IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT, IN AND FOR SEMINOLE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 2021-CA-002143

FOUNTAINHEAD SBF,

Plaintiff,

vs.

OTO ANALYTICS, INC. d/b/a/ WOMPLY,

Defendant.

_________________________________/

DEFENDANT'S MOTION TO COMPEL ARBITRATION AND OPPOSITION TO PLAINTIFF'S VERIFIED AMENDED PETITION FOR ORDER TO SHOW CAUSE FOR EXPEDITED TEMPORARY INJUNCTIVE RELIEF

Defendant Oto Analytics, Inc. d/b/a Womply ("Womply"), by and through its undersigned counsel, files this: (i) motion to compel arbitration (the "Motion") and (ii) opposition (the "Opposition") to Plaintiff Fountainhead SBF's ("Fountainhead") Verified Amended Petition for Order to Show Cause for Expedited Temporary Injunctive Relief (the "Amended Petition").

INTRODUCTION

This case is not properly before the Court. Plaintiff's Complaint and Amended Petition allege that Womply is in breach of a contract between the parties because it has not produced "loan files" to Fountainhead and ask the Court to grant a *mandatory* injunction ordering Womply to transmit electronic copies of the loan files to Fountainhead. The Court should not reach the merits of Fountainhead's claims because the parties' dispute over the loan files is the subject of an ongoing JAMS arbitration between the parties in California (the "Arbitration"). In the Arbitration, Fountainhead demanded that the arbitrator enter a "declaratory" award ordering Womply to turn over the loan files. Because an arbitrator was appointed over a month ago, any request for injunctive relief must be submitted to her. Inexplicably, Plaintiff has failed to do so. Instead, it filed this Amended Petition seeking to have this Court alter the status quo by ordering Womply to take action which would necessarily require a decision on key issues in the arbitration, including the meaning of the undefined term "loan file" in the parties' contract and the obligations the parties have with respect to such files.

Once an arbitrator is appointed, the Florida Arbitration Act prohibits a Court from issuing provisional remedies (like those sought here) unless the plaintiff shows that the matter is urgent *and that the arbitrator is unable to act*. Fla. Stat. § 682.031(2)(b) ("After an arbitrator is appointed and is authorized and able to act [...] [a] party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent ***and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy***.") (emphasis added). Here, Fountainhead merely dropped a footnote in its Amended Petition informing the Court of the already pending arbitration, without addressing whether the arbitrator can provide an adequate remedy. Likewise, as more fully explained herein, the governing JAMS rules require that "emergency" relief be determined by the appointed arbitrator. Accordingly, the Court should not (and cannot) rule here. Fountainhead's Petition should be denied, and this case should be dismissed or stayed in order to give the required deference to the pending arbitration.

In any event, even if it were proper for this Court to consider the merits of Fountainhead's claims (it is not), Fountainhead's Petition should be denied. Fountainhead does not even come close to meeting the extraordinarily high standard for a mandatory injunction, including because Fountainhead fails to articulate any irreparable harm that it may suffer absent injunctive relief. And, to the extent Fountainhead actually suffers harm as a result of not having possession of documents that it considers to be loan files, monetary damages are an adequate remedy. Indeed, that is why Fountainhead is seeking monetary damages from Womply in the Arbitration.

For these reasons and the reasons set forth below, Womply respectfully requests that this Court: (i) compel Fountainhead to arbitrate the loan file dispute in the pending Arbitration; (ii) either dismiss the Complaint or stay the action pending resolution of the Arbitration; and/or (iii) deny the Petition.

BACKGROUND

1. On or about March 23, 2021, Fountainhead and Womply entered into a PPP Loan Referral Agreement (the "Agreement"), a copy of which is attached as Exhibit 1 to the Complaint.

2. Section 12 of the Agreement includes an arbitration provision. (Compl. Ex. 1 § 12.)

3. Womply terminated the Agreement, as it is expressly permitted to do, because Fountainhead failed to pay Womply over $90 million in fees due under the Agreements. (Cheney Aff. ¶ 6.)[1]

4. On June 15, 2021, Womply commenced arbitration against Fountainhead captioned *Oto Analytics, Inc. d/b/a Womply v. Fountainhead SBF LLC*, No. 1100-111-808, by filing with JAMS an arbitration demand and statement of claim (the "Arbitration Demand"). (*Id.* ¶ 7.)

