedicated to excellence!” (emphasis added);

b. About Us

“... We provide a wide variety of **stress free, dependable moving services** from the moment you contact us until the last box is unpacked.... We also provide high quality packing, wrapping and storage options, **and specialize in moving antiques....** From dedicated customer service to providing experienced moving help **through our trained professionals**, we provide it all!...” (emphasis added);

c. Services

*Local Moves...* #1 Van Lines will transport your goods safely and swiftly to your new home to make your move easy. ...#1 Van Lines will take it from there to ensure you have a seamless, worry-free move....

*Long Distance Moves...* #1 Van Lines will effectively pack, wrap, and load your belongings using professional techniques and high-quality materials to protect your shipment during its lengthy transit....

*Antique Moves...* Nervous about moving with your priceless antique collection? At #1 Van Lines, we **provide professional wrapping, padding, packing and crating services** to protect your delicate antique furniture, heirlooms and artwork from damage during transit. **Our experience, skill and training** in handling and shipping these prized possessions **will ensure they arrive at your destination without so much as a scratch....**

*Packing Services...* Packing is a hectic and time-consuming task, which requires **dedication, precision, and knowledge of proper techniques.** #1 Van Lines will happily take care of this nerve-racking process for you, **carefully wrapping and protecting every one of your possessions with skill and care....** **Your shipment will arrive unscathed and intact with professional packing services** from #1 Van Lines!” (emphasis added);

d. Antique Movers Services

“You need to research for a reliable company to move your family heirlooms that may be antique paintings, furniture, pottery, mirrors, vases, jewelry, cars, music instruments and other items. Packing antiques is entirely different from the ordinary household items. **We have experts** who deal with packing all kind of antiques only **and ensure the safe shifting of your family antique** collections.... We use special antique wrapping techniques **to save them from any damage or scratches...**” (emphasis added);

c. Packing Services

“Packing is most important and tiring job of the shifting process. It needs to be done **patiently with proper techniques.... We send our expert packers** on a single call to make it possible in a lesser time with perfection.... If you are moving inter or intra state and have to cover longer kilometers, packing needs to be done differently than a short distance packing. **We provide special containers and trucks** as well to meet the heavy shipment loading.... **Latest techniques are applied in the art of packing** because we know that poor packing will lead to loss, damage or scratch. ” (emphasis added);

f. Long Distance Moving Services

“... you don’t have to sacrifice your belongings as one van lines (sic) has provided **reliable solutions** for long distance movers. ...

*Installing the electronics...* All the electrical goods either they belong to household, office; computers or any other equipments (sic) are **reconnected by our experts** so that you may find no inconvenience in starting life at new place. ...

*Track inventory system.* ... We provide the service of track inventory i.e. you are aware of each and every move and stop of your shipment. All the items are scanned and allocated a bar code by our track system then they can be monitored from anywhere. **Due to this there are zero chances of any loss or damage.**” (emphasis added).

54. In many instances, consumers were led to believe that their household goods would be loaded onto the Defendants’ trucks and immediately transported to the consumers’ new dwelling by the Defendants’ highly trained, supervised and professional staff. In fact, however, the Defendants often completed the consumers’ move by using other, third-party carriers whose employees were not trained and/or supervised by the Defendants, and who often carelessly damaged or failed to deliver the consumer’s property. On numerous occasions, the Defendants or their agents arrived to pick up and/or deliver the consumer’s household goods using unmarked or obviously rented vehicles (such as U-Haul or Budget Rental trucks).

55. In numerous instances, after the Defendants’ agents loaded the consumer’s household goods onto a moving truck, those goods were not then immediately transported to the consumer’s new dwelling. Instead, the Defendants’ agents unloaded the consumer’s goods at an undisclosed storage facility, and then stored those goods until they could be combined with the

household goods of one or more other consumer/shippers who were moving to the same geographic region or vicinity. Those practices, which often resulted in substantial delivery delays and/or loss of the consumers' household goods through theft or mis-delivery, were not disclosed to consumers on Defendants' websites or otherwise. In numerous instances, when consumers contacted the Defendants in an attempt to ascertain where their goods were located and/or when they would be delivered, the Defendants were unable or unwilling to provide that information.

