

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
- CIVIL DIVISION -**

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

Plaintiff,

CASE NO: _____

v.

MARLIN FINANCIAL, INC.,

Defendant.

_____ /

COMPLAINT

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs (“Attorney General”), sues Defendant, Marlin Financial, Inc. (“Defendant” or “Marlin”), and alleges the following:

JURISDICTION AND VENUE

1. This is an action for injunctive relief, restitution, civil penalties, attorney’s fees, and other statutory and equitable relief pursuant to the Florida Deceptive and Unfair Trade Practices Act (hereinafter referred to as “FDUTPA”), Chapter 501, Part II, Florida Statutes (2018).

2. This court has subject matter jurisdiction pursuant to the provisions of FDUTPA. The granting of injunctive and other equitable and statutory relief is within the jurisdiction of the Circuit Court and the amount in controversy satisfies the jurisdictional threshold of the Circuit Court.

3. All actions material to the complaint have occurred within four (4) years of the filing of this action.

4. The statutory violations alleged herein occur in or affect more than one judicial circuit in the State of Florida, including Hillsborough County, and the Thirteenth Judicial Circuit.

5. Venue is proper in Hillsborough County, Florida, as Marlin does business in Hillsborough County.

6. All conditions precedent to this action have been performed or have occurred.

PARTIES

7. The Attorney General is an enforcing authority of FDUTPA as defined in 501.203(2), Florida Statutes (2018), and is authorized to seek injunctive relief, restitution, and other statutory and equitable relief pursuant to this part.

8. The Attorney General has conducted an investigation of the matters alleged herein and has determined that this enforcement action serves the public interest, as required by Section 501.207(2), Florida Statutes (2018).

9. Defendant is a Wyoming corporation registered with Florida Department of State to transact business in Florida. Defendant's principal place of business is located at 175 SW 7th Street, Suite# 1214, Miami, FL 33176.

10. At all times material hereto, Defendant engaged in “trade or commerce” as defined in Section 501.203(8), Florida Statutes (2018). Defendant advertised, solicited, provided, and/or offered lending services in trade or commerce.

11. At all times material hereto, Defendant has been licensed by the Florida Office of Financial Regulation as a consumer finance company pursuant to Chapter 516, Florida Statutes.

**STATEMENT OF FACTS AND
DEFENDANT’S COURSE OF CONDUCT**

12. Marlin is a lender in Florida that makes short term loans to high risk borrowers who pledge vehicles as collateral.

13. Marlin offers its services throughout Florida through a website, www.marlincash.com.

14. As a feature of its loans, Marlin offers borrowers a debt cancellation product (“DCP”) under its written agreement with the borrower.

15. Pursuant to written agreement, the DCP provides that, in exchange for a fee paid to Marlin, Marlin agrees to waive and cancel a borrower’s obligation to pay for the unpaid balance due in the event of a total loss of collateralized property, *i.e.*, the vehicle.

16. Marlin claims that a borrower may decline to purchase the DCP.

17. At some times material hereto, Marlin required consumers who wished to decline purchase of the DCP to provide proof of full coverage comprehensive and collision auto insurance that had been prepaid for the full term of the loan agreement. Further, the insurance deductible could not exceed \$250.00. Borrowers found such insurance coverage either impossible or virtually impossible to purchase. Therefore, for many loans offered by Marlin, the DCP was in fact a mandatory feature of loans made to consumers.

18. Marlin fails to properly include charges for the DCP in its calculation of an annual percentage rate (“APR”). Charges related to the DCP are therefore excessive and are improperly added to the principal balance and amortization schedule.

19. At some times material hereto, Marlin also improperly charged interest on the DCP as if it were part of the financing agreement.

20. Marlin repossesses and causes the sale of vehicles based upon its improper calculation of borrowers’ outstanding loan balances. Because the charges associated with the DCP are excessive, improperly added to the principal balance and amortization schedule, and may inappropriately include interest on the DCP itself, these repossessions and sales are improper.

