

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

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

CASE NO.

Plaintiff,

-vs-

OCEAN MOVING & STORAGE CORP.,
an active State of Florida Corporation, and

**ITAI CARMEL, Individually, and as Owner,
Officer and/or Principal of OCEAN MOVING
& STORAGE CORP.,**

Defendants.

_____ /

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

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 Generals, hereby sues Defendants, OCEAN MOVING & STORAGE CORP. (“OCEAN”), an active State of Florida corporation, and ITAI CARMEL (“CARMEL”), Individually, and as Owner, Officer, and/or Principal of OCEAN MOVING & STORAGE CORP. (collectively referred to as “Defendants”).

SUMMARY OF COMPLAINT

1. Defendants advertise themselves as professional movers staffed by well-trained employees who use the utmost care with consumers’ belongings and are scrupulous in preparing and following estimates. The reality is far different. Defendants regularly use unskilled, untrained

laborers who often damage or steal property, and routinely provide deceptive, low-ball estimates then extort higher fees by holding consumers' property hostage. Defendants have harmed numerous consumers and Plaintiff respectfully asks this Court to grant restitution and to permanently enjoin further abuses.¹

2. This action is brought by the Attorney General: (1) under Section 14711 of Title 49 U.S.C., Subtitle IV, Part B (hereinafter the "Interstate Transportation Code" or "I.T.C.") on behalf of Florida residents based on violations of the consumer protection provisions of that title, including 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");² (2) based on direct violations of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (hereinafter "FDUTPA"); and (3) based on 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.) and FMCSA Regulations, which constitute *per se* violations of FDUTPA.

3. At all times material hereto, Defendants have engaged in deceptive acts and practices in connection with the transportation of household goods by consumers either solely within the State of Florida (intrastate moves) or involving more than one state (interstate moves).³

¹ As used in this Complaint, the term "consumers" shall have the same meaning as actual or prospective "shippers" or "individual shippers" as further defined herein; and as such, consumers, shippers, and individual shippers are used interchangeably throughout the Complaint.

² 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).

³ 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., 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

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

5. Defendant, CARMEL, is the President and sole Owner, Officer, and/or Principal of Defendant, OCEAN, and controls the acts and practices of OCEAN.

6. While engaged in trade or commerce as movers or household goods motor carriers, 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.

7. Defendants often misrepresent to consumers the price, nature, extent, qualities, timing or characteristics of the Moving Services offered to consumers. Essentially, Defendants often quote consumers an artificially low estimate for providing their Moving Services. Thereafter, in numerous instances, Defendants then fail to honor that low-ball” estimate, and instead, substantially increase the price charged at the time that the move occurs. In fact, oftentimes, the new higher price is not disclosed to consumers until after the loading of consumers’ household goods has been partially or fully completed.

8. In numerous instances, Defendants’ agents provide estimates for the transportation and other [accessorial] charges to be incurred in connection with the move that do not comply with applicable Florida law and/or FMCSA Regulations.⁴ For example, in numerous instances,

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.

⁴ 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

Defendants fail to base the estimate on a physical survey of the household goods when otherwise required to do so, and/or include in the estimate all of the charges for transportation and related (accessorial) services to be provided.

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

10. In numerous instances, after Defendants’ agents arrive and begin loading consumers’ household goods onto their trucks, the consumers are then confronted with a significantly higher monetary demand than previously quoted to them in order to obtain a release of their property from Defendants. In numerous instances, the new price demanded at the time of delivery is significantly more than the amount of the “binding estimate” that Defendants previously provided to the consumers, in violation of FMCSA Regulations and Florida law.

11. Defendants and their agents often refuse to deliver a consumer’s household goods notwithstanding the consumer’s attempts to tender the amount specified in the service agreement or estimate that they were previously provided. Instead, in numerous instances, Defendants and their agents refuse to relinquish the consumer’s household goods until after the consumer has paid in full the new, higher amount (which Defendants often demand to be paid only in cash).

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.

12. If a consumer refuses to pay the new higher amount, Defendants and their agents often threaten to retain the consumer's household goods and to add "storage" or other "redelivery" fees to the amount they are demanding from the consumer. In other words, the consumer's goods are held hostage until they pay the higher fees. Additionally, Defendants and their agents, in some instances, retain the deposit paid by a consumer to retain Defendants' Moving Services if the consumer refuses to pay the higher amount and elects to cancel the move.