56. Likewise, the Defendants often represented to consumers that UPLINE offers consumers "state-of-the-art storage facilities to keep your belongings safe while you're in transition during your move." The Defendants' website, for example, suggested that the company has its own "climate controlled" storage facilities. However, the location of these purported facilities (where consumers' goods are often held hostage) was not revealed; nor have the Defendants disclosed this information on their contract(s) and estimate(s) provided to consumers in connection with their moves (as required under Section 507.05(4) of the F.M.A.).

57. The Defendants' website also contained a toll-free telephone number for consumers to call for information regarding their Moving Services. Consumers who contacted the Defendant's agents over the telephone were again reassured that their household goods would be moved with the utmost care by the Defendants' "professional," "highly trained" and/or "expert" movers.

58. In reality, many consumers who have hired the Defendants to move their household goods (either within Florida or in interstate commerce) were confronted with unskilled, day laborers who loaded and unloaded the consumers' belongings with little regard for their property. Consumers who complained about damage to their property during the move

were regularly met with rude, aggressive, threatening and even abusive language, both from the movers and office personnel.

59. Although the Defendants and their agents promised consumers that they would take exceptionally good care of the consumers' household goods during the move, they routinely did not provide such care. Moreover, the Defendants did not compensate consumers for the damage or loss of their property (through theft or otherwise) that occurred during the move, often due to the intentional or reckless conduct of the Defendants' agents.

60. The Defendants repeatedly made these false promises and deceptive representations to consumers despite knowing that their agents routinely damaged, lost and/or misappropriated consumers' valuable property during the moves. Likewise, the Defendants knew or should have known that their deceptive acts and practices regularly resulted in significant financial harm to consumers. Nevertheless, the Defendants failed to disclose these material facts to their customer (including the substantial risk of loss to the consumers' household goods resulting from the likely malfeasance by Defendants' representatives).

61. The Defendants, implicitly or explicitly, condoned their agents' misbehavior in connection with providing their Moving Services. To allay consumers' fears regarding the damage or loss of property, the Defendants represented to consumers, expressly and by implication, that the Company is fully licensed and has insurance available to compensate consumers for any losses. For example, the Defendants' website pages (at [www.onevanlines.com](http://www.onevanlines.com)) represented, among other things:

a. **Why storage services are required:**

"Insurance... In case you observe **any damage of your goods during storage** or you are not satisfied with the services, **you can claim an insurance through on online form**. Our **experts** will investigate the problem and then an action will be taken accordingly." (emphasis added);

b. **Local Moving Services**

“Risk is lowered... You can never erase risk completely in any situation especially when it involves movement of sensitive goods. **But when you hire local movers the responsibility of safety of all your belongings rest on their shoulders. You can claim later if any damage occurs to your goods. The risk of any potential damage is automatically decreased** due to the hiring of professional and trained local movers.” (emphasis added);

c. **Long Distance Moving Services**

“*Legal aspects of long distance moving*.... #1 van line (sic) is a licensed company for long distance moves in any state and **we abide by all the government shipment rules and regulations** which may vary from state to state....

*Insurance and claims for long distance moving costumers* (sic) ... **We offer insurance after an investigation to the consumers who claim:**

- A dissatisfaction on service provided.
- Claims to be overcharged.
- Lost or breaking of valuables.” (emphasis added).

62. Some consumers were told that they would receive, at no additional charge, insurance coverage (required by law) totaling up to 60 cents per pound. The Defendants’ website, however, did not disclose this limitation in coverage. Moreover, the Defendants did not disclose (on their website or otherwise) that their customers would likely need to purchase additional, supplemental insurance to protect themselves from a known and likely loss resulting from the Defendants’ use of untrained, day laborers who often engaged in intentional or reckless malfeasance during the move.

63. In numerous instances, the consumers’ expensive household goods (such as computers, flat screen televisions, pianos, electronics, appliances, artwork or tools) were simply not delivered or were delivered in a severely damaged or unusable condition. The Defendants, however, often provided either no recompense or only a *de minimis* amount of compensation. In essence, the Defendants and their agents often deceptively used the statutory insurance “cap” provided under Florida law (limiting liability for missing or damaged items to 60 cents per pound), as a “license to steal.”