21. The Attorney General has received and reviewed complaints from Florida consumers, alleging that Marlin engaged in unfair and deceptive business

practices, including but not limited to, excessive charges, improper calculations of outstanding balances due, misrepresentations regarding the “voluntary” nature of the DCP, and improper repossessions and sales of vehicles.

COUNT I
VIOLATIONS OF FDUTPA
CHAPTER 501, PART II, FLORIDA STATUTES (2018)

22. The Attorney General incorporates and re-alleges the preceding paragraphs as if fully set forth herein.

23. Section 501.204(1), Florida Statutes (2018) provides 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.” The provisions of FDUTPA shall be “construed liberally” to promote and “protect 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. (2018).

24. As set forth above, Defendant has 1) committed acts or practices in trade or commerce, which shock the conscience, engaged in representations, acts, practices or omissions, which are material, and which are likely to mislead consumers acting reasonably under the circumstances; 2) committed acts or practices in trade or commerce which offend established public policy and are

unethical, oppressive, unscrupulous or substantially injurious to consumers; and, 3) engaged in acts or practices that are likely to cause substantial injury to consumers, which are not reasonably avoidable by consumers themselves or outweighed by countervailing benefits to consumers or competition. Thus, Defendant has engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of FDUTPA.

25. Defendant has willfully engaged in the acts and practices described herein when they knew or should have known that such acts and practices were unfair or deceptive or otherwise prohibited by law. Defendant is subject to civil penalties for willful violations of FDUTPA in the amount of Ten Thousand Dollars (\$10,000) for each violation pursuant to Section 501.2075, Florida Statutes (2018), and Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize, a senior citizen pursuant to Section 501.2077, Florida Statutes (2018).

26. These above-described acts and practices of Defendant have injured the public.

27. Unless Defendant is permanently enjoined from engaging further in the acts and practices complained of herein, Defendant's actions will result in irreparable injury to the public for which there is no adequate remedy at law.

PRAYER FOR RELIEF

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

a. A permanent injunction prohibiting Defendant, and its officers, agents, servants and employees, and those persons in active concert or participation with Defendant who receive actual notice of the Court's orders in connection with any loans offered within the State of Florida, or from outside the State of Florida but involving Florida businesses or Florida residents, from:

1. Failing to include charges, including but not limited to charges related to a DCP, in the calculation of an annual percentage rate ("APR") where no legal exception exists;
2. Offering loan term(s) on a purported voluntary basis where the conditions of such offer render such term(s) mandatory in effect;
3. Charging interest on a DCP;
4. Repossessing vehicles related to any loan where (a) the borrower was charged for a DCP that does not meet the exclusion set forth in 12 CFR 1026.4; (b) Marlin described the requirement of pre-paid full coverage comprehensive and collision insurance to decline the DCP for the full term of the loan, and marked with a maximum \$250 deductible, as "voluntary"; and (c) Marlin charged any interest on the DCP.

b. Award final judgment against Defendant for equitable remedies, including ordering full restitution for all consumers who were harmed by Defendant, to include disgorgement, imposition of constructive trust, repatriation

of assets necessary to satisfy any judgment, and any other appropriate relief pursuant to Section 501.207(3), Florida Statutes (2018);

c. Assess against Defendant, jointly and severally, civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of FDUTPA in accordance with Section 501.2075, Florida Statutes (2018), or Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize, a senior citizen in accordance with Section 501.2077, Florida Statutes (2018);

d. Award the Attorney General reasonable attorney's fees and costs pursuant to the provisions of Section 501.2105, Florida Statutes (2018), and as otherwise allowable by applicable statutes or law; and

e. Award any other equitable relief pursuant to Section 501.207(3), Florida Statutes (2018), and such other relief as the interests of justice shall require and that this Honorable Court may deem just and proper.

Dated this 20th day of November 2018.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ *Sasha Funk Granai*
Sasha Funk Granai
Senior Assistant Attorney General
Florida Bar No. 96648
Sasha.Granai@myfloridalegal.com
Office of the Attorney General
Department of Legal Affairs

3507 E. Frontage Road, Suite 325
Tampa, Florida 33607
(813) 287-7950 (telephone)
(813) 281-5515 (facsimile)