13. In addition, Defendants misrepresent to consumers (in their marketing materials and otherwise) that their agents are highly trained experts who will provide exceptional care for the consumers' household goods during the move. In fact, however, Defendants regularly employ unskilled and untrained laborers who often deliver the consumers' goods in a completely broken or severely damaged condition, or with various items missing. Defendants generally provide only *de minimis* compensation to the consumers, if anything at all, for the damage or loss resulting from the often intentional or reckless misconduct of their agents.

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

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

16. The Attorney General brings this action to halt Defendants' unlawful acts and practices; to prevent consumers from suffering irreparable harm as the result of Defendants'

unlawful acts and practices; to hold Defendants accountable for their unlawful acts and practices; and to provide equitable relief to consumers who Defendants have victimized as the result of their unlawful acts and practices.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to Section 14711(a) of the Interstate Transportation Code.

18. This Court has supplemental jurisdiction over the state of Florida's claims pursuant to 28 U.S.C. Section 1367 and FDUTPA.

19. Venue is proper in this district under Section 14711(e) of the Interstate Transportation Code as Defendants operated either as a broker or motor carrier in Broward County Florida, within the Southern District of Florida.

PLAINTIFF

20. 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.

21. Pursuant to Section 14711 of the Interstate Transportation Code, Plaintiff may bring a civil action on behalf of the residents of the State of Florida in an appropriate district court of the United States to enforce the consumer protection provisions of the Interstate Transportation Code that apply to individual consumers and are related to the delivery and transportation of household goods by a household goods motor carrier subject to jurisdiction under subchapter I of Chapter 135 of the I.T.C.⁵

⁵ As used in this Complaint, the term "individual shipper" shall have the same meaning as contained within Section 13102(13) of the I.T.C., and shall mean 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.

22. Section 14711 also enables Plaintiff to impose civil penalties authorized under the Interstate Transportation Code whenever Plaintiff has reason to believe that the interests of the residents of the State of Florida have been or are being threatened or adversely affected by a carrier providing transportation.⁶

23. The Attorney General has conducted an investigation of the matters alleged herein, and Attorney General Pamela Jo Bondi has determined that this enforcement action serves the public interest, as set forth in Section 501.207(2), Florida Statutes.

24. The Attorney General has reason to believe that the interests of the residents of the State have been, or are being, threatened or adversely affected by 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. Plaintiff has complied with the notice and consent requirements set forth in Section 14711(b) of the I.T.C.

DEFENDANTS

25. Defendant, OCEAN, is an active, for-profit corporation formed on about September 5, 2007, with its principal office located at 2810 S. Park Road, Pembroke Pines, Florida.

26. Defendant, ITAI CARMEL, is a natural person and is registered with the Florida Department of State, Division of Corporations, as the President, Registered Agent, and sole officer of OCEAN.

⁶ 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, Defendants, OCEAN and CARMEL, are “carriers” under the I.T.C., and subject to the civil penalty provisions contained within Chapter 149, thereunder.

27. As an Owner, Officer, and/or Principal of OCEAN, Defendant, ITAI CARMEL, 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 OCEAN, and possessed actual and/or constructive knowledge of all material acts and practices complained of herein.

28. 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 34 through 41 below. In numerous other instances, Defendants have acted as intrastate “movers” as defined in Section 507.01(9) of the F.M.A. *See* paragraph 42 through 47 below.

29. 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, Defendants were required to comply with the Florida Moving Act.

30. 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, 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.

31. Defendants, at all times material hereto, have solicited “consumers” within the definition of Section 501.203(7) of FDUTPA. Those persons who used 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 “consumers” under FDUTPA.

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

33. Defendants, at all times material hereto, have advertised, offered, solicited, and 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.

INTERSTATE TRANSPORTATION OF HOUSEHOLD GOODS

A. Transportation of Household Goods (Part 375)

34. Title 49 C.F.R., Subtitle B, Chapter III, Subchapter B, Part 375 sets forth 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 transportation of household goods must follow all of the regulations set forth in Part 375.⁷

35. 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.

⁷ 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.

