

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA**

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

Plaintiff,

v.

Case No.:

RIVERSIDE CHEVROLET, LLC d/b/a
RIVERSIDE CHEVROLET, and
ANDREW LARRY FERGUSON, JR.,

Defendants.

COMPLAINT

Plaintiff, OFFICE OF THE ATTORNEY GENERAL, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, (“the Attorney General”) sues Defendants, RIVERSIDE CHEVROLET, LLC d/b/a RIVERSIDE CHEVROLET (“RIVERSIDE”), and ANDREW LARRY FERGUSON, JR, (“FERGUSON”), and alleges:

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

PARTIES AND JURISDICTION

2. The Attorney General is an enforcing authority of FDUTPA.
3. The Attorney General has determined that an enforcement action serves the public interest as required by section 501.207(2), Florida Statutes (2018).
4. This Court has jurisdiction pursuant to section 26.012, Florida Statutes (2018) and FDUTPA.
5. RIVERSIDE is a Florida member-managed limited liability company with ANDREW FERGUSON as its sole member and manager.
6. RIVERSIDE, from 2016 until 2018, owned and operated a Chevrolet automobile dealership located at 3494 Phillips Highway, Jacksonville, Florida 32207.
7. The injurious actions of the Defendants affected consumers in judicial circuits throughout Florida, including the Fourth Judicial Circuit.
8. Venue is proper in this Court under sections 47.011 and 47.051 Florida Statutes, (2018) because RIVERSIDE conducted business in Duval County, Florida when the causes of action alleged herein arose.
9. At all times material to this Complaint, the Defendants solicited the purchase of goods and services by consumers as defined in section 501.203(7), Florida Statutes (2018).

10. At all times material to this Complaint, the Defendants engaged in trade or commerce as defined in section 501.203(8), Florida Statutes (2018).

11. Pursuant to sections 95.11(3) and 501.207(5), Florida Statutes (2018), all of the acts, practices, occurrences, and transactions upon which this Complaint is based occurred within four (4) years of the filing of this Complaint.

The Defendants' Course of Conduct

12. From July 2016 until May 2018, the Defendants operated the Riverside dealership in Jacksonville, Florida. Beginning in 2017, RIVERSIDE began to experience severe operational losses and capital shortages. These financial reverses led RIVERSIDE to over-draft its bank accounts, fail to pay sales taxes to the State of Florida that had been collected from consumers, fail to pay off liens on vehicles that had been traded in by consumers in a timely manner, fail to pay employee salaries and withholding taxes, and fail to properly and timely transfer title to vehicles that had been purchased or traded in by consumers.

13. Between approximately August 2017 and April 2018, RIVERSIDE accumulated an unpaid sales tax obligation to the State of Florida Department of Revenue of more than \$400,000.00.

14. Section 319.24(5)(a), Florida Statutes (2018) requires that an automobile dealer who acquires ownership of a motor vehicle by trade in with an

outstanding lien must pay and satisfy the outstanding lien within 10 working days of acquiring ownership.

15. Between August 2017 and April 2018, RIVERSIDE accumulated unpaid obligations to holders of liens on vehicles traded in by consumers of more than \$1.2 million.

16. When RIVERSIDE failed to pay off an outstanding lien on a vehicle traded in by a consumer, several results occurred. First, the lienholder would continue to hold the consumer accountable for the debt and would invoice or bill the consumer accordingly. If the consumer did not continue to make payments on the traded-in vehicle (which the consumer no longer owned), the lienholder often reported the default to credit bureaus—thereby adversely affecting the consumer’s credit. In some instances involving armed forces service members who held security clearances, the adverse credit reporting affected the service member’s security clearance. In other instances, the lienholder tried to repossess the vehicle which unbeknownst to it had been traded in by the consumer and RIVERSIDE had failed to timely satisfy the lien.

17. In May 2018, RIVERSIDE and ANDREW FERGUSON entered into a management agreement with Beaver GM, LLC (which in June 2018 changed its name to Beaver Chevrolet, LLC) to operate the Riverside Chevrolet dealership until its assets could be purchased by Beaver Chevrolet, LLC (“Beaver”).

18. The Riverside Chevrolet dealership was operated by Beaver until August 2018, at which time Beaver acquired all of RIVERSIDE'S assets.

19. Between August 2017 and August 2018, a total of 71 consumers traded in vehicles to RIVERSIDE with outstanding liens totaling more than \$1.2 million that were paid late or not paid at all by RIVERSIDE.