### **Additional Deceptive Activities as “Mover” or “Household Goods Motor Carrier”**

64. In numerous instances, while acting as an intrastate “mover” or as an interstate “household goods motor carrier,” the Defendants made various misrepresentations or deceptive representations to their consumer customers. Among other things, the Defendants often misrepresented or failed to properly disclose material facts concerning the true price, nature, extent, qualities, or characteristics of the Moving Services (including accessorial services) being offered and/or provided.

65. For example, although Defendants typically provided consumers with a written estimate for their Moving Services, the estimates often did not comply with Florida law or federal (FMCSA) regulations. For example, the estimates were not always properly dated; they often did not reflect the actual proposed date of the pickup and/or delivery; nor did they identify the physical address of the location where the goods would be held pending further transportation. In some instances, the estimates were not signed by the Defendants’ representative and the individual shipper, nor was a dated copy of the estimate provided to the individual shipper at the time it was executed by the Defendants.

66. In numerous instances, the Defendants provided consumers with written estimates that were false or misleading. In many cases, for example, the estimates materially understated the total charges that were likely be generated in connection with the household goods move. More specifically, in numerous instances, the Defendants’ written estimates were deceptive, in that they, among other things:

- a. failed to reflect all of the Moving Services and/or other related services (including for loading, transportation or shipment, unloading and accessorial services) the Defendants knew would be charged for the move;
- b. were not properly based on a physical survey of the consumer’s household goods;



- c. did not contain a reasonably accurate estimate of the approximate costs the individual shipper should expect to pay for the transportation and other services to be provided;
- d. were falsely denoted as being “binding estimates,” with total costs not to exceed a specified amount;
- e. were routinely ignored by the Defendants and their agents at the time of the move, and were not honored for purposes of relinquishing possession of the consumer/shipper’s household goods;
- f. did not clearly and conspicuously disclose the form of payment the Defendants or their agents would actually honor at delivery;
- g. contained dates or date ranges for the pickup or delivery of the consumer’s household goods that the Defendants routinely ignored; and/or
- h. were amended by the Defendants and/or their agents after loading the shipment.

67. As noted above, although the Defendant generally provided consumers with either a “binding” or “non-binding” estimate, they often did not honor those estimates at the time of the move. Instead, in numerous instances, after the Defendants’ agents arrived and began loading the consumers household goods onto a moving truck, the consumers were then confronted with a significantly higher monetary demand than previously quoted to them to obtain release of their property from the Defendants and/or their affiliates. In some instances, the Defendants demanded payment from consumers for services and fees that the consumer had not previously requested nor had they previously been informed about.

68. Often, the Defendants or their agents demanded that the new, higher amount be paid by the consumer only in cash, although this form of payment had not previously been clearly and conspicuously specified as being required in the original estimate or in other documents agreed to by the consumer. In other instances, the Defendants refused to relinquish the consumers’ household goods notwithstanding that an acceptable form of payment under the

estimate or service agreement was tendered. If the consumer refused to pay the new, higher amount demanded for the move (or refused to submit to their demand for cash), the Defendants and their affiliates would often threaten to retain the consumers' household goods and to add "storage" or other "redelivery" fees to the amount they were demanding be paid.

69. In numerous instances, the Defendants provided consumers with a document purporting to be a "binding" estimate. The consumers were led to believe that these "binding" estimates would lock-in the rate the consumer would be required to pay to complete their household move. Notwithstanding the issuance of a "binding" estimate, the Defendants and their agents often refused to relinquish possession of the consumer's goods at the time of delivery, despite attempts by the consumer to tender the full amount of the binding estimate (plus other statutorily authorized charges).

70. The Defendants continued to provide consumers with these supposed "binding" or "non-binding" estimates despite knowing that the estimates were unfair and deceptive. In numerous instances, the estimates were artificially low; they were illusory; and they were routinely ignored by the Defendants' agents during the moves.