36. 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.”⁸

37. Section 375.401(a) of the Regulations (and Section 14104(b) of the I.T.C.) requires that the household motor carrier conduct a physical survey of the household goods to be transported and to provide the prospective individual consumer 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.

38. Before executing an order for service for a shipment of household goods for an individual consumer, 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 consumer 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 consumer must sign the estimate of charges, and a dated copy of the estimate of charges must be provided to the consumer at the time

⁸ 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 the name, address, and telephone number in an on-line database or displayed on an Internet web site.

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.

B. Use of Binding Estimates

39. 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 consumer and that the charges shown apply only to those services specifically identified in the estimate.

40. If it appears that a consumer 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 consumer, 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.*⁹

41. A household goods motor carrier is required to relinquish possession of a shipment of household goods upon the individual consumer’s offer to pay the binding estimate amount (plus charges for any additional services requested by the consumer after the bill of lading has been issued and charges, if applicable, for “impracticable operations” not to exceed 15 percent of all

⁹ 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)).

other charges due at delivery).¹⁰ *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))¹¹ and FMCSA Regulations (Sections 375.403(7) and/or 375.703(a))¹²

FLORIDA HOUSEHOLD MOVING SERVICES ACT

42. 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.¹³

¹⁰ “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.

¹¹ 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 charges contained in a binding 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.

¹² 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.”

¹³ 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.”

43. 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.

44. 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.

45. 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* Section 507.05(5) of the F.M.A.

46. 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.”

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

“**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.

* * * * *

- (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.

* * * * *

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

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

A. Deceptive Marketing Activities

48. As set forth above, Defendants have deceptively solicited, and are continuing to deceptively solicit, consumers to purchase their Moving Services by making materially false and misleading representations to consumers and potential consumers. In that regard, Defendants have utilized various marketing methods to advertise their Moving Services to consumers, including, but not limited to, Internet websites and social media. In connection with these solicitations, 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.

49. Defendants' marketing materials have deceptively led consumers to believe that their Moving Services would be provided by highly trained, professional movers who will transport their household goods with the utmost care. Defendants commonly hired unskilled and untrained laborers who routinely damage, destroy, and/or steal consumers' property.

50. For example, in the marketing materials for OCEAN, Defendants claim that they “[are] Master Movers” and that they are a “Top Rated Local Moving Service” when in truth and in fact, and as Defendants well know, they are not.¹⁴

51. Defendants’ marketing materials additionally contain testimonials of individuals who claim to have used Defendants’ Moving Services and who characterize OCEAN’s Moving Services as “Friendly and Careful,” “Very Quick Movers,” “Really Helpful,” “Excellent Service,” “The Best,” and “Wonderful.”

52. Defendants also claim on OCEAN’s website that it is a “full service local and long distance moving company, proudly assisting individuals, families, businesses anywhere in the 48 contiguous states. We offer truly personal service that allows us to tailor each move to our customer’s specific needs, not offering just moving services, but also storage facilities and full service packing for your upcoming move.”

53. OCEAN’s website claims that its movers will provide extraordinary care in moving consumers’ household goods and alleges some of the following in support of its claims regarding the quality of its Moving Services:

- a. “Ocean Moving and Storage Quality in Motion.”
- b. OCEAN has over 30 years moving experience in the moving industry and its “moving experts [will] ensure that your transition is as comfortable and smooth as a mid-summer night’s breeze.”
- c. “With our long-distance team on your side, you will never have to stress about how and when you may move your belongings.”

¹⁴ 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.*

- d. "We give you a complete breakdown of what your moving schedule looks like based upon the dates and time frame you give us."

54. OCEAN's website, contains telephone numbers for consumers to call for information regarding their Moving Services. Consumers who call Defendants regarding their Moving Services are again reassured by Defendants' representatives that their household goods will be moved with the utmost care by Defendants' professional, highly trained, expert movers.

55. However, many consumers who retain Defendants' interstate or intrastate Moving Services are often confronted with unskilled, day laborers who load and unload their belongings with little regard for their property. Consumers who complain about damage to their property during the move are regularly met with rude, aggressive, threatening behavior, and/or abusive language from not only the unskilled movers and office personnel, but from CARMEL, the owner of OCEAN, as well.