20. By August 2018, the outstanding unpaid sales taxes and unpaid liens on traded-in vehicles had been paid through advances made by Beaver, which were subsequently deducted from the purchase price paid by Beaver for RIVERSIDE'S assets when the asset purchase was concluded on August 27, 2018.

21. Section 319.23(6)(a), Florida Statutes (2018) requires motor vehicle dealers in Florida to process title transfers within 30 days after selling or acquiring a motor vehicle.

22. According to an administrative complaint filed by the State of Florida Department of Highway Safety and Motor Vehicles in June 2018, out of 1,783 vehicle titles transferred by RIVERSIDE between January 1, 2017 and June 13, 2018, 799 titles were transferred outside the 30-day period required by section 319.23(6)(a), Florida Statutes (2018).

23. Consumers whose vehicle titles were not promptly transferred within the statutory period often experienced difficulty in obtaining financing and insurance on their vehicles.

24. In some instances where RIVERSIDE failed to promptly transfer title on vehicles that were traded in to RIVERSIDE by consumers, RIVERSIDE sold the traded-in vehicles to other consumers despite not having clear title to the vehicles.

25. In conducting the business of RIVERSIDE and engaging in the acts and practices described above herein, ANDREW FERGUSON directed and controlled the acts of RIVERSIDE, or had the authority to direct or control those acts, or directly participated in the acts or practices engaged in by RIVERSIDE that are alleged herein.

COUNT I

VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (“FDUTPA”)

26. The Attorney General re-alleges and incorporates by reference Paragraphs 1 through 25.

27. Section 501.204(1) of the Florida Unfair and Deceptive Trade Practices Act, Chapter 501, Part II, Florida Statutes (2018) states that “unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

28. By undertaking the activities alleged in Paragraphs 12 through 25 herein, the Defendants engaged in representations, acts, practices or omissions

which are material, and which are likely to mislead consumers acting reasonably under the circumstances.

29. By undertaking the activities alleged in paragraphs 12 through 25, the Defendants engaged in acts and practices that offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers; or are likely to cause substantial injury to consumers that were not reasonably avoidable by consumers themselves and are not outweighed by countervailing benefits to consumers or competition.

30. Any entity or person that willfully engages in a deceptive or unfair act or practice is liable for a civil penalty of \$10,000 for each such violation (up to \$15,000 for each violation involving senior citizens, veterans or members of their families, or disabled persons); willful violations occur when the entity or person knew or should have known that the conduct in question was deceptive or unfair or prohibited by rule. Fla. Stat. §§ 501.2075 and 501.2077 (2018).

31. Defendants engaged in deceptive, unfair, or unconscionable acts and practices that included, but are not limited to, failing to pay off outstanding liens on motor vehicles traded in by consumers and failing to promptly transfer titles on vehicles purchased by and traded in by consumers.

32. Consumers suffered harm and injury as a direct result of the Defendants' unlawful acts and practices that violated FDUTPA.

33. Defendants knew or should have known that their conduct alleged herein was deceptive and / or unfair.

PRAYER FOR RELIEF

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

(a) Temporarily and permanently enjoin each of the Defendants, and any person or entity acting on their behalf, from directly or indirectly, owning, operating, or managing an automobile or truck dealership within the State of Florida.

(b) Award restitution and disgorgement and other equitable relief, including ordering Defendants, jointly and severally, to fully pay off any outstanding liens on vehicles traded in to RIVERSIDE by consumers;

(c) Order Defendants to promptly transfer title to all vehicles purchased by consumers from RIVERSIDE or traded in to RIVERSIDE by consumers;

(d) Order Defendants jointly and severally to pay civil penalties pursuant to sections 501.2075 and 501.2077, Florida Statutes (2018);

(e) Award the Attorney General reasonable attorney's fees and costs pursuant to section 501.2075, Florida Statutes (2018) from Defendants, jointly and severally; and

(f) Grant such other relief as this Court deems just and proper, including equitable relief pursuant to section 501.207(3), Florida Statutes (2018).

Dated: August 2, 2019

Respectfully submitted,

ASHLEY MOODY

ATTORNEY GENERAL

/s/ Steven Gard

Steven Gard, Esq.

Counsel for Plaintiff

Florida Bar No. 20897

Senior Assistant Attorney General

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