BEFORE THE DELAWARE DEPARTMENT OF JUSTICE

IN THE MATTER OF:	)	
BLUE BEACH BUNGALOWS DE, LLC,	)	CPU Case No. 23000541
Respondent.	)	

POST-HEARING OPINION AND ORDER

This is the final, post-hearing opinion and order following the evidentiary hearing in this matter, addressing both the merits of the claims in the Complaint (Docket No. 2) filed by the Consumer Protection Unit ("CPU") against Respondent Blue Beach Bungalows DE, LLC ("Respondent" and collectively with CPU the "Parties") and the Motion for Sanctions (Docket No. 35) filed by CPU alleging violations of the Summary Cease and Desist Order by Respondent. After extensive pre-hearing proceedings,[1] including an administrative hearing on the Motion for Sanctions conducted on July 10 and 11 and August 1, 2023, the administrative

[1] The pre-hearing proceedings included briefing, argument, and a pre-hearing Opinion and Order on Pre-Hearing Legal Determinations (Docket No. 56), dated August 29, 2023, on those issues of law the Parties' presented for resolution in advance of the administrative hearing on the merits. While this opinion and order attempts to be comprehensive in addressing the issues before me, to the extent any issue is not addressed in this opinion and order but is addressed in the August 29, 2023 Opinion and Order on Pre-Hearing Legal Determinations, those determinations remain my findings of fact and conclusions of law and are incorporated herein.

hearing on the merits was conducted September 11-15, 2023, and the Parties submitted extensive simultaneous post-hearing briefing concluding November 27, 2023.

Trying to distill a complicated matter and extensive evidence down to its essence, in general terms, Respondent acquired a property, Pine Haven, that for years had been operated as a manufactured home community, and registered with the relevant State agency as a manufactured home community, with numerous year-round residents living at Pine Haven, in some cases for many years. Despite this, Respondent has insisted – regardless of evidence to the contrary provided by the prior owner, Delaware's manufactured home Ombudsperson, the State agency that regulates manufactured home communities, CPU, and others – that Pine Haven is a seasonal campground, and on the basis of that continued insistence has communicated with and taken actions against residents of Pine Haven, including full time residents, in violation of the statutory protections afforded to those residents. As a result, residents, many of whom intended to live at Pine Haven for years to come, left Pine Haven, entered settlements requiring them to leave Pine Haven, were subjected to illegal rent increases, or were evicted, among other things. Respondent's insistence that Pine Haven was a seasonal community continued even after the issuance of the Summary Cease and Desist Order by the Director of Consumer Protection specifically ordering Respondent to cease and desist from

"Making any false or misleading communications to residents/tenants of Pine Haven Campground, including, but not limited to... claiming that the community is and has been, seasonal." Docket No. 4 at 2. The harm caused by Respondent's actions cannot be undone.

As detailed below in the findings of fact and conclusions of law, in broad terms I find based on the claims alleged by CPU and the evidence presented by the Parties that: (1) the Summary Cease and Desist Order was validly issued and I therefore affirm its issuance; (2) CPU has met its burden of proof that Respondent wilfully violated the Consumer Fraud Act ("CFA") and award administrative penalties for such wilful violations, (3) CPU has not met its burden of proof that Respondent wilfully violated the Deceptive Trade Practices Act ("DTPA"), (4) CPU has met its burden of proof that Respondent violated the Manufactured Home and Manufactured Home Communities Act ("MHMHCA") and award relief accordingly, and (5) CPU has met its burden of proof that Respondent wilfully violated the Summary Cease and Desist Order and award administrative penalties for such wilful violations.

I. Procedural Posture

On April 3, 2023, the Director of Consumer Protection issued a Summary Cease and Desist Order.[2] The Summary Cease and Desist Order asserted the

[2] Docket No. 4 and cited herein as the "Summary Cease and Desist Order."

existence of "an immediate threat of public interest as a result of violations of 6 *Del. C.* § 2511 *et. seq*, 6 *Del. C.* § 2531 *et. seq.*, 25 *Del. C.* § 7024, and 25 *Del. C.* § 7052A" by Respondent. The Summary Cease and Desist Order prohibited Respondent from engaging in certain conduct.

Pursuant to 29 *Del. C.* § 2525(c) and Rule 25.0 of the Rules of Practice Governing CPU Administrative Proceedings ("CPU Rules"), a hearing was scheduled for Thursday, April 13, 2023. Initially as the parties engaged in discussions, and at various times since, the Parties and Hearing Officer modified the schedule of this matter pursuant to stipulations and orders. *See* Docket Nos. 7, 12, 16, 19, 25, 36, 41, 49, 55, 70, 74. Respondent, through such stipulations repeatedly affirmed its waiver of its right to a prompt hearing and the Parties agreed the Summary Cease and Desist Order would remain in effect until either the issuance of an opinion or order by the Hearing Officer or the Summary Cease and Desist Order was vacated. *Id.*

Given the extensive issues and evidence involved, a process to narrow the issues in dispute at the evidentiary hearing was agreed to as set forth in a May 22, 2023 stipulation and order. *See* Docket No. 25. Pursuant to that stipulation, on May 24, 2023, the Parties submitted a set of joint exhibits.[3] On May 24 and June 2, 2023, the Parties submitted briefs on the matters they set forth as appropriate for resolution

[3] The joint exhibits appear at Docket No. 26 and are cited herein as JE-__.

as a matter of law in advance of the full administrative hearing (Docket Nos. 28, 29, 30, 31)[4] and oral argument was held on June 6, 2023. Docket No. 33. I issued my opinion and order on pre-hearing issues on August 29, 2023. Docket No. 56.

On July 3, 2023, CPU filed a Motion for Sanctions against Respondent, alleging violations of the Summary Cease and Desist Order. Docket Nos. 35, 35.1. An administrative hearing was held on the Motion for Sanctions on July 10, July 11, and August 1, 2023 (*see* Docket Nos. 43, 43.2, 52), and the parties submitted pre- and post-hearing briefing on the Motion for Sanctions on July 6, July 10, July 21, July 28, August 4, and August 18, 2023. Docket Nos. 37, 37.1, 38, 39, 40, 44, 44.1, 45, 45.1, 46, 50, 51, 53, 54.

The administrative hearing on the merits was held on September 11, 13, 14, and 15, 2023, with both Parties presenting witnesses and documentary evidence. By stipulation (*see* Docket Nos. 62, 70, 74), the Parties submitted post-hearing briefing on October 30 and November 27, 2023. This post-hearing opinion and order addresses all outstanding issues in this matter.

II. Summary of the Evidence

As noted above, the evidence in this matter has been presented through testimony and exhibits during both the administrative hearing on the merits and the

[4] Given the number of briefs submitted at different points in this proceeding, all briefing is cited herein by docket number for clarity.

administrative hearing on the motion for sanctions, each of which were transcribed (Docket Nos. 43-43.2, 52, 65, 66, 67, 68) and recorded, as well as through joint exhibits (Docket No. 26), supplemental exhibits (ex. Docket No. 27), exhibits on the Motion for Sanctions (Docket Nos. 39, 40), a stipulated timeline (Docket No. 55), and administrative hearing exhibits (Docket No. 69[5]). The Parties presented their positions on the law and the evidence through both oral argument and hundreds of pages of combined briefing, including the earlier argument on legal issues, the Motion for Sanctions, and the administrative hearing on the merits.

In general terms, this matter arises from the 2022 acquisition[6] by Respondent of the Pine Haven Mobile Home Park ("Pine Haven"), located in Lincoln, Delaware. Following the acquisition, Respondent took various actions that gave rise to the Summary Cease and Desist Order, the associated Complaint, and this proceeding.

The Summary Cease and Desist Order that initiated this proceeding was issued on April 3, 2023, and ordered Respondent "to cease and desist from engaging in" two categories of specified conduct:

[5] The exhibits entered into evidence at the administrative hearing appear as Docket No. 69.1 and an index of the exhibits appears at Docket No. 69. All such exhibits are cited herein as "Exhibit __."

[6] As used herein, "acquisition" means Respondent acquiring title to Pine Haven and, if used to reference a point in time, means the closing date on the transaction through which Respondent acquired Pine Haven.

- "Making any false or misleading communications to residents/tenants of Pine Haven Campground, including, but not limited to: (1) claiming that the residents are licensees; (2) claiming that the community is and has been, seasonal; (3) threatening the residents with eviction in violation of Chapter 70 of Title 25 ("Chapter 70"); (4) threatening the residents with arrest and prosecution; (5) threatening to confiscate and destroy the residents' property; and (6) threatening the residents with illegal rent increases."
- "Threatening or attempting to evict tenants/residents, or raise their rent, in violation of Chapter 70."[7]

Respondent, in its arguments, witness testimony, and documentary evidence, generally asserts that it understood Pine Haven to be a seasonal campground and that it intended to operate Pine Haven as a seasonal campground, including closing down Pine Haven during the winter to allow only seasonal use. Along with documentary evidence, Respondent presented the testimony of:

- Rebecca Trifillis, Chief Staff Attorney for the Justice of the Peace Court, whose testimony addressed the eviction process.

[7] Summary Cease and Desist Order at 2.

- Robert DeLacy, a process server, whose testimony addressed the delivery of notices to residents of Pine Haven and the lockout of the Brown and Freudenthral family from their home.
- Emily DeMarco, a Project Manager for Respondent responsible for the acquisition of Pine Haven, whose testimony addressed Respondent's due diligence process for the acquisition of Pine Haven, the acquisition of Pine Haven, the Pine Haven property, communications with Pine Haven residents, rent increases and rent collection, the eviction and court process, services at Pine Haven, communications with Brian Eng, the Manufactured Home Ombudsperson ("Ombudsperson"), communications with Ms. Faries, communications with the Delaware Manufactured Home Relocation Authority ("DEMHRA"), and a variety of other subjects.
- Harvey Elliott, the General Manager of Pine Haven, whose testimony addressed the Pine Haven property, management of Pine Haven, services at Pine Haven, rent collection, and a lockout of residents of Pine Haven.
- Todd Burbage, the CEO of Blue Water Development, the parent company to Pine Haven, whose testimony included Blue Water

Development's business, the acquisition of Pine Haven, due diligence on the acquisition, and the Pine Haven property.

- Nicole Faries, Esq., counsel to Respondent in this matter for part of the relevant time period,[8] who testified regarding the acquisition of Pine Haven by Respondent, the due diligence process for the acquisition, communications with Pine Haven residents on behalf of Respondent, communications with Mr. Eng, communications with DEMHRA, the change of use submission for Pine Haven, communications with counsel for certain residents of Pine Haven, community meetings held at Pine Haven by Respondent, the eviction and court process, rent demands, and a variety of other subjects.

CPU, in contrast, in its arguments, witness testimony, and documentary evidence, generally asserts that Respondent's communications and actions were in furtherance of its efforts to remove year-round residents, including longstanding year-round residents, from Pine Haven, or otherwise cause those residents to leave Pine Haven, and that various of these communications and actions violated three statutes CPU is empowered to enforce: the Delaware Consumer Fraud Act, 6 *Del. C.* § 2511, *et seq.* (the "CFA"), the Delaware Deceptive Trade Practices Act, 6 *Del.*

[8] Ms. Faries' firm withdrew as counsel, without objection from CPU, in late August 2023. Docket Nos. 57-59.

C. § 2531, *et seq.* (the "DTPA"), and the Manufactured Homes and Manufactured Home Communities Act, 25 *Del. C.* § 7001, *et seq.* (the "MHMHCA"). Along with documentary evidence, CPU presented the testimony of:

- Jennifer Brown, a resident of Pine Haven, whose testimony included living at Pine Haven, communications with Respondent, her interactions with Respondent's personnel, the lockout of her family from their home, their payment of rent, and the entry into a settlement agreement to leave Pine Haven.
- Richard Freudenthral, a resident of Pine Haven, whose testimony included living at Pine Haven, communications with Respondent, his interactions with Respondent's personnel, the lockout of his family from their home and the entry into a settlement agreement to leave Pine Haven.
- Kyle Freudenthral, a resident of Pine Haven, whose testimony included living at Pine Haven and the lockout of his family from their home.
- Ashley Bowles, a resident of Pine Haven, whose testimony included living at Pine Haven, communications with Respondent, her employment by Respondent, her payment of rent, and her eviction from Pine Haven.