5. In its Arbitration Demand, Womply asserted claims for, among other things, breach of contract and declaratory judgment based on Fountainhead's failure to pay Womply more than $90 million in fees due under the Agreement. (*Id.* ¶ 8.)

[1] References to "Cheney Aff." or "Cheney Affidavit" are to the *Affidavit of Alexander L. Cheney*, submitted contemporaneously with and in support of this Motion and Opposition. References to "Exhibit" are to the Exhibits attached to the Cheney Affidavit.

6. On July 23, 2021, Fountainhead submitted an answer to Womply's Arbitration Demand and asserted counterclaims against Womply in the Arbitration (the "Arbitration Counterclaims"). (*Id.* ¶ 9; Exhibit A.)

7. On August 5, 2021, JAMS appointed as arbitrator in the Arbitration the Honorable Elaine Rushing (Ret.) (the "Arbitrator"), a former California state court judge. (*Id.* ¶ 11.)

8. Count I of Fountainhead's Arbitration Counterclaims is for breach of contract for allegedly "fail[ing] and refus[ing] to provide Fountainhead with copies of the Loan Files." (Exhibit A ¶ 13.)

9. Count III of Fountainhead's Arbitration Counterclaims is for breach of the covenant of good faith and fair dealing based, in part, on the allegation that Womply is "refusing to provide Fountainhead with its Loan Files." (*Id.* ¶ 24.)

10. Count IV of Fountainhead's Arbitration Counterclaims is for tortious interference based on the allegation that Fountainhead's relationships with borrowers and prospective borrowers have been disrupted because "Fountainhead is unable to access Loan Files." (*Id.* ¶¶ 28-29)

11. Count V of Fountainhead's Arbitration Counterclaims is for declaratory relief and seeks a declaratory judgment that "Womply is obligated under the Operative Agreement to return to Fountainhead its Loan Files." (*Id.* ¶ 33.)

12. In addition to seeking equitable relief in the form of a declaratory judgment, Fountainhead seeks monetary damages in the Arbitration for alleged harm caused by Womply's alleged failure to produce loan files. (*Id.* at Section VI.)

13. Fountainhead concedes in the Arbitration that "JAMS has jurisdiction over [Fountainhead's] Counterclaims pursuant to Section 12" of the parties' Agreement, which contains the arbitration provision. (*Id.* ¶ 2.)

14. On July 27, 2021, Womply and Fountainhead submitted their respective "strike lists" to JAMS ranking the possible arbitrators provided by JAMS. (Cheney Aff. ¶ 12.)

15. On August 20, 2021, Womply answered Fountainhead's counterclaims, disputing that it breached its obligations under the Agreement. (*Id.* ¶ 13.)

16. The Arbitrator has scheduled a conference with the parties for September 17, 2021. (*Id.* ¶ 14.)

17. Despite all of this, Fountainhead commenced this action making the same allegations and seeking the same relief as in the Arbitration. Under the Federal Arbitration Act (the "FAA"), which governs this dispute involving interstate commerce, the Court must send the parties to arbitration because there is no dispute that an arbitration agreement exists and that the loan file dispute fits within its scope. The Court should not accept Fountainhead's invitation to interfere with the jurisdiction of JAMS, usurp the Arbitrator's authority, and resolve the parties' loan file dispute in contravention of the FAA and the Florida Arbitration Act.

ARGUMENT

I. THIS COURT SHOULD COMPEL FOUNTAINHEAD TO ARBITRATE THE LOAN FILE DISPUTE AND DISMISS OR STAY THIS CASE.

A. The Arbitrator Already Has Jurisdiction Over This Matter.

Given that the Arbitrator already has jurisdiction over the relief that Fountainhead seeks, Fountainhead's dilatory request for emergency relief is entirely inappropriate.