56. Defendants and their agents have routinely promised consumers that their representatives will take exceptionally good care over the consumers' household goods during the intrastate or interstate move and while those goods are in storage with Defendants. Instead, however, in numerous instances, Defendants and their agents have not provided such care, nor have they compensated consumers for the damage or loss, through theft or otherwise, that the consumers regularly incur during the move, often due to the intentional or reckless misconduct of Defendants and/or their agents.

57. Defendants have repeatedly made these false promises and deceptive representations to consumers despite knowing that their agents routinely damage, lose, and/or steal consumers' valuable property during their intrastate or interstate household moves.

58. Defendants further have knowledge that their deceptive acts and practices regularly result in significant financial harm to consumers, yet they fail to disclose these material facts to

customers seeking their Moving Services, including the substantial risk of loss to the consumers' goods resulting from the likely malfeasance by Defendants' representatives. Defendants thus have, implicitly or explicitly, condoned their movers' misbehavior while performing their Moving Services.

59. To allay consumers' fears, Defendants have often advised consumers that they will receive, at no additional charge, insurance coverage required by law, totaling up to 60 cents per pound. Defendants further inform consumers that supplemental insurance is available; however, they do not disclose to these consumers that they most likely need to purchase additional, supplemental insurance to protect themselves from the likely loss, since Defendants' Moving Services are regularly performed by untrained, day laborers who Defendants knew, or should have known, often engage in intentional or reckless malfeasance.

60. In numerous instances, the consumers' expensive household goods (e.g., computers, flat screen televisions, electronics, appliances, artwork or tools) have simply not been delivered or if delivered, are delivered in a severely damaged or unusable condition.

61. Defendants, however, have often not provided recompense to consumers, or if recompense was provided, it was only a *de minimis* amount. In essence, Defendants and their agents have often used the statutory insurance "cap" provided under Florida law, that is, limiting liability for missing or damaged items to 60 cents per pound, as a "license to steal."

B. Deceptive Activities as "Mover" or "Household Goods Motor Carrier"

62. In numerous instances, while acting as an intrastate "mover" or as an interstate "household goods motor carrier," Defendants have made various misrepresentations and deceptive representations to their consumers. Among other things, Defendants often misrepresent or fail to

properly disclose material facts concerning the true price, nature, extent, qualities, or characteristics of the Moving Services (including accessorial services) being offered and provided.

63. For example, Defendants, OCEAN and CARMEL, often represent, expressly or by implication, that they will provide honest, reliable, highly skilled, expert Moving Services to consumers, as described on their website, in their estimates, and contracts for services. In reality, however, numerous consumers who have hired Defendants to move their household goods, either within Florida or in interstate commerce, have been confronted with unskilled, laborers who loaded and unloaded the consumers' belongings with little regard for their property.

64. In numerous instances, while acting as a "mover" or "household goods motor carrier," Defendants have failed to properly disclose the true price, nature, extent, qualities, or characteristics of the Moving Services, including accessorial services, being offered.

65. Although Defendants have typically provided consumers with a written estimate for their Moving Services, the estimates have often not complied with Florida law or federal (FMCSA) regulations. For example, in many instances, the estimates have neither identified the physical address of the location where the goods are to be held pending further transportation nor been signed by both Defendants' representative and the consumer.

66. In numerous instances Defendants have provided consumers with binding written estimates that are false and misleading, which materially understate the total transportation and accessorial charges that are likely to be charged in connection with their household goods move. Likewise, Defendants' written estimates have often been deceptive, in that, among other things, they:

- a. fail to reflect all of the Moving Services and/or other related services, including charges for loading, transportation or shipment, unloading and accessorial services that Defendants know will be required for the move;

- b. are not properly based on a physical survey of the consumer/shipper's household goods;
- c. do not contain a reasonably accurate estimate of the approximate costs the individual shipper should expect to pay for the transportation and services of such a shipment;
- d. are falsely denoted as being "binding estimates," with total costs "not to exceed" the estimated amount, in order to induce consumers to waive their right to an estimate based on a physical survey of the household goods;
- e. are routinely ignored by the Defendants at the time of the move, and are not honored for purposes of relinquishing possession of the consumer/shipper's household goods;
- f. contain dates and/or date ranges for the pickup and/or delivery of the consumer/shipper's household goods that the Defendants routinely ignore; and/or
- g. are amended by Defendants and/or their agents after loading the shipment.