- Kenneth Shearn, a resident of Pine Haven, whose testimony included living at Pine Haven, communications with Respondent, services at Pine Haven, and his moving away from Pine Haven.
- Gloria Henry, a resident of Pine Haven, whose testimony included living at Pine Haven, communications with Respondent, payment of rent, her moving away from Pine Haven, and the destruction of her mobile home by Respondent.
- Dale Cohee, the former owner of Pine Haven, whose testimony included a history of Pine Haven, the nature of Pine Haven as a year-round facility, the sale of Pine Haven to Respondent, the due diligence and closing process on the sale of Pine Haven, his communications with Respondent's personnel, rent collection at Pine Haven, and services provided at Pine Haven.
- Kathy Barr, a resident of Pine Haven, whose testimony included living at Pine Haven, communications with Respondent, interactions with Respondent's personnel, payment of rent, and eviction proceedings brought by Respondent.
- Carolyn Fahs, a resident of Pine Haven, whose testimony included living at Pine Haven, communications with Respondent, and interactions with Respondent's personnel.

- Joy Kaiser, a resident of Pine Haven, whose testimony included living at Pine Haven, communications with Respondent, payment of rent, and services provided at Pine Haven.
- Special Investigator Patrick Malone, an employee of the Delaware Department of Justice, whose testimony included his interviews of the Mayburys and Constantinos, both residents at Pine Haven.
- Sherry Rollman, a resident of Pine Haven, whose testimony included living at Pine Haven, payment of rent, communications with Respondent, her departure from Pine Haven, and the experience of a now deceased neighbor, Elmer Jefferson.

Evidentiary objections were raised at various points during the presentation of evidence and resolved according to the standard set forth for administrative proceedings, at times admitting evidence but giving it its due weight in light of the objection. *See* CPU Rule 20.1.1. On the whole, I found the testimony of the witnesses to be credible. One exception, however, is that at various points I did not find the testimony of Ms. DeMarco to be credible. Ms. DeMarco at times gave evasive answers as well as answers that seemed calculated, rather than genuine. For example, during her testimony on September 14, 2023, Ms. DeMarco was evasive in answering whether and when she learned there were year-round tenants at Pine Haven, and then changed her answer about the date she learned this fact, which is

central to the issues in dispute. *See, e.g.,* Docket No. 67 at 67, 107; Docket No. 68 at 22-25, 68-70, 76-78, 131-32. Ms. DeMarco had similar moments of evasive or calculated answers, or answers that were contrary to other testimony or evidence, during her July 11, 2023 testimony. For example, Ms. Demarco took a several second pause after being asked why Respondent had determined that Pine Haven was a seasonal campground and still provided a largely non-responsive answer. Docket No. 40.2 at 250-251; *also compare* Docket No. 43.2 at 249 *with* Docket No. 67 at 109. Ms. DeMarco gave testimony that conflicted with the briefing previously submitted by Respondent. *Compare* Docket No. 67 at 73-75, 113-121 and Docket No. 68 at 92-94 *with* Docket No. 30 at 8. Ms. DeMarco repeatedly declined to provide answers, asserting that she needed to check her records, although there is no indication such records were provided. Docket No. 43.2 at 206, 224-25, 231, 236, 241-43, 246. I therefore discredit Ms. DeMarco's testimony on various points, and Respondents' positions flowing from that testimony, particularly where there is contrary evidence or testimony in the record.

III. Applicable Law

This proceeding was brought as a summary proceeding in accordance with Rule 25 of the CPU Rules (6 DE Admin C. § 103 and referred to herein as the "CPU Rules"; *see also* 6 *Del. C.* § 2521), and in particular Rule 25, which provides that if the Director of CPU "perceives an immediate threat to the public interest as a result

of a violation of any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the Director may issue a summary cease and desist order ordering an immediate discontinuance of the unlawful practice identified in the order." CPU Rule 25.1.3. Following an administrative hearing, the hearing officer shall issue a "written opinion and order, containing findings of fact and conclusions of law." CPU Rule 25.1.3.4; *see also* 29 *Del. C.* § 2525(c)(3). The CPU Rules provide that an alleged violator may "waive[] his or her right to a prompt hearing," CPU Rule 25.1.3.5; *see also* 29 *Del. C.* § 2525(c)(4), as has occurred here by Respondent. "[T]he order issued after the hearing may provide for any administrative remedy contained in 29 Del.C. §2524." CPU Rule 25.1.3.6; *see also* 29 *Del. C.* § 2525(c)(5).

Section 2524, in turn, provides that "any violation or apparent threat of violation of any provision of Chapter 25 of Title 6, or any law or regulation [CPU] is charged to enforce, may be sanctioned by the issuance of a cease and desist order." 29 *Del. C.* §2524(a). Section 2524 further provides that "any wilful violation of § 2513 or § 2532 of Title 6, or of a lawful cease and desist order…, may be sanctioned by an administrative penalty up to $5000 per violation, a cease and desist order, and an order of restitution, rescission, recoupment, or other relief appropriate to prevent violators from being unjustly enriched." 29 *Del. C.* § 2524(b). For purposes of both the CFA and the DTPA, "a wilful violation occurs when the person committing the

violation knew or should have known that the conduct was of the nature prohibited by this subchapter." 6 *Del. C.* §§ 2522(b), 2533(e).

The CFA, in part, prohibits "[t]he act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale, lease, receipt, or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby…." 6 *Del. C.* § 2513(a). CPU has enforcement authority for the CFA. *See* 6 *Del. C.* § 2522. The CFA "shall be liberally construed and applied to promote its underlying purposes and policies," and "[t]he purpose of [the CFA] shall be to protect consumers and legitimate business enterprises from unfair or deceptive merchandising practices in the conduct of any trade or commerce in part or wholly within this State." 6 *Del. C.* § 2512. While the CFA provides for various remedies, the remedies available in this proceeding are those specified in, or incorporated by reference by, 29 *Del. C.* § 2524, discussed above.

The DTPA, in relevant part, provides that "[a] person engages in a deceptive trade practice when, in the course of a business, vocation, or occupation, that person: … (12) Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." 6 *Del. C.* § 2532(a). In order to prevail, it is not

necessary to prove "actual confusion or misunderstanding." *Id*. at § 2532(b). CPU has enforcement authority for the DTPA. *See* 6 *Del. C.* § 2533(d)-(e). While the DTPA provides for various remedies, the remedies available in this proceeding are those specified in, or incorporated by reference by, 29 *Del. C.* § 2524, discussed above. However, "[t]he relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this State." 6 *Del. C.* § 2533(c).

The MHMHCA, Chapter 70 of Title 25, establishes "the law governing the rental of lots for manufactured homes as well as the rights and obligations of manufactured home community owners (landlords), manufactured homeowners (tenants), and residents of manufactured home communities." 25 *Del. C.* § 7001, *et seq.* The various provisions of the MHMHCA that are relevant here are addressed in detail as applicable. "It is the duty and obligation of [CPU] to enforce the provisions of subchapters I through V of this chapter." 25 *Del. C.* § 7005(a). Chapter 70 "must be liberally construed." *Del. C.* § 7001(a)(1).

IV. Findings of Fact

The evidentiary standard for administrative hearings is set forth in Rule 20 of the Consumer Protection Unit Administrative Enforcement Rules. Rule 20 provides that "the hearing officer shall receive relevant evidence and may exclude all evidence that is irrelevant, immaterial or unduly repetitious." CPU Rule 20.1. While

the Delaware Uniform Rules of Evidence may provide guidance, "the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs, and give probative effect to that evidence." CPU Rule 20.1.1. "Evidence may not be excluded solely on the ground that it is hearsay." CPU Rule 20.1.2. I interpret this standard as either directly applicable to this summary proceeding, or because there is no contrary standard in Rule 25 for summary proceedings (*see* CPU Rule 25) and it is the standard for analogous administrative proceedings (*see generally* 6 Del. Admin. C. § 103), that this standard is appropriate to apply in this summary proceeding.

The burden of proof for this proceeding is on CPU and CPU must meet its burden by a preponderance of the evidence. *State, ex rel. Brady v. Gardiner*, 2000 WL 973304, at *4 (Del. Super. June 5, 2000); *see also* Docket No. 54 at 12-13. I find that CPU has met this burden to prove the following findings of fact.[9]

1. Finding of Fact 1: At the time Respondent acquired Pine Haven, the property contained at least two manufactured homes, as that term is defined in 6 *Del. C.* § 7003(12), and Respondent was aware of this fact.

[9] Throughout these findings of fact, I have endeavored to cite to portions of the record relevant to each finding. However, given the voluminous evidentiary record for this matter, these citations are not intended to be exclusive. Rather, the findings of fact represent my best assessment of the entirety of the record, having heard and assessed the entirety of the testimony in this matter, as well as documentary evidence submitted by the Parties as joint exhibits and other records, and in accordance with the burden of proof and evidentiary standard appliable to this matter.

The Parties acknowledge that at the time Respondent acquired Pine Haven there were manufactured homes on at least some (i.e. more than one and therefore at least two) lots. Docket No. 28 at 3-5, 22; Docket No. 29 at 3; Docket No. 33 at 7-9, 11, 53, 55-65. Respondent's due diligence materials indicate at least 29 and as many as 34 "mobile home" (manufactured home) owners in Pine Haven. JE-022-24; JE 392-395. Respondent expressed to DEMHRA that Pine Haven included "residents that are living in manufactured homes or affixed RVs on a fulltime basis." JE-239. The previous owner, Dale Cohee, testified that when he sold Pine Haven "The mobile homes were year round." Docket No. 65 at 88; *see also id.* at 97-98, 105-112, 124, 155-56.

2. Finding of Fact 2: At the time Respondent acquired Pine Haven, at least two residents at Pine Haven resided in Pine Haven year-round and Respondent was aware of this fact.

The Parties acknowledge that at the time Respondent acquired Pine Haven, multiple – i.e., at least two, and in fact significantly more – residents resided there year-round. Docket No. 28 at 3-5, 22; Docket No. 29 at 3-4; Docket No. 33 at 7-9, 11, 50, 53, 55-65, 95-96; *see also* JE-022-24; JE-131-33; JE-191; JE-194; JE-301-304; JE-392-395. The former owner, Mr. Cohee, testified that numerous residents resided year-round, including both manufactured home ("MH" and also referred to in various documents and testimony as "mobile homes") residents and recreational vehicle ("RV") residents. Docket No. 65 at 110-12. This was also recognized by

the Community Legal Aid Society, Inc. ("CLASI") and the Ombudsperson, who communicated this directly with Respondent. Docket No. 43.2 at 247-52; JE-191-94; JE-211. This was also recognized by DEMHRA in communications with Respondent. JE-094-95; JE-107; JE-239-40. And Respondent's later settlement agreements with residents explicitly state that "Whereas, Resident has been living on the Site […], Pine Haven, year-round." JE-345, 508, 519, 531, 550, 555, 560, 565, 570, 575, 580, 585, 590, 595, 600, 605, 610, 615. Ms. DeMarco admitted that she learned about full-time MH residents during due diligence. Docket No. 68 at 65-67. Respondent mailed notifications to residents during the winter at their Pine Haven address with apparent confidence they would be received by such residents on time sensitive matters, indicating Respondent knew or assumed residents were there year-round. Docket No. 68 at 175-78; Ex. 20. Indeed, both prior to Respondent's acquisition of Pine Haven and after Respondent's acquisition of Pine Haven, Pine Haven was operated on a year-round basis, including maintaining utilities year-round. Docket No. 52 at 302; JE-194; Docket No. 68 at 12-13, 29.

3. Finding of Fact 3: At the time of acquisition by Respondent, and for the relevant time frame thereafter, there were at least 29 MH residents at Pine Haven.