71. In addition, Defendants often misrepresented or deceptively represented the timeframe or schedule for pickup or delivery or storage of household goods estimated. In numerous instances, the Defendants and/or their agents arrived late to pick up the consumers' goods or delivered the consumers' goods well beyond (sometimes weeks beyond) the promised delivery dates/ranges. Nevertheless, the Defendants failed to provide these consumers with reasonable notice of those delays, and/or failed to provide appropriate recompense to those consumers.

72. In some instances, the Defendants or their agents refused to relinquish a

consumer's household goods that included prescription medicines or goods for use by children, including children's furniture, clothing and toys.

73. Numerous consumers have filed complaints with the Attorney General and/or other consumer protection agencies regarding the Defendants' deceptive and unfair business practices as it related to their intrastate and/or interstate Moving Services. Consumer complaints against the Defendants have included, but are not limited to, the following deceptive and unfair practices:

- a. the Defendants used "bait-and-switch" tactics by providing consumers with one moving quote **prior** to collecting consumers' household goods and thereafter increasing the moving quote **after** the movers arrived and began loading the consumers' household goods onto the Defendants' moving trucks;
- b. the Defendants held consumers' household goods "hostage" **after** all or a portion of the household goods were loaded onto the moving truck and thereafter refused to release the household goods unless consumers made additional payments (often required to be paid in cash);
- c. the Defendants delivered consumers' household goods in broken or damaged condition and failed or refused to provide recompense to the consumers;
- d. the Defendants delivered consumers' household goods with various items missing and failed or refused to provide recompense to the consumers;
- e. the Defendants collected consumers' household goods on the contracted date (or date range), but thereafter failed to deliver the consumers' household goods and failed or refused to provide recompense to the consumers;
- f. the Defendants collected consumers' household goods on the contracted date/date range, but thereafter delivered the household goods to the contracted final destination **after** the contracted date/date range and failed or refused to provide recompense to the consumers;
- g. the Defendants collected consumers' household goods **after** the contracted date/date range and thereafter failed or refused to provide recompense to the consumers;
- h. The Defendants failed to promptly notify consumers about pickup and/or delivery delays; and

- i. The Defendants failed or refused to disclose to consumer the physical address of the location where the consumers' household goods were being held or were to be held.

74. As indicated above, Defendant AUGUSTIN was the sole registered officer of Defendant UPLINE at all times material hereto and had direct communications with the USDOT regarding UPLINE's operations. Defendant AUGUSTIN permitted funds from some of UPLINE's customers to be deposited into a bank account that was opened in the name of a separate legal entity that did business using a similar (fictitious) trade name to the one utilized by UPLINE. Defendant AUGUSTIN had the ability to disburse funds from that account utilizing a debit card issued in her name.

75. Defendant AUGUSTIN used this debit card to pay, among other things, various expenses relating to the Moving Services that were offered and purportedly provided to consumers. For example, Defendant AUGUSTIN often used these debit cards to pay for, among other things, moving supplies, local storage facilities, fuel charges, travel expenses as well as certain other personal expenditures. Defendant AUGUSTIN also utilized that debit card to make installment payments to FMCSA for certain fines that had been imposed pursuant to a Settlement Agreement entered by Defendant UPLINE.

#### **NEED FOR INJUNCTIVE RELIEF**

76. Defendants' acts and practices have misled consumers acting reasonably under the circumstances throughout the State of Florida and elsewhere, in direct and indirect (per se) violation of FDUTPA. Such flagrant, unlawful and deceptive acts and practices by the Defendants, which could easily be repeated by them at any time unless enjoined, would likely cause further injure and prejudice the public.

77. In addition, Defendant AUGUSTIN continued to be employed by or associated

with another household goods motor carrier since purportedly leaving Defendant UPLINE in November 2016, who has also done business under the trade name “Number One Van Lines.” Thus, unless Defendants are permanently enjoined from engaging further in the acts and practices complained of herein in direct and indirect violation of FDUTPA, the continued activities of Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

### COUNT 1

**Deceptive and Unfair Trade Practices  
By Mover/Household Goods Motor Carrier  
(DIRECT VIOLATION OF FDUTPA)**

78. The Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 77 as if fully set forth hereinafter.

79. Chapter 501.204(1) of FDUTPA (or “the Act”), declares that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Misrepresentations, false statements or omissions of material fact constitute deceptive acts or practices prohibited by FDUTPA.