67. As noted above, although Defendants generally provide consumers with a "binding" estimate, they often do not honor the estimate at the time of the move. Instead, in numerous instances, after Defendants' agents arrive and begin loading the consumers' household goods onto a moving truck, the consumers are then confronted with a significantly higher monetary demand than previously quoted to them to obtain release of their property from Defendants and/or their agents. In some instances, Defendants demand payment from consumers for services and fees that the consumers had not previously requested, nor had they previously been informed of.

68. If the consumer refuses to pay the new, higher amount demanded for the move, Defendants will often threaten to retain the consumer's household goods and to add "storage" or other "redelivery" fees to the amount they were demanding be paid.

69. In numerous instances, Defendants provide consumers with a document purporting to be a "binding" estimate. The consumers are led to believe that these "binding" estimates will lock-in the rate the consumers will be required to pay to complete their household moves.

Notwithstanding the issuance of a “binding” estimate, Defendants and their agents often refuse to relinquish possession of the consumers’ goods at the time of delivery, despite attempts by the consumers to tender the full amount of the binding estimates (plus other statutorily authorized charges).

70. Defendants continue to provide consumers with these purported “binding” estimates despite knowing that the estimates are unfair and deceptive. In numerous instances, the estimates are artificially low; they are illusory; and they are routinely ignored by Defendants’ agents during the moves.

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

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

- a. Defendants use “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 arrive and begin loading the consumers’ household goods onto the Defendants’ moving trucks.
- b. Defendants hold consumers’ household goods “hostage” **after** all or a portion of the household goods are loaded onto the moving truck and thereafter refuse to release the household goods unless consumers make additional payments, often required to be paid in cash.

- c. Defendants hold consumers' household goods "hostage" even when consumers have offered to pay the original estimate provided to consumers by Defendants prior to the move and prior to the increased amount now being demanded of consumers.
- d. Defendants hold consumers' household goods "hostage" even when consumers have paid, or offered to pay, the binding estimate amount plus applicable charges for additional services requested by the shipper after the bill of lading has been issued and applicable charges for "impracticable operations" totaling up to 15 percent of all other charges due at delivery.
- e. Defendants deliver consumers' household goods in broken or damaged condition and fail or refuse to provide recompense to the consumers.
- f. Defendants deliver consumers' household goods with various items missing and fail or refuse to provide recompense to the consumers.
- g. Defendants collect consumers' household goods on the contracted date or date range, but thereafter fail to deliver the consumers' household goods and fail or refuse to provide recompense to the consumers.
- h. Defendants collect consumers' household goods on the contracted date/date range, but thereafter delivered the household goods to the contracted destination **after** the contracted date/date range and fail or refuse to provide recompense to the consumers.
- i. Defendants collect consumers' household goods **after** the contracted date/date range and thereafter fail or refuse to provide recompense to the consumers.
- j. The Defendants fail to promptly notify consumers about pickup and/or delivery delays.
- k. Defendants fail or refuse to disclose to consumers the physical address of the location where the consumers' household goods are being held or were to be held.

NEED FOR INJUNCTIVE RELIEF

73. Defendants' acts and practices are likely to mislead consumers acting reasonably under the circumstances, and in fact have misled consumers throughout the State of Florida and elsewhere in direct and indirect (i.e., *per se*) violation of FDUTPA.

74. The above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

75. 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

**Advertising Violations by Household Goods Motor Carrier
(Title 49 C.F.R. Part 375 (§ 375.207))**

76. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 75 above as if fully set forth hereinafter.

77. Section 375.207 of the Regulations permits a household goods motor carrier to publish and use advertisements, but requires that any such advertisements be "truthful, straightforward, and honest."

78. Defendants, while operating as carriers (and specifically, household goods motor carriers), have engaged in advertising, as defined in Section 375.103 of the Regulations, including on their Internet web site, which advertising includes false, dishonest and misleading representations as described in paragraphs 48 through 61 above. Among other things, Defendants have repeatedly advertised that their Moving Services are performed by highly trained, professional, expert movers, when in truth and in fact, and as Defendants well know, in numerous

instances their Moving Services are performed by unskilled and untrained laborers who regularly damage, destroy, or steal the consumers' property.