Although there is some discrepancy in the total number of Manufactured Home residents at Pine Haven, I find the evidence supports that there were at least 29 MH residents (and possibly 34) at the time of acquisition, and that this number

did not fluctuate materially for the relevant time period. Although some residents moved away from Pine Haven over the course of the relevant time period, neither party provided a specific number of residents at different points in time, and accordingly I find that there were at least 29 MH residents throughout the relevant time period based on the evidence in the record. At the time of acquisition, a list created by Respondent's counsel confirms at least 29 MH residents. JE-392-94. Indeed, this compilation supports that there may have been as many as 5 more MH residents (i.e. 34 total), JE-395, and so even as some residents moved away, 29 remains supported by the evidence in the record. This total is supported by testimony from the former owner, Dale Cohee, due diligence prepared on Respondent's behalf, Ms. DeMarco's testimony, and is consistent with the number of MH owners provided in correspondence to DEMHRA (which indicates 28, but one more MH resident took over a lot previously owned by Mr. Cohee, thus supporting 29). Docket No. 65 at 111; Docket No. 68 at 13-17, 65; Ex. 34; JE-020-24. Accordingly, I find that there were at least 29 MH residents at Pine Haven throughout the relevant time period.

4. Finding of Fact 4: At the time of acquisition by Respondent, and for much of the relevant time frame thereafter, there were at least 24 year-round RV residents living at Pine Haven.

Throughout the testimony, evidentiary exhibits, and briefings of the parties, various numbers have been purported to be the number of year-round RV residents

at Pine Haven. The two clearest sources for this number are the testimony of Mr. Cohee, the former owner, and a list prepared by CLASI in the fall of 2022. Mr. Cohee testified that there were 170 licensed RV lots (in addition to 29 licensed MH lots). Docket No. 65 at 110-112. Of the 170 RV lots, 10 were permitted but never used, another 12-14 were unused in 2022, and approximately 100 were used seasonally, not year-round. *Id*. Of the approximately 40 remaining, Mr. Cohee testified that the residents "were living year-round. Most – most of those people, Social Security and disability people. That's why I let them live there, because they couldn't afford nothing else." *Id.* at 112. However, Mr. Cohee did not give a more specific number than the estimate of 40. During the fall of 2022, CLASI compiled a list of year-round RV residents that identified 26 year-round RV residents. CLASI's list, however, includes one resident who is included on Respondent's list of year-round MH residents and one address similarly on both lists (*compare* JE-392-95 *with* JE-191-93), making the non-duplicative count of RV residents is 24. CLASI compiled its list in response to inquiries from Respondent's counsel regarding how many full time RV residents were at Pine Haven. JE 190-92. CLASI indicated specifically that this was "a list of year-round Pine Haven camper/RV residents" and provided that list to Respondent's counsel in October 2022. JE-191-93. In weighing these pieces of evidence, I give the most weight to CLASI's list of residents, which was contemporaneous with the closing of the acquisition, is

generally consistent with other evidence, seems to have been the most thoroughly prepared, and was not disputed by Respondent's counsel in that correspondence. Given Mr. Cohee's testimony of approximately 40, CLASI's list is a conservative estimate of the number of year-round RV residents at Pine Haven, but Mr. Cohee's testimony does not have the specificity of CLASI's list. Accordingly I find that there were least 24 year-round RV residents at Pine Haven both at acquisition and throughout the relevant time period.

5. Finding of Fact 5: Pine Haven's former owner paid into the Delaware Manufactured Home Relocation Trust Fund established under the MHMHCA and Pine Haven is Registered with DEMHRA as a manufactured home community.

The Parties acknowledge that Pine Haven's former owner paid into the Delaware Manufactured Home Relocation Trust Fund established under the MHMHCA, which is only applicable for manufactured home communities. Docket No. 29 at 4-5; Docket No. 30 at 6; Docket No. 33 at 12, 89-91; *see also* 25 *Del. C.* §§ 7042-45; JE-094; JE-103-06; JE-109-10; JE-125-28; Docket No. 65 at 89. Pine Haven was also registered as a manufactured home community with DEMHRA. JE-103-09; Docket No. 43.2 at 251-52.

6. Finding of Fact 6: On March 8, 2022, Respondent, through an affiliated entity (RIG Acquisitions), entered into a Commercial Real Estate Purchase Agreement ("Purchase Agreement") with the prior owner of Pine Haven, Dale Cohee ("Cohee"), to acquire Pine Haven, and that Purchase Agreement specifically addressed the year-round residents.

The Purchase Agreement is undisputed. Docket No. 55 at 1; JE-004-019. That agreement included paragraph XXXV.2, which specifically addresses that "MH tenants shall have up to three years from Closing to live within their respective MH site so long as rent is current…." JE-016. Testimony by Mr. Cohee, the seller, corroborates that this provision was specifically to address the year-round MH residents, and Respondent acknowledged this purpose. Docket No. 65 at 98; Docket No. 67 at 17.

7. Finding of Fact 7: On or about April 14, 2022, as part of the acquisition by Respondent, Pine Haven's former owner issued a right of first offer notice pursuant to 25 *Del. C.* § 7027 (JE-020-21).

In conjunction with the sale of Pine Haven to Respondent, Mr. Cohee issued a right of first offer notice pursuant to 25 *Del. C.* § 7027 on April 14, 2022. Docket No. 55 at 1; JE-020-21; Docket No. 29 at 5. A right of first offer is applicable only to a manufactured home community. 25 *Del. C.* §§ 7026-7036.

8. Finding of Fact 8: On May 5, 2022, the Purchase Agreement was amended to extend closing to September 15, 2022. Docket No. 55; JE-017-019.

9. Finding of Fact 9: On June 30, 2022, Respondent caused a letter to be sent to at least two residents purporting to terminate rental of lots at Pine Haven after 60 days (Exhibit 4).

On June 30, 2022, Respondent caused a letter to be sent to at least two residents purporting to terminate rental of lots at Pine Haven after 60 days (Exhibit 4). While the evidence indicates Respondent intended this letter to be delivered

more widely, there is not certainty as to how many residents did in fact receive it, and the evidence indicates that it was not delivered to all of the intended recipients. Accordingly, the evidence only supports to the required burden of proof that this letter was delivered to the two residents clearly established by testimony. Exhibit 4; Docket 65 at 59-60, 102; Docket No. 66 at 115-116; Docket No. 67 at 73-74, 113-115; Docket No. 68 at 92-93.

10. Finding of Fact 10: On July 18, 2022, Respondent caused a letter (Exhibit 1) to be sent to the RV residents at Pine Haven asserting that Pine Haven was seasonal and purporting to "revok[e]" the "guest license[s]" of the RV residents. Docket No. 55; Exhibit 1. This letter was sent to all RV residents of Pine Haven, as well as at least one manufactured home ("MH") resident.

The July 18, 2022 letter was prepared by Respondent and sent at Respondent's direction. Docket No. 67 at 74-75; 115-16; 118-21; Docket No. 68 at 93-94, 116-21. I find that this letter was sent to the RV residents at Pine Haven, and to at least one MH resident. Ms. DeMarco testified that this letter was sent to all RV residents. Docket No. 65 at 20-22; Docket 66 at 129; Docket No. 67 at 118-19; Docket No. 68 at 67. Residents of Pine Haven, including one MH resident, confirmed receipt of this letter.

11. Finding of Fact 11: In August and September 2022, three-year seasonal lot license agreements (Exhibits 2, 13, 14, and 19) were distributed on Respondent's behalf to the 29 MH residents in Pine Haven. The three-year lot licenses purported to be seasonal leases and purported to increase the lot rental for MH residents from $350 to $450 per month, or by approximately 28%.

I find that these seasonal lot license agreements were sent to all 29 MH residents at Pine Haven. Respondent's personnel testified that the intention was for all MH residents to receive this document. While some residents may have received multiple copies and some RV residents may also have received it, the evidence is not sufficient to establish which or how many. Accordingly, I find only that it was sent to all MH residents. Docket No. 55 at 1; Docket No. 65 at 23-25; Docket No. 66 at 15-18; Docket No. 67 at 76-77, 127-29; Docket 43.2 at 233, 252. At least one tenant left Pine Haven after receiving the three-year lot license. Docket No. 65 at 26-27. Ms. DeMarco admitted the three-year seasonal license was sent to residents for which it plainly was not applicable. Docket No. 67 at 123.

12. Finding of Fact 12: On September 15, 2022, the purchase of Pine Haven by Respondent closed. Docket No. 55 at 1.

13. Finding of Fact 13: On September 15, 2022, Respondent delivered a letter with the title "Hello!" (Exhibit 3) to the 29 MH residents, including also a copy of the three-year seasonal lot license agreement. The Hello! Letter asserted that Pine Haven was seasonal. Exhibit 3; Docket No. 55 at 1. The letter also purported to allow the HM residents to live at Pine Haven year-round for three years, despite including the three-year *seasonal* lot license.

The evidence supports that this letter was sent by Respondent to all 29 MH residents. Docket No. 65 at 30-32; Docket No. 66 at 15-19, 108-09, 116-18; Docket No. 67 at 77-79, 127-33.

14. Finding of Fact 14: On November 17, 2022, Respondent requested that DEMHRA allow funds from the relocation assistance fund to be used

to assist "Pine Haven residents that are living in manufactured homes or affixed RVs on a full time basis." Docket No. 55 at 1; JE-094-95.

On November 17, 2022, counsel for Respondent submitted a request to DEMHRA that funds from the relocation assistance fund be used to assist "Pine Haven residents that are living in manufactured homes or affixed RVs on a full time basis." JE-094-95; JE-239-40; JE-286-87. The Parties do not dispute this request. Docket No. 28 at 3-4; Docket No. 29 at 5-6; Docket No. 30 at 11.

15. Finding of Fact 15: On multiple occasions in late 2022 and early 2023, the Ombudsperson, CLASI, and DEMHRA expressed to Respondent that Pine Haven was a year-round manufactured home community.

On multiple occasions, the Ombudsperson expressed that Pine Haven was a year-round manufactured home community. For example, on October 28, 2022, the Ombudsperson detailed his view that Pine Haven was a year-round manufactured home community in correspondence to Respondent's counsel. JE-183. Again, on December 7, 2022, he stated that "Pine Haven is a mixed-use manufactured home community that contains manufactured homes as defined by 25 *Del. C.* 7003(12)a as well as camper trailers. Although some residents in the community are seasonal or part-time residents, the community operates year-round and has done so for at least 10 years. As such, the lot leases for the manufactured homes in the community are covered by the [MHMHCA] as are the lot leases for chapter trailers that are consider manufactured homes." JE-103-04; *see also* Docket No. 55 at 2; JE-156-60; JE-177; JE-183; JE-241. Respondent was made aware through its agents that

the Ombudsperson held this position. Docket Number 68 at 20. On November 9, 2022, CLASI similarly conveyed to Respondent its view that Pine Haven included year-round residents. JE-211. On January 27, 2023, DEMHRA similarly wrote to Respondent affirming its view that Pine Haven was a year-round manufactured home community. JE-107. Mr. Burbage admitted that he learned of the year-round residents in January 2023. Docket No. 67 at 24, 31.

16. Finding of Fact 16: On February 23, 2023, Respondent issued a change-of-use notice for Pine Haven pursuant to 25 *Del. C.* § 7024(b). The change-of-use notice asserted that Pine Haven was "a seasonal campground." Docket No. 55 at 2; JE-396-397; Exhibits 15, 32.

Both Respondent and CPU acknowledge that on February 23, 2023, Respondent issued a change-of-use notice for Pine Haven pursuant to 25 *Del. C.* § 7024(b). The change-of-use notice was sent to 37 residents of Pine Haven, as confirmed by proofs of delivery, determined by Respondent to be in MH units. Exhibits 15, 32; Docket No. 66 at 42-43; Docket No. 68 at 110; Docket No. 33 at 91-93; JE-396-486; Docket No. 28 at 36-37; Docket No. 29 at 3-4; Docket No. 30 at 7, 11.

17. Finding of Fact 17: On February 23, 2023, Respondent issued a letter (Exhibit 20) to the RV residents of Pine Haven (the "Dear RV Residents" letter) asserting that Pine Haven was "a seasonal campground." The letter further asserted that the purported seasonal nature of Pine Haven was "not a change of use, but it is an elimination of an illegal use," i.e. asserting that year round use was illegal despite that multiple RV residents had been living at Pine Haven year-round for years. This letter purported to require the RV residents to vacate Pine Haven within three weeks, and asserted that if RV residents failed

to vacate police would be called and possessions could be destroyed. Exhibit 20; Docket No. 55 at 2.