80. The provisions of the Act are to be “construed liberally” to promote the protection of the “consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” §501.202, *Fla. Stat.*

81. Section 501.203(3) of FDUTPA defines a violation as any violation of the Act or the rules adopted under the Act and may be based upon, among other things, “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair,

deceptive, or unconscionable acts or practices.”

82. Any person, firm, corporation, association, or entity, or any agent or employee thereof, who willfully engages in a deceptive or unfair act or practice is liable for a civil penalty of \$10,000 for each such violation, or a civil penalty of \$15,000 for each such violation if the deceptive or unfair act or practice victimizes or attempts to victimize a senior citizen; willful violations occur when the person knew or should have known that the conduct in question was deceptive or unfair or prohibited by rule. §§501.2075 and 501.2077 *Fla. Stat.*

83. In numerous instances, while engaged in trade or commerce, the Defendants have violated Section 501.204 of FDUTPA by, among other things, using deceptive and unfair acts and practices in the advertising, marketing, soliciting, selling and/or providing of Moving Services to consumers in Florida and elsewhere, as more fully described in paragraphs 50 through 74, above. Among other things, the Defendants’ unfair and deceptive acts and practices have included:

- a. Misrepresenting to consumer, in Defendants’ advertising materials and other solicitations, expressly and by implication, the true nature, quality or extent of Moving Services to be provided by the Defendants and their agents;
- b. Misrepresenting to consumers, in Defendants’ advertising materials and other solicitations, expressly and by implication, that Defendants’ Moving Services would be provided by highly trained, professional or expert movers who would transport the consumers’ household goods with the utmost care;
- c. using “bait-and-switch” tactics by providing consumers with one moving quote **prior** to collecting the consumer’s household goods and thereafter materially increasing the price for the mover **after** the Defendants’ agents have arrived at the consumer’s dwelling and began loading the consumers’ household goods onto the Defendants’ moving trucks;
- d. holding consumers’ household goods “hostage” **after** all or a portion of the consumer’s household goods have been loaded onto moving trucks, by refusing thereafter to release the household goods unless consumers paid additional material amounts above their prior estimates to the Defendants’ agents (often required to be paid in cash);

- e. failing to disclose that Defendants' Moving Services are regularly performed by untrained and unskilled laborers who act in a careless and/or reckless manner that often results in substantial, unrecompensed damage to (or loss of) the consumers' household goods;
- f. failing to disclose that Defendants' Moving Services are regularly performed by inept, corrupt and/or dishonest agents who often damage, lose and/or misappropriate consumers' valuable property during the move;
- g. regularly failing or refusing to provide recompense to consumers whose shipment of household goods is delivered by Defendants or their agents with various property items missing or damaged;
- h. regularly failing to deliver the consumers' household goods on the promised or agreed upon date/date range and thereafter failing or refusing to provide recompense to the consumers; and
- i. regularly failing to pick up the consumers' household goods after the promised or agreed upon date/date range and thereafter failing or refusing to provide recompense to the consumers.

84. The Defendants' acts and practices, as set forth herein were false, misleading or otherwise deceptive, and likely to mislead a consumer acting reasonably under the circumstances. Numerous consumers within the State of Florida and elsewhere were misled by the acts and practices of Defendants alleged herein. The above-described acts and practices of the Defendants have injured and would likely continue to injure and prejudice the consuming public.

85. The Defendants have violated and will continue to violate, Section 501.204 of the FDUTPA, by using deceptive and unfair practices in the marketing and selling of Moving Services, as described above. The Defendants willfully engaged in the acts and practices described herein when they knew or should have known that such acts and practices are unfair or deceptive or otherwise prohibited by law.

86. The Defendants are liable for injunctive and other equitable relief (including

restitution). Defendant AUGUSTIN is liable, individually, as she participated in, controlled and/or possessed the authority to control the acts and practices of the Corporate Defendant, and possessed actual and/or constructive knowledge of all material acts and practices complained of herein.