Fountainhead ignores the Florida Arbitration Act,[2] which dictates that the Arbitrator, not the Court, should decide whether Fountainhead is entitled to the requested relief. Section 682.031(2)(b), *Florida Statutes,* provides: "[a]fter an arbitrator is appointed and is authorized and able to act [. . .] [a] party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent ***and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy***." (emphasis added). Further, under JAMS Comprehensive Arbitration Rules & Procedures, Rule 2(c), Fountainhead could have sought the appointment of an Emergency Arbitrator pursuant to "Emergency Relief Procedures" "prior to the appointment of an Arbitrator." Rule 2(c)(i). Now that an arbitrator has been appointed, however, any emergency relief must be heard by the Arbitrator. *See* JAMS Comprehensive Arbitration Rule 2(c)(v).

Fountainhead has not sought emergency relief in the Arbitration. (Cheney Aff. ¶ 15). Nor has Fountainhead even attempted to explain in its Amended Petition why it cannot seek the relief it requests here from the Arbitrator (it can). Accordingly, Fountainhead has not met its burden in establishing the predicate necessary for seeking a provisional remedy from this Court despite the pending Arbitration, and the Complaint can be dismissed on this basis alone. *See K12 Fla. LLC v. S. Fla. Virtual Charter Sch. Bd., Inc.*, 2019 WL 568878, at *2 (S.D. Fla. Jan. 10, 2019), *report and recommendation adopted sub nom. K12 Fla. LLC v. S. Fla. Virtual Sch. Charter Sch. Bd., Inc.*, 2019 WL 1115877 (S.D. Fla. Jan. 30, 2019) (recommending dismissal in light of pending arbitration where "but for the actions of K12 in moving to suspend the arbitration pending resolution of the Petition, the appointment of the arbitrator could have been accomplished and the same petition could have been presented to the arbitrator").

[2] Although this dispute is governed by the Federal Arbitration Act, the Florida Arbitration Act governs where not expressly preempted by conflict or inconsistency. *See Sachse Constr. & Dev. Corp. v. Affirmed Drywall, Corp.*, 251 So. 3d 1005, 1009 (Fla. 2d DCA 2018) ("Enacted pursuant to the Commerce Clause of the United States Constitution, the FAA preempts conflicting or inconsistent state law.").

B. The Elements Of The Florida Arbitration Act And Federal Arbitration Act Are Satisfied.

To the extent any dispute remains as to whether this claim is arbitrable, all three factors mandating arbitration are met. The FAA applies to arbitrations, like the Arbitration between Womply and Fountainhead, involving interstate commerce. *Grant v. Rotolante*, 147 So. 3d 128, 131 (Fla. 5th DCA 2014) ("The FAA applies to any contract 'affecting' interstate commerce."). Here, Fountainhead is a lender in Florida and Womply is a Delaware technology Company, and the Agreement at issue concerns services related to the referral and management of hundreds of thousands of loans under the federal Paycheck Protection Program ("PPP") to borrowers across the United States. In any event, on a motion to compel arbitration under either the FAA or Florida's Arbitration Act, Florida courts consider the same three factors: "(1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived." *Raymond James Fin. Servs., Inc. v. Saldukas*, 896 So. 2d 707, 711 (Fla. 2005); *Terminix Int'l Co., v. Ponzio*, 693 So. 2d 104, 106 (Fla. 5th DCA 1997).

There is no dispute that a valid agreement to arbitrate exists and that the loan file dispute raised in the Complaint and Amended Petition is an arbitrable issue within the scope of the arbitration provision in Section 12 of the Agreement. As discussed above, Fountainhead is pursuing Arbitration Counterclaims against Womply seeking monetary damages and equitable relief in the form of a declaratory judgment based on Womply's alleged failure to provide loan files to Fountainhead under the parties' Agreement. Fountainhead further concedes in the Arbitration that "JAMS has jurisdiction over [Fountainhead's] Counterclaims pursuant to Section 12" of the parties' Agreement." (Exhibit A ¶ 2.)