The evidence supports that this letter was sent to all RV residents, including those living year-round at Pine Haven. Indeed, Respondent's counsel conceded that the letter was sent to RV residents they knew lived in Pine Haven year-round. Exhibit 20; Docket No. 55 at 2; Docket No. 65 at 110-12; Docket No. 68 at 46-47, 162-63.

18. Finding of Fact 18: On March 7, 2023, Respondent issued a letter (Exhibit 24) to the MH residents at Pine Haven stating that Pine Haven was a seasonal campground. Exhibit 24; Docket No. 55 at 2.

The evidence supports that the March 7, 2023 letter, again stating that Pine Haven was a seasonal campground, was sent to all MH residents. Exhibit 24; Docket No. 55 at 2; Docket No. 65 at 110-12; Docket No. 66 at 135.

19. Finding of Fact 19: Multiple residents of Pine Haven paid increased rental rates multiple times and Respondent failed to inform these Residents of their overpayment or to refund such overpayments. The evidence supports that there were at least 126 such overpayments.

Respondent does not dispute that residents continued to pay the increased rental ($450 instead of $350; *see* Finding of Fact 11) even after Respondent was alerted by CPU that this exceeded the amount permitted by the MHMHCA. Respondent similarly does not dispute that residents continued to pay the increased rental after the change-of-use notice, despite the MHMHCA's prohibition on rent increases after a change-of-use filing. The only real question is the number of

residents who paid and the number of such overpayments. Ms. DeMarco testified that she had records of who paid increased rent that could be produced, Docket No. 67 at 137, yet Respondent did not provide such records. Ms. Demarco further testified that depending on the period in question, as many as 20 people and as few as nine people paid rent for a given month. Docket No. 67 at 136-37. CPU asserts that excess rent was paid 126 times and I find that that total is supported by the evidence in the record. First, Ms. DeMarco testified that between 9 and 20 residents paid rent in any period. The time period at issue extends for at least 12 months, and potentially longer. Given Ms. DeMarco's testimony that the minimum number of residents who paid for a given period is nine, it is reasonable to conclude that nine residents paid for 12 months, amounting to 108 overpayments. *See* Docket No. 67 at 136-37. An additional resident testified that they paid rent for 8 months (Docket No. 66 at 119), making at total of 116 overpayments. This accounts for 10 of the 20 residents Mr. DeMarco indicated paid rent in any given month, so at least 10 more residents must have paid rent in at least one month (and likely more), making a further 10 violations, for 126 total. This estimate seems conservative, as of those 10 additional residents it seems highly likely that some of those residents paid excess rent in more than one month, rather than only one month. Indeed, numerous residents continued to pay this increased rent even after the issuance of the Summary Cease and Desist Order months after the excess rent rates were implemented.

Docket No. 43.2 at 233; *see also* Docket No. 66 at 38-40, 119; Docket No. 67 at 136-37; Docket No. 72 at 8-9.

20. Finding of Fact 20: In or about March 2023, Respondent communicated to at least 11 residents settlement agreements and stipulated agreements asserting that Pine Haven was a seasonal campground. Docket No. 55 at 2. Respondent subsequently entered into such agreements with such assertion of the seasonal nature of Pine Haven with at least those 11 residents.

The Parties do not dispute that Respondent utilized these settlement agreements and stipulated agreements, as is clear from the joint exhibits. CPU asserts that Respondent communicated to at least 11 residents such agreements and entered into those agreements with at least 11 residents and the evidence supports at least this many instances. Docket No. 45 at 5-7, Ex. B; Docket No. 55 at 2; JE-495-619; *see also* Docket No. 45.1, Ex. B.

21. Finding of Fact _21: Prior to issuing the Summary Cease and Desist Order, CPU sent Respondent written notice of the conduct that gave rise to the Summary Cease and Desist Order, including the year-round nature of Pine Haven and CPU's objections to evictions, stipulated agreements, and rent increases in violation of Chapter 70.

Among various other communications, on at least February 24, March 22, and March 27, CPU wrote Respondent detailing CPU's concerns, including that Pine Haven was a year-round community covered by Chapter 70 and the protections Chapter 70 provides, and demanded that Respondent cease and desist from violating Chapter 70. JE-620-22; Docket No. 2 at ¶¶39-45, 55, 62.

22. Finding of Fact _22: After the issuance of the Summary Cease and Desist Order, Respondent continued to assert in its settlement agreements proposed to Residents that Pine Haven was seasonal.

For example, on July 27, 2023, Respondent provided to Sherry Rollman a proposed settlement agreement that asserted in whereas clauses both that "Blue Beach is not keeping Pine Haven open on a year-round basis, and is limiting use to a seasonal campground…" and that "Residents needs [sic] to vacate the Site in Pine Haven and remove any and all structures or property from the Site." Docket No. 45.1, Ex. C (emphasis added). Respondent in this proposed agreement thus both acknowledges that Pine Haven had been a year-round community ("is not keeping Pine Haven open on a year-round basis"), while nevertheless continuing to assert that residents must vacate Pine Haven at the end of the season. *Id.*

23. Finding of Fact 23: After the issuance of the Summary Cease and Desist Order, Respondent continued to assert to Residents that Pine Haven was seasonal.

Despite the issuance of the Summary Cease and Desist Order, on multiple occasions thereafter, Respondent continued to assert to Residents of Pine Haven that Pine Haven was a seasonal community. On June 28, 2023, Respondent communicated to Jennifer Brown and Richard Freudenthral (1) that Pine Haven was seasonal and (2) they could not stay in their home until February 2024, when the change-of-use would take effect. Jennifer Brown, Richard Freudenthral, and Kyle Freudenthral (Richard's son) all lived in a manufactured home in Pine Haven and

had lived there for approximately three years. Docket No. 43 at 30. Respondent had sent to the Brown and Freudenthral family on or about February 23, 2023, a change-of-use-notice, providing one-year to vacate Pine Haven. *Id*. at 31. On June 29, 2023, however, Respondent communicated to Ms. Brown that Pine Haven would changeover to a seasonal campground in October 2023 and that the Brown and Freudenthral family could not stay in their home until February 2024 (when the change-of-use would be effective). Docket No. 43 at 48. The assertion that they could not stay through February 2024 (because Pine Haven was seasonal) was reiterated by Respondent's counsel in a second communication with Ms. Brown and Richard Freudenthral. Docket No. 43 at 49.

24. Finding of Fact 24: After the issuance of the Summary Cease and Desist Order, Respondent sought to evict Residents from Pine Haven without the required notice.

On June 28, 2023, Respondent sought to evict Ms. Brown, Richard Freudenthral, and Kyle Freudenthral without notice. The Brown and Freudenthral family live in a different manufactured home at a different address in Pine Haven than Ashley Bowles, another Pine Haven resident. Despite this, Respondent sent multiple notices of eviction proceedings to Ms. Bowles, but sent these notices to Ms. Brown and Mr. Freudenthral's address. Docket No. 43 at 32. Ms. Brown returned the initial notice to Respondent and informed Respondent's agent that Ms. Bowles did not live, and had not lived, at the address. Docket No. 43 at 32. Prior to the

eviction on June 28, 2023, neither Ms. Brown nor Mr. Freudenthral had received notice of an eviction in their name. Docket No 43 at 56-57. Respondent nevertheless continued eviction proceedings in Justice of the Peace Court against Ms. Bowles. Docket No. 43.2 at 215. Respondent then hired a process server to serve as a witness to the eviction. Docket No. 43.2 at 215-216. These actions were taken against Ms. Bowles, and not against Ms. Brown and Mr. Freudenthral, but notice was not provided to either: Ms. Bowles had not received notice because it was sent to the Brown-Freudenthral home, and the Brown-Freudenthral family had no reason to understand they were at risk of eviction because all notices had been to Ms. Bowles. Despite all this, Respondent proceeded to hire agents in uniform to remove the Brown-Freudenthral family from their home, including forcing Kyle Freudenthral, who was sleeping at the time, out of the house, changing the locks on the doors, and informing the Brown-Freudenthral family they had been evicted. Docket No. 43 at 39-46.

Respondent similarly proceeded with eviction proceedings against Ms. Bowles, despite all notices having been delivered to the wrong address (namely Ms. Brown and Mr. Freudenthral's address). *See also* Docket No. 43 at 110-14. Respondent knew or should have known Ms. Bowles address, as Ms. Bowles worked for Respondent at the neighboring Yogi Bear Campground and her pay stubs reflect her correct address. Docket No. 43 at 105-08.

V. Conclusions of Law

A. General Conclusions of Law.

1. Conclusion of Law 1: CPU's authority to bring an action under the CFA or DTPA is separate and independent from any private right of action under those acts.

Respondent has asserted that CPU's authority is displaced where a consumer has entered into a settlement agreement about the same conduct. *See* Docket No. 28 at 12-19. I reject Respondent's interpretation. CPU holds enforcement authority for consumer protection laws, including the CFA and DTPA, and is authorized to bring actions to enforce those laws. *See American Appliance, Inc. v. State, ex rel. Brady*, 712 A.2d 1001, 1002 (Del. 1998). CPU's authority to enforce the CFA and DTPA is separate and independent from any private right of action under those acts. *See, e.g., State ex rel. Brady v. Preferred Florist Network, Inc.*, 791 A.2d 8 (Del. Ch. 2001) (State bringing CFA claims); *State ex rel. Brady v. Publishers Clearing House*, 787 A.2d 111 (Del. Ch. 2001) (State bringing CFA and DTPA claims); *American Appliance*, 712 A.2d at 1002-03 (discussing the Attorney General's broad enforcement authority, effectuated through CPU); 6 *Del. C.* § 2522; 29 *Del. C.* § 2522 ("the Director shall have standing to see, on behalf of the State, any remedy in this chapter whenever it appears that a person has violated or is about to violate any provision of Chapter 25 of Title 6… [or] Chapter 70 of Title 25" (emphasis added)); *see also* Docket No. 33 at 78, 81-83.

The CFA separately provides a private right of action that is plainly distinct and separate from CPU's authority under the CFA. "A private cause of action shall be available to any victim of a violation of this subchapter. Such cause of action may be brought... without prior action by the Attorney General...." 6 *Del. C.* § 2525(a) (emphasis added); *see also Young v. Joyce*, 351 A.2d 857, 859 (Del. 1975) (finding a private right of action even before the explicit language was added and indicating that this is separate from an action brought by the Attorney General). The DTPA likewise provides separate provisions for seeking relief for private parties. 6 *Del. C.* §§ 2533(a)-(c) (remedies applicable to private party claims), (d)-(e) (remedies applicable to CPU claims).

2. Conclusion of Law 2: CPU's standing to pursue claims under the CFA and DTPA is unaffected by a settlement of claims between private parties, even if arising from the same acts.

As discussed in Conclusion of Law 1, CPU's standing to pursue CFA and DTPA claims is separate from any private right of action under those acts. Accordingly, CPU's standing exists (or fails) in its own right and not as a result of any private legal right. *See Young v. Joyce*, 351 A.2d at 859. Indeed, CPU's standing and private rights of action under the CFA are to achieve separate purposes. A private right of action is to redress harm to that individual. 6 *Del. C.* § 2525. In contrast, CPU's standing under the CFA is to "swiftly stop[]" prohibited practices and more broadly protect the public. 6 *Del. C.* § 2512. Because CPU's standing

under the CFA is separate from any private right of action, the resolution of any private right of action, even arising from the same act, does not affect whether CPU has standing. Rather, the occurrence of an unlawful practice, as defined in 6 *Del. C.* § 2513(a), provides CPU's standing, regardless of whether a private right of action is pursued or is resolved. 6 *Del. C.* §§ 2513(a), 2522.