87. The Defendants are also liable, jointly and severally, for civil penalties (as prescribed by Sections 501.2075 and 501.2077, Florida Statutes) for each deceptive or unfair act or practice they willfully engaged in, as set forth above, found to be in violation of FDUTPA.

## COUNT 2

### **Violations of the Florida Moving Act by Intrastate Mover (Constituting A Per Se FDUTPA Violation)**

88. The Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 77 as if fully set forth hereinafter.

89. Section 501.204(1) of FDUTPA establishes that unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

90. Section 501.203(3)(c) of FDUTPA further establishes that a violation of “any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices” is a violation of FDUTPA.

91. Section 507.08 of the Florida Moving Act proscribes deceptive and unfair trade practices in connection with intrastate household moves. Specifically, this section provides that: “Acts, conduct, practices, omissions, failings, misrepresentations, or nondisclosures committed in violation of [the F.M.A.] are deceptive and unfair trade practices under [FDUTPA], and administrative rules adopted in accordance with the act.”

92. The Defendants, at various times material hereto, have operated in numerous instances as intrastate “movers” as defined by Section 507.01(9) of the F.M.A. At all times



while acting as a mover in connection with the transportation or shipment of household goods originating and terminating in the State of Florida, the Defendants were required to comply with the F.M.A. As more fully described in paragraphs 64 through 75, above, the Defendants violated one or more provisions of the F.M.A. during various periods relevant hereto, which constitute per se FDUTPA violations.

93. In numerous instances, the Defendants violated Section 507.07(3) of the F.M.A. by misrepresenting or deceptively representing:

- a. The contract for services, bill of lading, or inventory of household goods for the move estimated.
- b. The timeframe or schedule for delivery or storage of the household good estimated.
- c. The price, size, nature, extent, qualities, or characteristic of accessorial or moving services offered.
- d. The nature or extent of other goods, services, or amenities offered.
- e. A shipper's rights, privileges, or benefits.

94. The Defendants also violated Section 507.07(4) of the F.M.A. by failing to honor and comply with all provisions of the contract for services or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder. As described above, in numerous instances, the Defendants improperly increased the price charged for the purported Moving Services provided after loading of the consumers' household goods had commenced, they failed to relinquish the goods as required despite a proper tender of payment by the consumer, and they failed to honor the pickup and delivery dates/date ranges that had been agreed upon with the consumer.

95. The Defendants also violated Section 507.07(5) of the F.M.A. by withholding delivery of household goods or otherwise holding goods in storage against the express wishes of

the consumer notwithstanding that payment had been made by the consumer as delineated in the estimate or contract for services. The Defendants also violated Section 507.07(6)(b) of the F.M.A. by committing numerous acts of fraud, misrepresentation, or failure to disclose a material fact, as detailed above.

96. Accordingly, the Defendants' acts and practices described above violate various provisions of a statute (the Florida Moving Act) designed to protect consumers from unfair and deceptive acts or practices, which constitutes a per se violation of FDUTPA, and subject the Defendants to the penalties and remedies provided therein for such violations. Numerous consumers within the State of Florida and elsewhere have been injured by the acts and practices of Defendants alleged herein, which would likely continue to injure and prejudice the consuming public.

97. The Defendants have violated and will continue to violate the F.M.A., in connection with the marketing, selling and/or providing of Moving Services, as described above. The Defendants willfully engaged in the acts and practices described herein when they knew or should have known that such acts and practices are unfair or deceptive or otherwise prohibited by law.

98. The Defendants are liable for injunctive and other equitable relief (including restitution). Defendant AUGUSTIN is liable, individually, as she participated in, controlled and/or possessed the authority to control the acts and practices of the Corporate Defendant, and possessed actual and/or constructive knowledge of all material acts and practices complained of herein.

99. The Defendants are also liable, jointly and severally, for civil penalties (as prescribed by Sections 501.2075 and 501.2077, Florida Statutes) for each deceptive or unfair act

or practice in connection with intrastate household moves that they willfully engaged in, as set forth above, that are found to be in violation of the F.M.A., a *per se* violation of FDUTPA.