79. Accordingly, Defendants have committed violations of Section 375.207 of the Regulations, and, pursuant to Section 375.901 of the Regulations, are subject to the penalty provisions of Title 49 U.S.C. Chapter 149.

80. Section 14901 (General civil penalties) provides, in pertinent part: "... (d) Protection of Household Goods Shippers.— (1) In general.— If a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 or a receiver or trustee of such carrier fails or refuses to comply with any regulation issued by the Secretary or the Board relating to protection of individual consumers, such carrier, receiver, or trustee is liable to the United States for a civil penalty of not less than \$1,000 for each violation and for each additional day during which the violation continues." Pursuant to the Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Appendix B to Title 49 C.F.R. Part 386), a motor carrier of household goods that does not comply with any regulation relating to the protection of the individual consumer, is liable for a minimum penalty of \$1,572 per violation.

81. Based on the violations set forth above, Defendants, OCEAN and CARMEL, are liable, jointly and severally, for civil penalties under Section 14901 of the I.T.C.

COUNT 2

Failure to Provide Proper Written Estimates by Household Goods Motor Carrier (Title 49 U.S.C. §14104(b) and C.F.R. Part 375 (§375.401))

82. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 75 above as if fully set forth hereinafter.

83. Before executing an order for service for a shipment of household goods for an individual shipper, Section 14104(b)(1)(C) of the I.T.C., and Section 375.401 of the Regulations require a household goods motor carrier to 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. These provisions further require that the written estimate indicate whether it is a binding or a non-binding estimate, and that it be based on a physical survey of the household goods to be transported, unless: (1) the household goods are located beyond a 50-mile radius of the location of the household goods motor carrier's agent preparing the estimate; or (2) the individual shipper elects to waive the physical survey, in writing and signed by the shipper before the shipment is loaded.

84. During various time periods material hereto, Defendants, while acting as household goods motor carriers, have executed orders for service for a shipment of household goods for individual consumers without providing the consumers with a proper, written estimate in compliance with Section 14104(b)(1)(C) of the I.T.C., and Section 375.401 of the Regulations. As more fully described in paragraphs 62 through 72 above, in numerous instances, Defendants have violated these provisions by, among other things, providing estimates to consumers that:

- a. were not made in a writing that is dated, signed by Defendants' agents and the individual shipper, and copied and supplied to the individual shipper;
- b. did not include the total amount for all charges for the transportation and related, accessorial services to be provided;
- c. were not made based on a physical survey of the household goods to be transported and without a valid exemption from the requirement that such estimates be based on said physical survey; and/or
- d. are amended by Defendants and/or their agents **after** loading the shipment.

85. Accordingly, Defendants have committed numerous violations of Section 14104(b)(1)(C) of the I.T.C., and Section 375.401 of the Regulations, and (pursuant to Section 375.901 of the Regulations) are liable, jointly and severally, for civil penalties under Chapter 149 of the I.T.C., including, but not limited to Section 14901 (General civil penalties), thereunder, as adjusted for inflation pursuant to Appendix B to Title 49 C.F.R. Part 386.

COUNT 3

**Failure to Relinquish Goods (Binding Estimate)
by Household Goods Motor Carrier
(Title 49 U.S.C. §13707(b)(3) and C.F.R. Part 375 (§§375.403(7) and 375.703(a))**

86. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 75 above as if fully set forth hereinafter.

87. In numerous instances, while operating as carriers (and specifically, household goods motor carriers), Defendants have provided individual consumers with “binding” written estimates pursuant to Section 14104(b)(1)(C) of the I.T.C. and Section 375.401(b) of the Regulations.

88. Section 13707(b)(3) of the I.T.C. and Sections 375.403(7) and 375.703(a) of the Regulations require a household goods motor carrier 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).

89. As more fully described in paragraphs 62 through 72 above, in numerous instances, Defendants have failed to relinquish possession of a shipment of household good to an individual shipper who offered to pay (and in some instances had paid) the binding estimate amount plus

applicable charges for additional services requested by the shipper after the bill of lading has been issued and applicable charges for “impracticable operations” totaling up to 15 percent of all other charges due at delivery.