The same is true for the DTPA, which explicitly provides different rights and remedies for private parties and for CPU. 6 *Del. C.* §§ 2533(a)-(c) (remedies applicable to private party claims), (d)-(e) (remedies applicable to CPU claims). This separation is explicit: "The Attorney General shall have standing to seek, on behalf of the State…." 6 *Del. C.* § 2533(d) (emphasis added). It is also plainly intended not to constrain remedies otherwise available. *See* 6 *Del. C.* § 2533(c) ("The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this State.").

3. Conclusion of Law 3: The CFA, DTPA, and MHMHCA are each separate legal requirements for which CPU has separate enforcement authorities. Accordingly, a CFA or DTPA claim may apply even where the MHMHCA does not.

Respondent has argued that CPU cannot succeed on CFA or DTPA claims because the claims involve mobile recreational vehicles. *See, e.g.*, Docket No. 28 at 23-25, 33. This misstates CPU's authority. The CFA, DTPA, and MHMHCA are all specifically within the statutes for which CPU may initiate an administrative process. 29 *Del. C.* § 2523(a). Each of the CFA, DTPA, and MHMHCA set forth

separate statutory requirements that, for purposes here, CPU asserts Respondent has violated. *See* Docket No. 2 (Complaint); Conclusions of Law 1, 2. Whether any CPU claim succeeds or fails is controlled by the law underlying that claim. Thus, for example, the fact that mobile RVs are exempt from subchapters I through V of the MHMHCA does not preclude the possibility of claims under the CFA or DTPA relating to Respondents acts or communications to mobile RV residents, and any such claims would be evaluated under the CFA or DTPA.

4. Conclusion of Law 4: The Hearing Officer has authority to order only the relief provided by statute and regulation and sought by CPU.

Respondent disputes the Hearing Officer's authority to issue relief on the claims asserted in CPU's complaint. *See, e.g.*, Docket No. 28 at 37-44; *see also* Docket No. 33 at 97. The Hearing Officer's authority is solely that provided by statute and the applicable implementing regulations. The regulations governing this summary administrative proceeding provide in part that the Hearing Officer may, after a hearing, issue an order for "any administrative remedy contained in 29 *Del. C.* § 2524." 6 Del. Admin. C. § 103-25.1.3.6. The statute authorizing CPU to initiate administrative proceedings similarly provides that "[u]pon finding a violation, the hearing officer may order any of the administrative remedies authorized in § 2524" and that "[u]pon finding a violation or a threat of a violation, the hearing officer may issue or affirm the issuance of a cease and desist order authorized by § 2524(a)." 29 *Del. C.* § 2523(c).

The CFA, DTPA, and MHMHCA are all specifically within the statutes for which CPU may initiate an administrative process. 29 *Del. C.* § 2523(a). Section 2524, in turn, authorizes specific administrative remedies, including (a) "the issuance of a cease and desist order" for "any violation or apparent threat of violation… of any law or regulation the Division of Consumer Protection is charged to enforce," and (b) "an administrative penalty up to $5000 per violation, a cease and desist order, and an order of restitution, rescission, recoupment, or other relief appropriate to prevent violators from being unjustly enriched" only for "any wilful violation of § 2513 or §2532 of Title 6, or of a lawful cease and desist order of the Director or the hearing officer." 29 *Del. C.* § 2524. I have no authority to issue relief beyond that set forth in statute and regulations.

Respondent further argues that the Hearing Officer does not have authority to invalidate settlement agreements between Respondent and residents, or any portion of those agreements. Docket No. 28 at 15-19. As discussed in Conclusions of Law 1 and 2, CPU enforcement and private claims and resolution of those claims are necessarily distinct. A Hearing Officer's authority is limited to that specified by statute and the regulations governing this proceeding. 29 *Del. C.* § 2524; 6 Del. Admin. C. §§ 103-22.2, 25.1.3.6. While the governing statute does provide for "rescission" as a form of relief, the briefing does not set forth authority to indicate that rescission could include invalidating executed settlement agreements or

resolutions of private claims through Justice of the Peace Court orders. However, the issue appears moot because the relief sought in the Complaint and in CPU's post-administrative hearing briefing does not seek the invalidation of any settlement agreement. Docket No. 2 at 30-31; *see general* Docket No. 72.

5. Conclusion of Law 5: I do not award any attorneys' fees or investigative costs.

Respondent argues that I lack authority to order Respondent to pay the attorneys' fees and investigative costs incurred by CPU. Docket No. 71 at 31-33. CPU does not challenge this argument. *See generally* Docket No. 75. As set forth in Conclusion of Law 4, above, the relief I can grant is limited to that set forth in statute and regulation. Specifically, 29 *Del. C.* § 2524(b) provides for "an administrative penalty up to $5000 per violation, a cease and desist order, and an order of restitution, recoupment, or other relief appropriate to prevent violators from being unjustly enriched." Attorneys' fees and investigative costs are not specifically identified in any of these categories. Additionally, the omission of specific authority to award attorneys' fees and investigative costs appears to be intentional, as in 29 *Del. C.* § 2522, addressing judicial remedies, the statute explicitly provides that "the Court may award attorneys' fees and investigative costs to the State." Accordingly, given that my authority is limited to that provided in the statute and rules, and the apparent intentional omission of attorneys' fees and investigative costs from the

remedies available under section 2524, I decline to award any attorneys' fees or investigative costs.

6. Conclusion of Law 6: This proceeding does not run afoul of the Delaware Constitution's right to a trial by jury.

Respondent argues that a ruling against Respondent would infringe Respondent's constitutional right to a jury trial. Docket No. 71 at 33-36. While the Delaware Constitution does provide for a right to a trial by jury, it is a limited right and applies to those causes of action that were afforded a right to a trial by jury at common law and causes of action that are granted a right to a jury trial by statute. Here, there is no cause of action that is guaranteed a right to a jury trial under Delaware law.

Respondent points to Article IV, Section 1 of the Delaware Constitution and to Delaware caselaw interpreting that requirement. Docket No. 71 at 33-34. Respondent argues that a hearing officer's exercise of authority over the claims brought by CPU infringe on that right to a trial by jury, particularly as to fact-finding. *Id.* at 34-35. CPU responds by arguing that Delaware caselaw reflects a more limited view of the right to a jury trial, specifically that the right to a jury trial is only present in cases where the cause of action is one that carries with it a right to a jury trial under common law, as adopted by the State Constitution at its inception, or that has been created by statute since. *See* Docket No. 75 at 16-21. CPU points to numerous

examples of the Delaware courts upholding quasi-judicial administrative processes, including making factual determinations and issuing orders. *Id.* at 17-18.

In my view, this proceeding does not violate Respondent's constitutional right to a jury trial. As Respondent concedes, the right to a jury trial must have existed in the common law as of the ratification of the Delaware Constitution; for any cause of action arising following the ratification of the Delaware Constitution, a jury trial must be created by the General Assembly. *See* Docket No. 71 at 34. "In other words, absent a newly created statutory right to trial by jury, if the right for a particular cause of action did not exist at common law, then it does not exist today." *Bon Ayre Land LLC v. Bon Ayre Cmty. Ass'n*, 2015 WL 893256, at *4 (Del. Super. Feb. 26, 2015), *rev'd*, 133 A.3d 559 (Del. 2016); *see also Vill. Two Apartments v. Molock*, 1987 WL 8697, at *3 (Del. Super. Ct. Feb. 5, 1987); *Perdue Farms Inc. v. Dep't of Lab.*, 1994 WL 698584, at *3 (Del. Ch. Dec. 7, 1994). *Compare State v. Cahill*, 443 A.2d 497, 499-500 (Del. 1982) ("it is clear that such an action did not exist in a non-statutory form at law… [t]hus, as we view this case, it is based on a new statutory cause of action intended by the General Assembly to be tried without a jury") (citations omitted) *with Robinson v. Mroz*, 433 A.2d 1051, 1056 (Del. Super. Ct. 1981) (finding a constitutional right to a jury trial applies in medical malpractice action). Respondent cites to no authority that the right to a jury trial attaches to CPU's claims here. Rather, CPU's claims flow from statute and those statutes (CFA,

DTPA and MHMHCA) do not provide for a right to a jury trial for these claims, but instead provide for this administrative process. These statutes provide for causes of action plainly different from those that existed at common law when the Constitution was adopted. *See Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1074 (Del. 1983); *Johnson v. GEICO Cas. Co.*, 516 F. Supp. 2d 351, 359 (D. Del. 2007).

Respondent suggests that a factual dispute gives rise to the right to a jury trial, but that is inconsistent with *Cahill*, as well as the numerous other circumstances where factual disputes were resolved by quasi-judicial proceedings without a jury. The General Assembly is empowered to create new causes of action and in so doing may determine whether or not a right to a jury trial attaches to such causes of action. Here, the General Assembly did not provide for a right to a jury trial and Respondent is deprived of no constitutional right by CPU's decision to pursue these claims through administrative proceedings.

Respondent also argues that this proceeding is unconstitutional because the Hearing Officer must determine the amount of penalties, which Respondent equates to damages. This misstates the role of the Hearing Officer in this proceeding, however, as there is no assessment or awarding of damages, but rather the imposition of administrative penalties for violations of the applicable statutes. The amount of such administrative penalty is independent of actual damages, if any, that may or may not have occurred. A violation may have occurred (and penalties may be

imposed for such violation) "whether or not any person has in fact been misled, deceived, or damaged thereby," and thus the determination of penalties is necessarily distinct from any assessment of damages. 6 *Del. C.* § 2513(a); *see also* 6 *Del. C.* § 2532(b).

7. Conclusion of Law 7: The Summary Cease and Desist Order was validly issued.

Section 2523(c) of Title 29 provides that "Upon finding a violation or a threat of a violation, the hearing office my issue or affirm the issuance of a cease and desist order authorized by § 2524(a) of this title…." Section 2525(c) of Title 29, in turn, provides that "Where the Director in the Director's discretion perceives an immediate threat to the public interest as a result of a violation of any provision of Chapter 25 of Title 6, or of any law or regulation [CPU] is charged to enforce, the Director may issue a summary cease and desist order ordering an immediate discontinuance of the unlawful practice identified in the order." 29 *Del. C.* § 2525(c). CPU must serve on the alleged violator a complaint "detailing the specific allegations against the alleged violator," which CPU did here. *See* Docket Nos. 2-5. The Summary Cease and Desist Order provides that "Due to an immediate threat to the public interest as a result of violations of 6 *Del. C.* § 2511 *et. seq*, 6 *Del. C.* § 2531 *et. seq.*, 25 *Del. C.* § 7024, and 25 *Del. C.* § 7052A, the Director of CPU finds that it is necessary to issue the following Summary Cease and Desist Order against [Respondent]." Docket No. 4 at 1. The associated complaint details the allegations

against Respondent. *See generally* Docket No. 2. As addressed throughout this opinion, CPU had evidence of "a violation or a threat of violation" of both the CFA and the MHMHCA when it issued the Summary Cease and Desist Order. These included communications that were in violation of the CFA and rent increases that were in violation of the MHMHCA, among others, as set forth in greater detail throughout this Opinion.

Section 2525(c) further provides that prior to issuing the Summary Cease and Desist Order, CPU "shall attempt to obtain voluntary compliance from the alleged violator by letter or telephone call." 29 *Del. C.* § 2525(c). The Complaint details CPU's efforts at voluntary compliance, including a February 24, 2023 letter to Respondent's counsel and other communications. *See* Docket No. 2 at ¶ 39-43, 55, Ex. N. And Section 2525(c) also has service requirements, and CPU documented its compliance with these requirements through a Certificate of Service (Docket No. 5), which Respondent has not contested.

As such, all statutory requirements of Section 2525(c) were complied with and it was appropriately within the Director's authority to issue the Summary Cease and Desist Order. Accordingly, I affirm the issuance of the Summary Cease and Desist Order on April 3, 2023.

B. Conclusions of Law Relevant to the CFA.

8. Conclusion of Law 8: Real estate is a form of merchandise to which the CFA's protections apply.

Unlawful practices apply "in connection with the sale, lease, receipt, or advertisement of any merchandise." 6 *Del. C.* § 2513(a). Merchandise is, in turn, defined to include real estate. 6 *Del. C.* § 2511(6).