### COUNT 3

#### **Violations of the I.T.C. and FMCSA Regulations by Interstate Household Goods Motor Carrier (Constituting A *Per Se* FDUTPA Violation)**

100. The Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 77 as if fully set forth hereinafter.

101. Section 501.204(1) of FDUTPA establishes that unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

102. Section 501.203(3)(c) of FDUTPA further establishes that a violation of “any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices” is a violation of FDUTPA.

103. The I.T.C. and FMCSA Regulations were intended to promote competitive and efficient transportation services in order to, among other things, “encourage fair competition, and reasonable rates for transportation by motor carriers of property” and “meet the needs of shippers, receivers, passengers, and consumers.” (See §13101(a)(2)(A) and (C) of the I.T.C.). Likewise, Title 49 C.F.R. Part 375 (Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations) sets forth the specific consumer protection regulations governing the transportation of household goods in interstate commerce.

104. The Defendants, at various times material hereto, have operated in numerous instances as interstate “household goods motor carriers,” and were required to follow all of the regulations set forth in Part 375 of the FMCSA Regulations. (See §375.101 of the Regulations). As described above, the Defendants violated one or more provisions of the I.T.C. and/or FMCSA

Regulations during various periods relevant hereto, which constitute per se FDUTPA violations.

105. To protect consumers, the I.T.C. and/or FMCSA Regulations require, among other things, that:

- a. All advertisements published and used by a household goods motor carrier be “truthful, straightforward, and honest” (§375.207);
- b. The carrier must specify the form of payment that will be required at delivery when the estimate is prepared; include that same form of payment in the order for service and bill of lading; and accept that same form of payment at delivery unless the shipper agrees to a change in writing (§375.217);
- c. The carrier provide the shipper with a written (binding or reasonably accurate non-binding) estimate of the transportation and other related charges before executing an order for service for shipment of household goods (§§375.401 and 375.405(b));
- d. The carrier relinquish possession of a shipment of household goods upon the individual shipper's offer to pay the binding estimate amount (plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for “impracticable operations” not to exceed 15 percent of all other charges due at delivery) (I.T.C. §13707(b)(3) and §§375.403(7) and 375.703(a));
- e. The carrier relinquish possession of a shipment of household goods upon the individual shipper's offer to pay 110 percent of the non-binding estimate amount (plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for “impracticable operations” not to exceed 15 percent of all other charges due at delivery) (I.T.C. §13707(b)(3) and §§375.405(8), 375.407(a) and 375.703(b));
- f. The carrier tender a shipment for delivery for an individual consumer on the agreed delivery date or within the period specified on the bill of lading (§375.603); and
- g. The carrier notify the individual shipper by certain specified means as soon as a delay in the pick up or delivery of household goods becomes apparent to the carrier (§375.605);

106. As more fully described in paragraphs 51 through 75, above, in numerous instances during periods material to this Complaint, the Defendants violated the I.T.C. and FMCSA Regulations (including those set forth above) by, among other things:

- a. Publishing and using advertisements that were materially false and misleading;
- b. Providing binding or non-binding estimates to consumer that were materially false and misleading, including as to the services to be provided and charges to be incurred;
- c. Requiring consumer to use a different form of payment at the time of delivery that specified when the estimate was prepared;
- d. Failing to relinquish possession of a shipment of household goods upon the proper payment or proper tender of payment of the amount required on a binding or non-binding estimate by an individual shipper;
- e. Failing to tender a shipment for delivery to an individual consumer on the agreed delivery date or within the period specified on the bill of lading; and
- f. Failing to provide required notice to the individual shipper when a delay in the pick up or delivery of household goods was apparent.

107. Accordingly, the Defendants' acts and practices described above violate various provisions of a statute (the I.T.C. and related FMCSA Regulations) designed to protect consumers from unfair and deceptive acts or practices, which constitute per se violations of FDUTPA, and subject the Defendants to the penalties and remedies provided therein for such violations. Numerous consumers within the State of Florida and elsewhere have been injured by the acts and practices of Defendants alleged herein, which will likely continue to injure and prejudice the consuming public.