Further, any purported carve-out in the Agreement does not preclude compelling arbitration. In its Complaint, Fountainhead claims that the Agreement provides Fountainhead with "the right to seek equitable relief from Womply in court, as it is doing in this action." (Compl. ¶ 28). This assertion misconstrues the limited scope of the exception that allows for limited court intervention to preserve the status quo in an emergency. While the arbitration provision in the Agreement does not "limit[] a party's right to seek injunctive or other equitable relief in court," that provision contemplates an emergency to preserve the status quo where it will take time to form a panel or appoint an arbitrator; it does not permit Fountainhead to seek the same equitable relief in this Court that it is already pursuing in the Arbitration after the appointment of the Arbitrator.

To the contrary, under Florida law, Fountainhead is estopped from pursuing the Complaint and Amended Petition because they are based on the same facts and seek the same relief as Fountainhead's Arbitration Counterclaims. *See Heller v. Blue Aerospace, LLC*, 112 So. 3d 635 (Fla. 4th DCA 2013) (holding that a party was "equitably estopped by its own conduct" from pursuing a complaint in court based on "essentially the same allegation and operative facts" as in the party's counterclaims in arbitration). And Fountainhead does not, because it cannot, claim that the Arbitrator cannot grant Fountainhead the same relief it seeks from this Court. The Court should therefore compel Fountainhead to arbitrate the loan file dispute in the pending Arbitration and dismiss this case. *See Perera v. H&R Block Eastern Enters., Inc.*, 914 F. Supp. 2d 1284, 1289–90 (S.D. Fla. 2012) (dismissing case under the FAA where all claims are subject to arbitration).

In the alternative, the Court should stay the case pending resolution of the first-filed Arbitration under the principle of priority. *See Siegel v. Siegel*, 575 So. 2d 1267, 1272 (Fla. 1991) ("[W]here courts within one sovereignty have concurrent jurisdiction, the court which first exercises its jurisdiction acquires exclusive jurisdiction to proceed with that case"); *Hirsh v. DiGaetano*, 732 So. 2d 1177, 1177–78 (Fla. 5th DCA 1999) ("It is well-established law of Florida that where two courts have concurrent jurisdiction of a cause of action, the first court to exercise jurisdiction has the exclusive right to hear all issues or arising in the case"); *Polaris Pub. Income Funds v. Einhorn*, 625 So.2d 128, 129–30 (Fla. 3d DCA 1993) (ordering stay of the later filed Florida lawsuit because it "is so similar in parties and issues as to be unnecessarily duplicative of the prior-filed New York state proceedings"); *Pilevsky v. Morgans Hotel Grp. Mgmt, LLC*, 961 So. 2d 1032, 1035 (Fla. 3d DCA 2007) ("It is sufficient that the two actions involve a single set of facts and that resolution of the one case will resolve many of the issues involved in the subsequently filed case.") (citation and quotation omitted).

II. THIS COURT SHOULD DENY THE PETITION FOR MANDATORY INJUNCTIVE RELIEF.

If the Court does consider the merits of Fountainhead's claims (it should not), the Court should deny the Petition. Under Florida law, "a temporary injunction is an extraordinary remedy that can only be granted if the movant establishes (1) a likelihood of irreparable harm, (2) unavailability of an adequate legal remedy, (3) substantial likelihood of succeeding on the merits, and (4) support for the injunction within considerations of public interest." *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1014 (Fla. 2d DCA 2005); *see also Playpen South, Inc. v. City of Oakland Park*, 396 So.2d 830, 830–31 (Fla. 4th DCA 1981) ("It is incumbent upon the plaintiff" who seeks the relief to prove the four elements of a temporary injunction.); Fla. R. Civ. P. 1.610(a). The purpose of a temporary injunction is to preserve the status quo. *See Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 924 (Fla. 2017) ("[T]he purpose of a temporary injunction is to preserve the status quo while final injunctive relief is sought."); *Grant v. Robert Half Intern., Inc.*, 597 So. 2d 801, 801-02 (Fla. 3d DCA 1992) ("The purpose of a temporary injunction is not to resolve a dispute on the merits, but rather to preserve the status quo until the final hearing when full relief may be granted.").