9. Conclusion of Law 9: The CFA applies to conduct "in connection with the sale, lease, receipt, or advertisement of any merchandise." Communications by a landlord such as Respondent with tenants about current leases that may renew or potential future leases, even if made during the term of a lease, are plainly "in connection with" that lease or the receipt of merchandise resulting from that lease.

Respondent argues that the CFA does not apply to the communications which CPU alleges violated the CFA. Docket No. 71 at 10-14. In particular, Respondent asserts that "the CFA applies only to a business's representations to induce a consumer to pay for merchandise… [and] not after the transaction has occurred or is being performed." *Id*. at 11. Respondent asserts that "almost all the communications about which the CPU complains are outside the scope of the CFA and are not actionable because they were made *after* the lease had started." *Id*. at 13 (emphasis in original). I reject this argument as applied to the communications at issue here. First, Respondent concedes that both the "Hello!" letter and the Three-Year Seasonal Lot License document *are* within the scope of the CFA, as "those communications were intended to encourage the manufactured home owners to enter into a new [lease]." Docket No. 71 at 13-14. Additionally, various other of the communications sent by Respondent were sent to encourage the residents to enter into new or different contractual relationships for their lots within Pine Haven than

the residents had at the time Respondent acquired Pine Haven. Thus, even under Respondent's interpretation, these communications are potentially actionable under the CFA.

Respondent acquired Pine Haven on September 15, 2022. Finding of Fact 12; Docket No. 55 at 1. Respondent submitted its one-year change of use submission for Pine Haven on February 23, 2023, making the effective date of a change of use for Pine Haven not earlier than February 22, 2024. Finding of Fact 16; Docket No. 55 at 2. The MHMHCA provides as a default that "[t]he duration of a rental agreement for a lot in a manufactured home community is 1 year," 25 *Del. C.* § 7009(a), and Respondent has identified no signed written lease agreements providing a different duration in place at the time of acquisition. Accordingly, all leases must have renewed at some point between September 15, 2022 and February 22, 2024 and therefore all of the communications at issue were potentially relevant to the renewal or renegotiation of the residents' leases. Even accepting *arguendo* Respondent's interpretation that communications made *after* the lease has started are not actionable, that argument fails as to the claims at issue here addressing one-year leases which would renew or be renegotiated *after* the communications at issue. Therefore, even if Respondent's interpretation of the CFA were correct, the communications at issue here are still actionable.

Second, I reject Respondent's interpretation that post-sale communications are not actionable in the context of an ongoing lease, particularly where CPU alleges that the communications were intended to misrepresent the nature of the residents' rights under those leases (for example, seasonal versus year-round; monthly rental price) and to cause the residents to change their position in reliance on those communications (for example, by accepting new leases, by relinquishing their lease rights and leaving Pine Haven, or by paying increased rental payments). None of the caselaw offered by Respondent is in a land lease context. *See* Docket No. 71 at 11-13. The plain language of the CFA provides that it applies to both the "lease" and the "receipt" "of any merchandise," which includes real estate. 6 *Del. C.* § 2513(a); 6 *Del. C.* § 2511(6); Conclusion of Law 8. I find the plain language of section 2513(a) to be unambiguous. *See Ins. Com'r of State of Delaware v. Sun Life Assur. Co. of Canada (U.S.)*, 21 A.3d 15, 20 (Del. 2011 ("If the statute is found to be clear and unambiguous, then the plain meaning of the statutory language controls."). To the extent there were any ambiguity, it is resolved by the guiding purpose of the CFA, 6 *Del. C.* § 2512,[10] and the 2021 amendment of the CFA which

[10] "The purpose of this subchapter shall be to protect consumers… from unfair or deceptive merchandising practices in the conduct of <u>any trade or commerce</u> in part or wholly within this State. It is the intent of the General Assembly that such practices <u>be swiftly stopped</u> and that this subchapter <u>shall be liberally construed and applied</u> to promote its underlying purposes and policies." 6 *Del. C.* § 2512 (emphasis added).

inserted "receipt" and "unfair practice" into the definition of an unlawful practice. 83 Del. Laws, c. 85, § 2. Furthermore, Respondent itself plainly did not consider the terms of contractual relationships immutable or it would not have sought to increase the monthly rental rate on all residents. The communications at issue are either in connection with the leases and the renewal or non-renewal of those leases *or* the communications are in connection with the receipt of the merchandise under those leases, and were made with the intent that the residents rely on those communications. I reject Respondent's argument that the communications at issue were not within the scope of the CFA.

10. Conclusion of Law 10: The CFA does not require CPU to prove that residents of Pine Haven were in fact misled or deceived by Respondent's actions.

Pursuant to the CFA, the "act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale, lease, receipt, or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is an unlawful practice." 6 *Del. C.* § 2513(a) (emphasis added); *see also State, ex rel. Brady v. Gardiner*, 2000 WL 973304, at *4 (Del. Super. June 5, 2000) (proof of intent to induce action, reliance, or benefit from the wrongful act are not required). "Unfair practice" is defined as

"any act or practice that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 6 *Del. C.* § 2511(9).

11. Conclusion of Law 11: The CFA does not require CPU to prove that residents of Pine Haven were harmed.

A violation of the CFA may occur "whether or not any person has in fact been... damaged thereby." 6 *Del. C.* § 2513(a) (emphasis added); *see also Gardiner*, 2000 WL 973304, at *4 (discussing differences in proof between CFA claims and common law claims).

12. Conclusion of Law 12: CPU is not required to obtain a judicial declaration that Pine Haven *is not seasonal* before it can pursue claims that Respondent's assertions to residents that Pine Haven *was seasonal* violated the CFA.

Respondent argues that CPU must first obtain a judicial declaration that Pine Haven *was not seasonal* before CPU can assert that Respondent's claims that Pine Haven *was seasonal* could violate the CFA. *See* Docket No. 28 at 17, 22-23; *see also* Docket No. 31 at 10. Requiring a judicial declaration that a particular statement was false as a precursor to CPU enforcing the CFA would gut CPU's ability to utilize the CFA to protect consumers and thus cannot be reconciled with the statute's overall purpose; that is "to protect consumers and legitimate business enterprises from unfair or deceptive merchandising practices in the conduct of any trade or commerce." 6 *Del. C.* § 2512. Such a requirement would drastically slow CPU's

ability to enforce the CFA in any specific instance and thus similarly cannot be reconciled with the General Assembly's express intent that "such practices be swiftly stopped." *Id.* Likewise, such a requirement would be inconsistent with the express statutory requirement that the CFA be "liberally construed and applied to promote its underlying purposes and policies." *Id.*; *Young v. Joyce*, 351 A.2d 857, 859 (Del. 1975) ("its primary purpose is to protect the consumer and accordingly is to be liberally construed"); *see also State, ex rel. Oberly v. Malago Tire and Auto Service*, 1995 WL 17002341, at *1-2 (Del. Com. Pl. Jan. 12, 1995) (rejecting arguments that determination of liability and claim for penalties must be brought separately). CPU is not required to first obtain a judicial declaration that Pine Haven is not seasonal before it can pursue claims that Respondent's assertions to residents that Pine Haven was seasonal violated the CFA.

13. Conclusion of Law 13: An act may violate the CFA regardless of whether it was performed in furtherance of an otherwise permissible act.

The Parties dispute whether communications were unlawful if they were in furtherance of an otherwise permissible act or goal. For example, Respondent asserts that offering move-out bonuses to residents of Pine Haven was lawful, whereas CPU asserts that Respondent's acts and communications encouraging residents to accept move-out bonuses (and therefore extinguish any otherwise

existing lease rights), particularly in asserting that Pine Haven was seasonal, were unlawful practices.

In my view, the relevant analysis is whether any "unlawful practice" was employed by Respondent in its attempt to solicit residents to terminate a lease or other right to remain at Pine Haven, *regardless* of whether offering move-out bonuses was lawful. 6 *Del. C.* § 2513. By analogy, the sale of widgets might be a permissible act, but if the selling company employs unlawful practices in soliciting the sale of its widgets, those unlawful practices are actionable. So, if Respondent engaged in "any deception, fraud, false pretense, false promise, misrepresentation, unfair practice," or engaged in "the concealment, suppression, or omission of any material fact with the intent" that the omission be relied on, those acts could violate the CFA even if the offering of a move-out bonus was itself permissible. This applies equally to other unlawful practices, even if made in furtherance of otherwise permissible acts.

14. Conclusion of Law 14: Respondent wilfully violated the Consumer Fraud Act on multiple occasions and penalties will be imposed as set forth below.

CPU has alleged numerous violations of the CFA. I find that CPU has met its burden of proof of showing numerous wilful violations of the CFA and order penalties accordingly, as detailed below. In making the determination of wilfulness, and in determining the appropriate magnitude of the penalty for each wilful

violation, several overarching factors are present, in addition to those addressed individually below. First, prior to its purchase of Pine Haven, Respondent conducted due diligence on the acquisition, *see, e.g.*, Docket No. 67 at 22-24, and thus Respondent knew or should have known basic facts about the property, including that Pine Haven had operated as a year-round manufactured home community for many years prior to Respondent's acquisition. Second, Respondent is part of a large entity with extensive experience in this industry, with business and legal guidance for this acquisition, *see, e.g.*, *id.* at 22. Third, Respondent's approach on various basic issues, like its assertion that Pine Haven was a seasonal campground, continued unchanged regardless of additional information provided to Respondent (including, for example, numerous entities communicating to Respondent that Pine Haven was a year-round manufactured home community). Respondent continued to wilfully violate the CFA, even after direct communications from various entities including CPU, highlighting that consequences short of administrative penalties were insufficient to change Respondent's conduct.

Finally, Respondent has asserted as a purported defense that Respondent only took various actions, for example the initiation of eviction proceedings, because of actions by other entities. *See, e.g.*, Docket No. 43.2 at 250-253; Docket No. 67 at 19-24. I do not find Respondent's argument persuasive factually or legally. Nothing in any action of these entities required Respondent to violate Delaware law and

indeed in some cases Respondent took the opposite action to that sought by these entities. Respondent bears responsibility for its actions.

- On June 30, 2022, Respondent sent or caused to be sent a notice purporting to terminate leases on 60 days notice, asserting the residents were holdover tenants, and threatening the residents with double rent. This letter was delivered to at least two residents. Finding of Fact 9. Respondent did not yet own Pine Haven and was thus not a party to the lease agreements with these residents, which Respondent knew or should have known. This communication was an "act, use, or employment by [Respondent] of [a] deception, fraud, false pretense, … [or] misrepresentation." 6 *Del. C.* §2513(a). **I find this to constitute 2 wilful violations of 6 *Del. C.* §2513 and award $2,500 for each violation for a total of $5,000.**
- On July 18, 2022, Respondent sent or caused to be sent a letter asserting that Pine Haven was seasonal and purporting to revoke guest licenses of RV residents. Finding of Fact 10. This letter purports to revoke the residents "guest licenses," which Respondent could not do because it did not yet own Pine Haven and was thus not a party to the lease agreements with these residents. Thus, regardless of the near-contemporaneous legislative change to the MHMHCA, this

communication was an "act, use, or employment by [Respondent] of [a] deception, fraud, false pretense, … [or] misrepresentation." 6 *Del. C.* §2513(a). Respondent knew or should have known that it did not yet own Pine Haven and could not revoke the leases (or even guest licenses) with these residents. The evidence supports that this communication was sent to at least 25 residents (24 RV residents and at least one MH resident). Findings of Fact 4, 10. **Accordingly, I find this to constitute 25 wilful violations of 6 *Del. C.* §2513 and award $2,500 for each violation for a total of $62,500.**

- In August and September 2022, Respondent sent or caused to be sent three-year seasonal lot license agreements to the 29 MH residents in Pine Haven, possibly twice to each MH Resident. Finding of Fact 11. Respondent did not yet own Pine Haven. Finding of Fact 12. These documents purported both to be seasonal leases and purported to increase the monthly rent by significantly more than is permissible under the MHMHCA. Finding of Fact 11; Conclusions of Law 28-30. Respondent knew or should have known that it did not yet own Pine Haven, that the MHMHCA contained limitations on increases of rent, and that Pine Haven had been operated as a year-round manufactured home community. This communication was an "act, use, or

employment by [Respondent] of [a] deception, fraud, false pretense, … [or] misrepresentation." 6 *Del. C.* §2513(a). The evidence supports that this communication was sent to all 29 MH residents. Findings of Fact 3, 11. **Accordingly, I find this to constitute 29 wilful violations of 6 *Del. C.* §2513 and award $2,500 for each violation for a total of $72,500.**

- On or about September 15, 2022, Respondent delivered the "Hello!" letter to the 29 MH residents in Pine Haven. Finding of Facts 3, 13. This document asserted that Pine Haven was seasonal and enclosed the three-year seasonal lot license agreements, yet purported to allow the MH residents to live at Pine Haven year round for three years. *Id*. This communication was an "act, use, or employment by [Respondent] of [a] deception, fraud, false pretense, … [or] misrepresentation." 6 *Del. C.* §2513(a). The evidence supports that this communication was sent to the 29 MH residents. Findings of Fact 3, 13. **Accordingly, I find this to constitute 29 wilful violations of 6 *Del. C.* §2513 and award $2,500 for each violation for a total of $72,500.**
- In determining the appropriate penalty for the violations above, I am mindful that these actions occurred prior to the extensive back-and-forth between Respondent and CPU, CLASI, the Ombudsperson, and

DEMHRA regarding the nature of Pine Haven. Accordingly, in determining the appropriate penalty I find those violations, while violations nonetheless, warrant a lesser penalty than the later violations occurring after such back-and-forth placed Respondent unquestionably on notice of the nature of their communications. The later acts and communications, addressed below, warrant a greater penalty.