90. Accordingly, Defendants have committed numerous violations of 13707(b)(3) of the I.T.C. and Sections 375.403(7) and 375.703(a) of the Regulations, and, pursuant to Section 375.901 of the Regulations, are subject to the penalty provisions of Chapter 149 of the I.T.C., including, but not limited to Section 14901 (General civil penalties) and/or Section 14915 (Penalties for failure to give up possession of household goods) set forth therein.

91. Section 14915(a)(1) of the I.T.C. provides that whoever is found holding a household goods shipment hostage is liable to the United States for a civil penalty of not less than \$10,000 for each violation. Pursuant to Appendix B to Title 49 C.F.R. Part 386, the inflation adjusted amount for such a knowing and willful violation is not less than \$15,727 for each violation. Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation under Section 14915(a)(2). For purposes of this section, the term “failed to give up possession of household goods” means the knowing and willful failure, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or III of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods, and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13707(b)(3)(A). (See §14915(c) of the I.T.C.).

92. Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation under Section 14915(a)(2). For purposes of this section, the term “failed to give up possession of household goods” means the knowing and willful failure, in

violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or III of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods, and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13707(b)(3)(A). (See §14915(c) of the I.T.C.).

93. Based on the violations set forth above, Defendants, OCEAN and CARMEL, are liable, jointly and severally, for civil penalties under Sections 14901 and/or 14915 of the I.T.C.

COUNT 4

Failure to Pick Up/Tender Shipment and Provide Notification by Household Goods Motor Carrier (Title 49 C.F.R. Part 375 (§§375.603 and 375.605))

94. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 75 above as if fully set forth hereinafter.

95. Section 375.603 of the Regulations requires that a household goods motor 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. Section 375.605 provides that, when a motor 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, in one of the following six ways: (1) By telephone; (2) In person; (3) Fax transmission; (4) E-mail; (5) Overnight courier; or (6) Certified mail, receipt requested.

96. During various time periods material hereto, Defendants, while operating as carriers (and specifically, household goods motor carriers), have in numerous instances failed to

tender a shipment of household goods for delivery for an individual consumer on the agreed delivery date or within the period specified on the bill of lading in violation of Section 375.603 of the Regulations. In many of these instances, Defendants knowingly and willfully failed to tender the shipment.

97. Similarly, during various time periods material hereto, Defendants have failed to timely pick up a shipment of household goods from an individual shipper on the agreed delivery date or within the period specified in the order for service.

98. In many instances, when Defendants were unable to perform either the pickup or delivery of a shipment on the dates or during the periods specified in the order for service, they failed to promptly notify the individual shipper as soon as the delay had become apparent, and/or advise the individual shipper of the dates or periods when they expected to be able to pick up and/or deliver the shipment, as set forth in Section 375.605.

99. Accordingly, as more fully described in paragraphs 62 through 72 above, Defendants have committed numerous violations of Sections 375.603 and 375.605 of the Regulations, and (pursuant to Section 375.901 of the Regulations) are subject to the penalty provisions of Chapter 149 of the I.T.C., including, but not limited to Section 14901 (General civil penalties) and/or Section 14915 (Penalties for failure to give up possession of household goods), thereunder.

100. Based on the violations set forth above, Defendants, OCEAN and CARMEL, are liable, jointly and severally, for civil penalties under Sections 14901 and 14915 of the I.T.C., as adjusted for inflation pursuant to Appendix B to Title 49 C.F.R. Part 386.

COUNT 5

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

101. The Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 75 above as if fully set forth hereinafter.

102. 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.

103. 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.” Section 501.202, Florida Statutes.

104. 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.”

105. 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. Sections 501.2075 and 501.2077, Florida Statutes.