Fountainhead's Amended Petition misleadingly asks for "temporary injunctive relief" but it actually seeks the ultimate relief sought in Fountainhead's Complaint: a mandatory injunction ordering Womply to produce "loan files" to Fountainhead. In Florida, a mandatory injunction "will not be granted until after a final hearing on the merits as its effect before that time has been compared to awarding execution before trial and judgment." *Montgomery Pipe & Tube Co. of Fla.,* 205 So. 2d 660, 661 (Fla. 3d DCA 1968); *see also Zetrouer v. Zetrouer*, 89 Fla. 253, 103 So. 625 (1925) ("It is well settled that mandatory injunctions are rarely granted before final hearing, or before the parties have full opportunity to present all the facts in such manner as will enable the court to see and judge what the truth may be."). The only instance where a mandatory injunction might issue prior to a final hearing is in the "rare case[] where the right is clear and free from reasonable doubt." *Id*. "Mandatory injunctions are looked upon with disfavor, and the courts seem even more reluctant to issue them than prohibitory ones. One court has announced that relief of this kind for the most obvious reasons should be granted only in situations which so clearly call for it as to make its refusal work real and serious hardship and injustice." *Johnson v. Killian*, 27 So. 2d 345, 346 (Fla. 1946) (quotations and citations omitted).

Fountainhead cannot meet the standards for a temporary injunction, let alone a mandatory injunction at the outset of this case without discovery on an order to show cause.

First, Fountainhead fails to articulate any irreparable harm it will suffer absent a mandatory injunction. In its Amended Petition, Fountainhead claims that (i) it will be unable to fund 77 loans with a total loan principal of $1,060,499 (Amended Petition at 8), (ii) government agencies and law enforcement officials have served subpoenas on Fountainhead seeking documents that are in Womply's possession (*id*. at 8-9), and (iii) Fountainhead is required by regulation to maintain "all applications for financing, financing instruments, and 'all other documents and supporting material relating to such loans, including correspondence'" (*id.* at 9). None of this constitutes irreparable harm.

Fountainhead does not explain how it could still fund PPP loans when the SBA stopped approving PPP loans on June 30, 2021. (*See* https://www.womply.com/blog/ppp-deadline-extended-ppp-extension-act-of-2021-urgent-update/.) In any event, Fountainhead does not identify what harm it would suffer from failing to fund 77 loans. Rather, the predominant harm it complains of is to unidentified potential borrowers, not to Fountainhead. And while Fountainhead may not receive fees from the SBA or interest on those potential loans, the amounts of such fees and interest would be nominal, and monetary loss this does not constitute "irreparable harm." *State of Fla., Dept. of Health v. Bayfront HMA Med. Center,* 236 So. 3d 466, 475 (Fla 1st DCA 2018) ("[E]conomic harm does not constitute irreparable injury.").

Nor can Fountainhead show irreparable harm by not possessing documents sought by subpoenas. To the extent Fountainhead has received subpoenas, it is only obligated to produce documents in its possession. Indeed, Fountainhead does not even allege that any government agency or law enforcement official has threatened Fountainhead with any penalty for not producing documents that are not in Fountainhead's possession.

Fountainhead's purported concerns about its regulatory obligations are similarly insufficient to show irreparable harm. For one thing, it is not clear from the face of the Amended Petition that Fountainhead would be in violation of any regulation absent the injunctive relief it seeks here. To the contrary, Fountainhead's CEO concedes that Fountainhead has access to at least some of the documents it contends are loan files—that is, the borrower applications and promissory notes. (Hurn Aff. ¶ 7.)[3] For another, Fountainhead does not claim that it is under

[3] References to "Hurn Aff." are to the Affidavit of Christopher G. Hurn, dated September 8, 2021, submitted in support of Fountainhead's Verified Petition for Order to Show Cause for Expedited Temporary Injunctive Relief.

imminent threat of any sanction, or even what a potential sanction might be. Any potential harm to Fountainhead from a regulatory perspective is speculative, at best, and therefore not irreparable. *See State of Fla., Dept. of Health v. Bayfront HMA Med. Center,* 236 So. 3d 466 (Fla 1st DCA 2018) ("Irreparable injury will never be found where the injury complained of is doubtful, eventual, or contingent.") (quotations and citations omitted.); *Yachting Promotions, Inc.,* 792 So. 2d at 663 (same).[4]