- On or about February 23, 2023, Respondent sent a one-year change of use notice to Pine Haven residents, based on Respondent's counsel's determination of which residents were MH residents under the MHMHCA. Finding of Fact 16. The communication occurred after the extensive back-and-forth between Respondent and CPU, CLASI, the Ombudsperson, and DEMHRA, through which Respondent was unquestionably placed on notice that Pine Haven was not seasonal. Despite this, the communication asserted that Pine Haven was a seasonal campground. This communication was an "act, use, or employment by [Respondent] of [a] deception, fraud, false pretense, … [or] misrepresentation." 6 *Del. C.* §2513(a). The evidence supports that this communication was sent to 37 residents. Finding of Fact 16. I find this communication, following the extensive back-and-forth between Respondent and CPU, CLASI, the Ombudsperson, and

DEMHRA, to warrant a more severe penalty than earlier communications. **Accordingly, I find this to constitute 37 wilful violations of 6 *Del. C.* §2513 and award $3,500 for each violation for a total of $129,500.**

- On or about February 23, 2023, Respondent sent a letter to RV residents of Pine Haven (the "Dear RV Residents" letter, Exhibit 20) asserting that Pine Haven was a seasonal campground. Finding of Fact 17. The communication occurred after the extensive back-and-forth between Respondent and CPU, CLASI, the Ombudsperson, and DEMHRA, through which Respondent was unquestionably placed on notice that Pine Haven was not seasonal. Despite this, the Dear RV Letter asserted that Pine Haven was a seasonal campground. This communication was an "act, use, or employment by [Respondent] of [a] deception, fraud, false pretense, … [or] misrepresentation." 6 *Del. C.* §2513(a). The evidence supports that this communication was sent to at least 24 residents. Findings of Fact 4, 17. I find this communication, following the extensive back-and-forth between Respondent and CPU, CLASI, the Ombudsperson, and DEMHRA, to warrant a more severe penalty than the earlier communications. **Accordingly, I find this to**

constitute 24 wilful violations of 6 *Del. C.* §2513 and award $3,500 for each violation for a total of $84,000.

- On or about March 7, 2023, Respondent sent a letter to the MH residents of Pine Haven (Exhibit 24) asserting that Pine Haven was a seasonal campground. Finding of Fact 18. The communication occurred after the extensive back-and-forth between Respondent and CPU, CLASI, the Ombudsperson, and DEMHRA, through which Respondent was unquestionably placed on notice that Pine Haven was not seasonal. Despite this, the March 7, 2023 letter asserted that Pine Haven was "a seasonal campground and is only operating a seasonal campground" and later reiterated that Respondent "is only operating a seasonal campground now and will continue that same use in the future." Exhibit 24. Respondent sent this communication with the intention that Residents rely on it in deciding whether to avail themselves of the "moving incentive[s]" Respondent was offering to cause residents to vacate Pine Haven. *Id.* This communication was an "act, use, or employment by [Respondent] of [a] deception, fraud, false pretense, … [or] misrepresentation." 6 *Del. C.* §2513(a). The evidence supports that this communication was sent to 29 MH residents. Findings of Fact 4, 18. I find this communication, following the

extensive back-and-forth between Respondent and CPU, CLASI, the Ombudsperson, and DEMHRA, and sent with the apparent intention that residents rely on it in deciding whether to accept Respondent's "moving incentive" in determining whether to vacate Pine Haven, warrants a particularly severe penalty. **Accordingly, I find this to constitute 29 wilful violations of 6 *Del. C.* §2513 and award $4,500 for each violation for a total of $130,500.**

- Respondent sent to multiple residents draft settlement and/or stipulated agreements. These agreements asserted that Pine Haven was a "seasonal campground." Finding of Fact 20. Having conducted due diligence on the purchase of Pine Haven, Respondent knew or should have known that Pine Haven had been operated as a year-round manufactured home community and was a year-round manufactured home community at the time Respondent acquired Pine Haven. This communication was an "act, use, or employment by [Respondent] of [a] deception, fraud, false pretense, … [or] misrepresentation." 6 *Del. C.* §2513(a). The evidence supports that this communication was sent to and/or signed by 11 MH residents. I find the inclusion of this misrepresentation in proposed settlement agreements that Respondent intended for residents to execute, and to be bound by and relinquish

rights through such execution, despite the extensive back-and-forth between Respondent and CPU, CLASI, the Ombudsperson, and DEMHRA, to warrant the maximum penalty allowed for each of these violations. Finding of Fact 20. **Accordingly, I find this to constitute 11 wilful violations of 6 *Del. C.* §2513 and award $5,000 for each violation for a total of $55,000.**

- Respondent caused residents of Pine Haven to pay rental rates in excess of that permitted by the MHMHCA and continued to accept rental payments without rebating the overpayment after it was placed on notice by CPU that these rental amounts were in excess of that permitted by the MHMHCA and also continued to accept rental payments in excess of the permissible amount after submitting the change-of-use notice. As detailed in Finding of Fact 19 and Conclusions of Law 28-30, the MHMHCA prohibits rent increases above a specific amount and prohibits rent increases whatsoever after a change-of-use notice. Despite this, Respondent communicated an increase in rent well in excess of the permitted threshold, accepted rent payments in excess of the permitted threshold even after CPU detailed the maximum permissible rent increase, and continued to accept increased rent payments even after submitting the change-of-use notice

on or about February 23, 2023. The evidence supports that such payments occurred at least 126 times. Finding of Fact 19. These excess rent charges (and acceptance of excess rent payments) violated the MHMHCA. Additionally, by seeking these impermissible rent increases and by failing to correct residents who continued to pay the excess rent, Respondent engaged in either the "act, use, or employment… of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice," or engaged in "the concealment, suppression, or omission of any material fact with the intent that others rely on such concealment, suppression, or omission, in connection with" the residents' leases. These acts are particularly wilful given that CPU detailed to Respondent the restrictions on rent increases permitted by the MHMHCA. Nevertheless, I order less than the maximum penalty for each violation, guided in part by the amount of each excess rent charge and that I separately order the rebate of excess rent charges. **Accordingly, I find this to constitute 126 wilful violations of 6 *Del. C.* §2513 and award $1,000 for each violation for a total of $126,000.**

I do not find CPU has met its burden of proof as to any other alleged CFA violations.

C. Conclusions of Law Relevant to DTPA.

15. Conclusion of Law 15: The DTPA allows CPU to pursue violations against consumers, not just competitors.

The Parties dispute whether the DTPA allows CPU to pursue violations of the DTPA applicable only to competitors, or also to consumers. *See* Docket No. 28 at 27-28, 31; Docket No. 31 at 10-11. While the DTPA was at one time interpreted as only applying to competitors, it was amended to clarify that CPU may pursue violations against consumers. "The Attorney General shall have standing to seek, on behalf of the State, any remedy enumerated in this section for any violation of 6 *Del. C.* § 2532 of this title that is likely to harm any person, including but not limited to individual retail purchasers and consumers of goods, services or merchandise." 6 *Del. C.* § 2533(d) (emphasis added); *see also State ex rel. Brady v. Fallon*, 1998 WL 283438, at *5 (Del. Super. Feb. 27, 1998).

16. Conclusion of Law 16: CPU is not required to prove "actual confusion or misunderstanding" of any resident nor harm to any resident to prevail under the DTPA.

The DTPA is clear that "actual confusion or misunderstanding" is not required in a DTPA claim. "In order to prevail in an action under this chapter, a complainant need not prove competition between the parties or actual confusion or misunderstanding." 6 *Del. C.* § 2532(b) (emphasis added). By extension, if there is no requirement of actual confusion or misunderstanding, there cannot be a requirement of harm. This is consistent with the preventative nature of the DTPA

to address acts that could, but have not yet caused harm, *see, e.g.*, 6 *Del. C.* § 2533(d) ("that is likely to harm"), and with the definition of deceptive trade practices, which is focused on the deceptive act, not the result of that act, *see, e.g.*, 6 *Del. C.* § 2532(a)(12) ("Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding" (emphasis added)).

17. Conclusion of Law 17: The DTPA may apply in circumstances, like here, where the allegedly actionable communications involve "a package of goods and services" that includes, but is not limited, to a real estate lease.

Respondent argues that the DTPA does not apply to the communications at issue because "[i]t is settled Delaware law that the DTPA does not apply to real estate transactions" (Docket No. 71 at 15 (citation omitted)), and while "the DTPA may apply when the real estate transaction includes the provision of separate goods or services" (*id.* at 17), "Respondent's communications to Pine Haven residents were solely about real estate, and not related to 'goods or services' as construed under the DTPA." *Id.* at 18.

CPU disagrees, and argues that only real estate *sales*, not leases, are excluded from the DTPA and that communications involving transactions that include both sales *and services* may be actionable under the DTPA. Docket No. 75 at 8-11. CPU points out that the communications at issue here involved leases, not sales, and that there were numerous services incident to the leases, including community amenities such as a bathhouse, utilities, and trash collection. *Id.* at 8-9.

Having reviewed the Parties' arguments and the caselaw cited, it appears to me that the issue is not resolved in Delaware law. Cases cited by Respondent address the sale of real estate, but a real estate sale (with the permanent change of ownership and all the legal consequences thereto) is materially different than the leases at issue here. CPU, on the other hand, cites to no cases specifically providing that the DTPA does apply to leases of real estate. However, *State ex rel. Brady v. Preferred Florist Network, Inc.*, holds that "Consumer Fraud Act and Uniform Deceptive Trade Practices Act are closely related acts, remedial in nature and liberally construed." 791 A.2d 8 (2001). Interpreting the statute and the caselaw, and applying it to the type of transaction at issue here (lot leases *with* associated services), and given the liberal construction required of the DTPA, I believe CPU has the better of the argument, and that the DTPA could apply to the communications at issue, and so find that the DTPA applies to communications like those here where Respondent provides services to the residents in conjunction with the leases.

18. Conclusion of Law 18: Respondent's communications here were not wilful within the meaning of the DTPA for the imposition of monetary sanctions.