108. The Defendants have violated and will continue to violate the I.T.C. and related FMCSA Regulations in connection with the marketing, selling and/or providing of Moving Services, as described above. The Defendants willfully engaged in the acts and practices described herein when they knew or should have known that such acts and practices are unfair or deceptive or otherwise prohibited by law.

109. The Defendants are liable for injunctive and other equitable relief (including

restitution). Defendant AUGUSTIN is liable, individually, as she participated in, controlled and/or possessed the authority to control the acts and practices of the Corporate Defendant, and possessed actual and/or constructive knowledge of all material acts and practices complained of herein.

110. The Defendants are also liable, jointly and severally, for civil penalties (as prescribed by Sections 501.2075 and 501.2077, Florida Statutes) for each deceptive or unfair act or practice in connection with interstate household moves that they willfully engaged in, as set forth above, that are found to be in violation of the F.M.A., a *per se* violation of FDUTPA.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs, respectfully requests that this Court:

A. ENTER judgment in favor of Plaintiffs and against the Defendants for each Count alleged in this Complaint.

B. Permanently ENJOIN the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with the Defendants who receive actual notice of this injunction, prohibiting and enjoining such persons from, directly or indirectly:

1. Committing future violations of FDUTPA, including, but not limited to making false and/or misleading representations to consumers in advertisements or otherwise regarding the nature, quality, extent, price timing and/or characteristics of the Moving Services being offered or provided;
2. Committing future violations of the Florida Moving Act, constituting a *per se* violation of FDUTPA, including, but not limited to:
  - a. Violating Section 507.07(3) of the F.M.A. (misrepresentations or deceptive representations);
  - b. Violating Section 507.07(4) of the F.M.A. (failing to honor contract for

- services or bill of lading);
- c. Violating Section 507.07(5) of the F.M.A. (withholding delivery of household goods); and
  - d. Violating Section 507.07(6)(b) of the F.M.A. (fraud, misrepresentation or failure to disclose material facts);
3. Committing future violations of the I.T.C. and/or FMCSA Regulations, constituting a *per se* violation of FDUTPA, including, but not limited to:
- a. Violating Section 375.207 of the Regulations (false and misleading advertising);
  - b. Violating Section 375.271 of the Regulations (form of payment);
  - c. Violating Section 375.401 of the Regulations (written estimates);
  - d. Violating Section 13707(b)(3) of the I.T.C. and Sections 375.403(7) and 375.703(a) of the Regulations (release of goods on binding estimates);
  - e. Violating Section 375.603 of the Regulations (failure to tender shipment); and
  - f. Violating Section 375.405 of the Regulations (failure to notify);

C. AWARD such equitable or other relief as the Court finds appropriate, pursuant to Section 501.207, Florida Statutes.

D. ASSESS civil penalties in the amount of Ten Thousand Dollars (\$10,000.00) as prescribed by Section 501.2075, Florida Statutes, or Fifteen Thousand Dollars (\$15,000.00) for victimized senior citizens as prescribed by Section 501.2077, Florida Statutes, for each act or practice found to be in violation of FDUTPA.

E. AWARD attorneys' fees and costs against the Defendants, jointly and severally, pursuant to Section 501.2075, Florida Statutes, or as otherwise authorized by law.

F. ORDER the rescission or reformation of contracts where necessary to redress injury to consumers.

G. ORDER disgorgement of ill-gotten proceeds against the Defendants.

H. GRANT such other equitable relief as this Honorable Court deems just and proper.

Dated this 13<sup>th</sup> day of January, 2020.

Respectfully Submitted,

ASHLEY MOODY  
ATTORNEY GENERAL

By: /s/ HUGHENS DOLISCA  
Hughens Dolisca  
Assistant Attorney General  
Fla. Bar No. 0099744  
Hughens.Dolisca@myfloridalegal.com  
Howard S. Dargan  
Senior Assistant Attorney General  
Florida Bar No. 0494089  
Howard.Dargan@myfloridalegal.com  
Office of the Attorney General  
Consumer Protection Division  
1515 N. Flagler Drive, Suite 900  
West Palm Beach, FL 33470  
Tel: 561-837-5007  
Fax: 561-837-5109