106. In numerous instances, while engaged in trade or commerce, Defendants have violated, and/or will continue to violate, 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 48 through 72 above. Among other things, Defendants' unfair and deceptive acts and practices have included:

- a. Misrepresenting to consumers in Defendants' advertising materials and other solicitations, expressly and by implication, the true nature, quality and/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 will be provided by expert movers who will transport the household goods of consumers with the utmost care;
- c. using "bait-and-switch" tactics by providing consumers with one moving quote **prior** to collecting a consumer's household goods and thereafter materially increasing the price for the move **after** Defendants' agents have already arrived at the consumers' dwelling and have already started loading consumers' household goods onto Defendants' moving trucks;
- d. holding consumers' household goods "hostage" **after** all or a portion of the consumers' household goods have been loaded onto moving trucks, by refusing thereafter to release the household goods unless and until consumers pay Defendants' agents additional funds, often required to be paid in cash) which are substantially higher than the amount stated in the initial estimate provided to consumers by Defendants' at the onset of the moving process;
- e. failing to disclose that Defendants' Moving Services are regularly performed by untrained and unskilled laborers, rather than "expert movers" as Defendants falsely advertise, who act in a careless and/or reckless manner that often results in substantial, unrecompensed damages to, or loss of, 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.

107. Defendants' acts and practices, as set forth herein are 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 have been misled by the acts and practices of Defendants alleged herein. The above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the consuming public.

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

110. Defendants, OCEAN and CARMEL, 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 6

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

111. The Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 75 above as if fully set forth hereinafter.

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

113. 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.

114. 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 “[a]cts, 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.”

115. 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, Defendants were required to comply with the F.M.A. As more fully described in paragraphs 48 thorough 72 above, Defendants violated one or more provisions of the F.M.A. during various periods relevant hereto, which constitute per se FDUTPA violations.

116. In numerous instances, 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; and/or
- e. a shipper's rights, privileges, or benefits.

117. 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, 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 pick-up and delivery dates/date ranges that had been agreed upon with the consumer.

118. 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/shipper notwithstanding that payment had been made by the consumer as delineated in the estimate or contract for services. 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.

119. Accordingly, 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 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.

120. 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. 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.

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

122. Defendants, CARMEL and OCEAN, 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 7

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

123. The Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 75 above as if fully set forth hereinafter.

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

125. 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.

126. 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.

127. 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* Section 375.101 of the Regulations). As described above, 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.

128. 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 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));

- c. 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));
- d. 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
- e. 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 (Section 375.605).

129. As more fully described paragraphs 48 thorough 72 above, in numerous instances during periods material to this Complaint, Defendants violated the I.T.C. and FMCSA Regulations, including those set forth above, by, among other things:

- a. Publishing and using advertisements that are materially false and misleading;
- b. Publishing and using advertisements that were materially false and misleading;
- c. Providing binding estimates to consumers that were materially false and misleading, including as to the services to be provided and charges to be incurred;
- 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 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.

130. Accordingly, Defendants' acts and practices described above violate various provisions of a statute (i.e., the I.T.C. and related FMCSA Regulations) designed to protect consumers from unfair and deceptive acts or practices, which constitutes a *per se* violation of FDUTPA, and subject 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.

131. 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. 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.

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

133. Defendants, CARMEL and OCEAN, 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.

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 Plaintiff and against Defendants for each Count alleged in this Complaint.

B. ASSESS civil penalties against Defendants, jointly and severally, in the inflation adjusted amount of Fifteen Thousand Seven Hundred Twenty-seven Dollars (\$15,727.00) for each household goods shipment Defendants are found to have knowingly and willfully held hostage,

pursuant to Section 14915(a)(1) of the I.T.C. and Appendix B to Title 49 C.F.R. Part 386, and for each day the Defendants are found to have failed to give up possession of such a hostage household goods shipment, pursuant to Section 14915(a)(2) of the I.T.C.

C. ASSESS civil penalties against Defendants, jointly and severally, in the inflation adjusted amount of One Thousand Five Hundred Seventy-Two Dollars (\$1,572.00) for each additional (non-hostage) violation of the I.T.C. and/or FMCSA Regulation, pursuant to Section 14901 of the I.T.C., and Appendix B to Title 49 C.F.R. Part 386.

D. Permanently ENJOIN Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with 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 375.401 of the Regulations (written estimates);
- c. 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);
- d. Violating Section 375.603 of the Regulations (failure to tender shipment);
and
- e. Violating Section 375.405 of the Regulations (failure to notify).

E. AWARD consumer restitution and such equitable or other relief as the Court finds appropriate, pursuant to Section 501.207, Florida Statutes;

F. 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;

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

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

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

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

Dated this 27th day of December, 2018.

Respectfully Submitted,

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