Second, and in any event, even if Fountainhead suffered some harm as a result of any of the foregoing allegations, monetary damages would be an adequate remedy. The best evidence of this is that Fountainhead is already seeking monetary damages for the foregoing alleged harm in the Arbitration. In Count I of its Arbitration Counterclaims for breach of contract, Fountainhead seeks monetary damages for the "economic and reputational damage to Fountainhead" for Womply's alleged failure to provide loan files, which allegedly "has prevented Fountainhead from funding loan applications, servicing existing borrowers, complying with law enforcement requests, and adhering to SBA regulations." (Exhibit A ¶ 14.) These are the same purported harms that Fountainhead complains of here. Mandatory injunctive relief is inappropriate under these circumstances. *See Esposito v. Horning*, 416 So. 2d 896, 897 (Fla. 4th DCA 1982) (reversing trial court's grant of preliminary injunction because the plaintiff has "an adequate remedy at law" where she "has claimed damages in a number of counts and, if the complaint is proven, she could recover for her damages").

[4] Fountainhead's Order to Show Cause for Expedited Temporary Injunctive Relief, submitted with its Amended Petition, asks the Court to order that, pending a hearing on the Amended Petition, "Womply is temporarily restrained, together with its agents, servants, employees, and attorneys, from altering or destroying any of the Loan Files." However, Fountainhead fails to allege any facts even suggesting that there is a risk Womply will alter or destroy loan files. Even if there was a risk (there is not), Fountainhead could seek that same relief from the appointed Arbitrator. It has not.

Third, Fountainhead cannot establish a substantial likelihood of success on the merits, which requires a *prima facie* clear legal right to the relief requested. *Naegele Outdoor Advertising Co., Inc. v. City of Jacksonville,* 659 So. 2d 1046, 1047-48 (Fla. 1995). Fountainhead claims that "the ultimate issue before the Court – whether Womply is obligated to provide the Loan Files to Fountainhead – is straightforward," but the term "loan files" in the Agreement is not defined. And the definition that Fountainhead's CEO attempts to provide in his affidavit is vague. It includes, among other unspecific and overbroad categories of documents, "bank information," "all other data utilized to determine applicable eligibility," and "any and all communications with borrowers or potential borrowers." (Hurn Aff. ¶ 7.) Moreover, the meaning of the word "loan files," and therefore whether and to what extent Womply must produce any documents to Fountainhead, is in dispute and the subject of Fountainhead's Arbitration Counterclaims presently before the Arbitrator.

Fourth, Fountainhead cannot establish that an injunction supports the public interest. Fountainhead claims that with its "loan files," it will be able to respond to subpoenas to aid government agencies and law enforcement officials, fund 77 PPP loans, and comply with regulatory requirements. (Amended Petition at 11-12.) However, if government agencies or law enforcement officials require documents in Womply's possession, they can serve a subpoena on Womply. And the public's interest in having just 77 PPP loans funded, or having Fountainhead satisfy its regulatory obligations, is not sufficient enough to compel Womply to produce loan files or provide access to a technology platform that Womply was expressly permitted to terminate under the Agreement due to Fountainhead's failure to pay $90 million in fees to Womply.

CONCLUSION

For the foregoing reasons, Defendant Womply respectfully requests that the Court: (i) compel Fountainhead to arbitrate the loan file dispute in the pending Arbitration; (ii) either dismiss the Complaint or stay the action pending resolution of the Arbitration; and/or (iii) deny the Petition.

Dated this 13th day of September, 2021.

/s/ Emily J. Lang
Kevin D. Fowler
Florida Bar No. 091110
Primary email: kfowler@foley.com
Secondary email: bshelley@foley.com
Emily J. Lang
Florida Bar No. 1011367
Primary: elang@foley.com
Secondary: dburgos@foley.com
FOLEY & LARDNER LLP
301 East Pine Street, Suite 1200
Orlando, FL 32801
Tel. 407.244.3235
Fax 407.648.1743

Attorneys for Defendant OTO Analytics d/b/a Womply

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2021, a true copy of the foregoing was filed with the Clerk of Court via the Florida Court E-filing Portal which was directed to electronically furnish a copy of the forgoing to all counsel/parties of record.

/s/ Emily J. Lang
Emily J. Lang
Florida Bar No.: 1011367