For the administrative penalties sought by CPU to be imposed on Respondent in this proceeding for a violation of the DTPA, CPU must meet its burden of proof in showing that Respondent's violation of the DTPA was "wilful." 29 *Del. C.* § 2524(b). For purposes of the DTPA, "a wilful violation occurs when the person

committing the violation knew or should have known that the conduct was of the nature prohibited by this subchapter" – i.e. prohibited by the DTPA. 6 *Del. C.* § 2533(e) (emphasis added). The DTPA includes a list of eleven specific types of deceptive trade practices. *Id.* § 2532(a)(1)-(11). CPU does not assert (and if it did, I would reject) that the communications at issue here fall within any of those eleven categories. Instead, CPU asserts that the communications at issue fall within the final category of conduct within the definition of deceptive trade practices: "Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." *Id.* § 2532(a)(12). Given the statutorily defined role and scope of this administrative proceeding, for monetary penalties to be imposed on Respondent here under the DTPA, CPU must prove that Respondent knew or should have known that the communications at issue were prohibited by the DTPA, despite those communications fitting within none of the specific examples of conduct itemized in the DTPA and despite the caselaw carving out from the DTPA sales of real estate transactions. I do not find CPU to have met this burden.

Simplistically, the main bucket of allegedly wrongful communications are about whether the community was seasonal or year-round, and whether the residents' real estate rights granted by the leases were seasonal or year-round. Those types of misrepresentations are not obviously akin to any of the eleven enumerated examples in section 2532. Subsection (12) of section 2532 is plainly intended to

broaden the definition of deceptive trade practices from the prior eleven ("any other conduct"), but nevertheless exists in reference to those eleven ("which *similarly* creates a likelihood of confusion or of misunderstanding" (emphasis added)). Regardless of whether subsection (12) could be read to encompass the communications at issue here, it is not clear from the plain language of section 2532 that it *does* prohibit the communications at issue here. As a result, I decline to find that Respondent *should have known* that these communications were prohibited by the DTPA. Nor has CPU met the burden of proof in showing that Respondent *did in fact know* that these communications are prohibited by section 2532.

As a result, as to the DTPA claims, I cannot find that CPU has met its burden in showing the alleged violations were "wilful" as required by 29 *Del. C.* § 2524(b), i.e. that Respondent knew or should have known that its communications were "of the nature prohibited by" the DTPA, 6 *Del. C.* § 2533(e), and accordingly, I do not award any administrative penalties under the DTPA.[11]

19. Conclusion of Law 19: Respondent's communications may support the imposition of a cease and desist order, even though monetary penalties are not warranted under the DTPA.

[11] Unlike administrative penalties and other relief provided for in 29 *Del. C.* § 2524(b), a cease and desist order may be issued after an administrative hearing for "any violation or apparent threat of violation," *see* 29 *Del. C.* § 2524(a), and thus does not require a wilful violation.

CPU may issue a summary cease and desist order if CPU "in the Director's discretion perceives an immediate threat to the public interest as a result of a violation of Chapter 25 of Title 6." 29 *Del. C.* § 2525(c). The cease and desist order, unlike monetary penalties, does not require wilful conduct, but rather "any violation or apparent threat of violation." *Compare* 29 *Del. C.* §§ 2524(a) and 2525(c) *with* 29 *Del. C.* § 2524(b); *see also Smash Franchise Partners, LLC v. Kanda Holdings, Inc.*, 2023 WL 4560984, *24-25 (Del. Ch. July 14, 2023) (discussing that different penalties may be ordered for violations of the DTPA that are and are not wilful). In this administrative proceeding, section 2524(a) provides a remedy for any violations of the DTPA, while section 2524(b) provides a separate remedy for wilful violations. As detailed in Conclusion of Law 7, the Summary Cease and Desist Order was properly issued and I affirm its issuance under the CFA. Despite not finding a wilful violation of the DTPA, nothing in that finding undermines the issuance of the Summary Cease and Desist Order or my affirmance of that Order.

D. Conclusions of Law Relevant to MHMHCA.

20. Conclusion of Law 20: Violations of subchapters I through V of the MHMHCA are within CPU's authority, as is enforcement of Section 7055.

"It is the duty and obligation of [CPU] to enforce the provisions of subchapters I through V of this chapter [the MHMHCA]. A violation of any provision of subchapters I through V of this chapter by a landlord is within the scope

of enforcement duties and power of [CPU]." 25 *Del. C.* § 7005(a). Subchapters I-V of the MHMHCA "apply to all rental agreements for manufactured home lots" in Delaware. 25 *Del. C.* § 7001(b). In addition to Subchapters I-V, CPU "shall have authority over" section 7055 of the MHMHCA. 25 *Del. C.* § 7055. CPU has statutory authority to initiate administrative charges over the entirety of the MHMHCA. 29 *Del. C.* § 2523 ("The Director of Consumer Protection may initiate administrative charges against any person who appears to have violated or [is] about to violate any provision of… Chapter 70 of Title 25"). The MHMHCA is to "be liberally construed and applied" to promote its purposes. 25 *Del. C.* § 7001(a)(1).

21. Conclusion of Law 21: A violation of the MHMHCA can be evidence for a violation of the CFA, but I decline to award penalties under both the CFA and the MHMHCA for the same conduct.

Respondent argues that the array of remedies available to CPU to pursue violations of Chapter 70 are more limited in an administrative proceeding than in court. Docket No. 71 at 28-30. Respondent is correct. Although CPU may bring enforcement proceedings for Chapter 70 through an administrative proceeding, *administrative penalties* may only be granted under section 2524(b) for violations of "§ 2513 or § 2532 of Title 6, or of a lawful cease and desist order." 29 *Del. C.* § 2524(b). Section 2524(a) more broadly applies to "any violation or apparent threat of violation of… any law or regulation [CPU] is charged to enforce" and authorizes "the issuance of a cease and desist order." *Id*. § 2524(a).

CPU, however, argues that a violation of MHMHCA can be sanctioned in this administrative hearing as a violation of the CFA, because a violation of established law can be evidence of a substantial injury for the purpose of determining if an unfair practice has been committed in violation of the CFA. Docket No. 74 at 14-16. I agree that a violation of Chapter 70 can be evidence of a violation of the CFA, and thus the violation of the CFA evidenced by the violation of Chapter 70 can support penalties under the CFA as authorized in 29 *Del. C.* § 2524(b). *However*, section 2524(b) provides the permissible penalties in this proceeding, and nothing in section 2524(b) indicates that it would permit multiple penalties for the same act (i.e., if an act is both a direct violation of the CFA and a violation of the MHMHCA that forms an unfair practice in violation of the CFA). Accordingly, where the same act is a direct violation of the CFA and a violation of the MHMHCA, I address through the CFA and decline to order any duplicative administrative penalties for that same act.[12]

22. Conclusion of Law 22: Respondent is a "community owner" and "landlord" as defined by the MHMHCA.

"'Community owner' or 'landlord' means the owner of 2 or more manufactured home lots offered for rent." 25 *Del. C.* § 7003(4). At the time Pine Haven was acquired by Respondent, Pine Haven contained at least two

[12] As detailed below in Conclusions of Law 28-30, and as Respondent concedes, I have authority to award rebates of excess rent collected by Respondent in violation of the MHMHCA.

manufactured home lots offered for rent. Findings of Fact 1, 2. Accordingly, Respondent is a "community owner" and "landlord" under the MHMHCA.

> 23. Conclusion of Law 23: Pine Haven was a "manufactured home community" as defined by the MHMHCA when acquired by Respondent; however, (i) those lots upon which a recreational vehicle that is not a manufactured home is placed and (ii) those lots that are seasonal are not subject to subchapters I through V of the MHMHCA.

"'Manufactured home community' means a parcel of land where 2 or more lots are rented or offered for rent for the placement of manufactured homes." 25 *Del. C.* § 7001(3)(13). At the time Pine Haven was acquired by Respondent, Pine Haven contained at least two manufactured home lots offered for rent. Finding of Facts 1, 2. Residents resided at Pine Haven year-round both before and after Respondent acquired Pine Haven. Finding of Fact 2. Both Pine Haven's prior owner and Respondent operated Pine Haven year-round. Finding of Fact 2. Pine Haven was registered with DEMHRA as a manufactured home community and its former owner paid into the Manufactured Home Relocation Trust Fund, which is required only for manufactured home communities. Finding of Fact 5. Respondent points to a variety of other information about Pine Haven's zoning and permitting. *See, e.g.*, Docket No. 28 at 1-3. But this does not change the specific statutory definition of manufactured home community in the MHMHCA, or the extensive evidence that Pine Haven operated as a year-round manufactured home community both before and after Respondent's acquisition, with year-round residents both before and after

Respondent's acquisition. The evidence is abundant that Pine Haven is a year-round manufactured home community within the definition of the MHMHCA.

However, the rental of ground at Pine Haven upon which a RV is placed (so long as that RV does not meet the definition of MH) "is exempt from the requirements of subchapters I through V" of the MHMHCA. 25 *Del. C.* § 7004(a). The number of residents of Pine Haven who <u>are not</u> exempted is addressed in Findings of Fact 3 and 4.

> 24. <u>Conclusion of Law 24</u>: Pine Haven was, and remained, a "manufactured home community" as defined by the MHMHCA until on or about February 22, 2024; however, (i) those lots upon which a recreational vehicle that is not a manufactured home is placed and (ii) those lots that are seasonal are not subject to subchapters I through V of the MHMHCA.

As set forth in Conclusion of Law 23, Pine Haven was a manufactured home community when acquired by Respondent. Respondent provided the one-year change of use notification required by the MHMHCA on February 23, 2023. Finding of Fact 16. The MHMHCA requires a landlord to provide "at least a 1-year termination or non renewal notice" when undertaking a "good faith [change] in the use of land on which a manufactured home community or a portion of a manufactured home community is located." 25 *Del. C.* § 7024(b). Accordingly, Pine Haven remained a manufactured home community until at least February 22, 2024, and until that time tenants at Pine Haven had rental agreements that are within the requirements and protections of the MHMHCA. 25 *Del. C.* § 7001(b).

However, the rental of ground at Pine Haven upon which a RV is placed (so long as that RV does not meet the definition of MH) "is exempt from the requirements of subchapters I through V" of the MHMHCA. 25 *Del. C.* § 7004(a). The number of residents of Pine Haven who are not exempted is addressed in Findings of Fact 3 and 4.

25. Conclusion of Law 25: Rental agreements within a manufactured home community automatically renew unless certain specified conditions exist, and thus in the absence of such conditions the rental agreements of tenants at Pine Haven automatically renewed "for the same duration and with the same terms, conditions, and provisions as the original agreement."

A rental agreement for a lot in a manufactured home community "automatically renews" unless certain specified conditions are met by the tenant or landlord. 25 *Del. C.* § 7009(b). For a landlord not to renew, it must provide 90 days notice prior to the expiration of the rental agreement and it must be "for due cause under § 7016 or § 7024 of this title." 25 *Del. C.* § 7009(b)(2). "A landlord may terminate a rental agreement for a lot in a manufactured home community before it expires or may refuse to renew an agreement only for due cause." 25 *Del. C.* § 7024(a). If not terminated, and with very limited exceptions, "the rental agreement renews for the same duration and with the same terms, conditions, and provisions as the original agreement." 25 *Del. C.* § 7009(c).

26. Conclusion of Law 26: Pine Haven was not exclusively a "seasonal property" under the MHMHCA at the time it was acquired by Respondent.

"Seasonal property" is defined in the MHMHCA as "a parcel of land operated as a vacation resort on which 2 or more lots are rented or offered for rent for the placement of manufactured homes or other dwellings used less than 8 months of the year" and "characterized by a lack of availability of year-round utilities and by the fact that its tenants have primary residences elsewhere." 25 *Del. C.* § 7003(23) (emphasis added). Utility service means "water, sewer, electricity, fuel, propane, cable television, or trash" provided by the landlord to tenants. 25 *Del. C.* § 7003(29). While some lots within Pine Haven were used on a seasonal basis, not all lots within Pine Haven were seasonal. Rather, at least two lots (and in fact significantly more) within Pine Haven were rented or offered for rent for use on a year-round basis and therefore meet the definition of a manufactured home community. Findings of Fact 1, 2; Conclusions of Law 23, 24. Accordingly, Pine Haven was not exclusively a "seasonal property" under the MHMHCA at the time of acquisition, but rather was a manufactured home community.

27. Conclusion of Law 27: Pine Haven could not become exclusively a "seasonal property" until at least on or about February 22, 2024, when the one-year change-of-use becomes effective.

Pine Haven was not an exclusively seasonal property at acquisition. Conclusion of Law 26. Respondent did not begin the process to convert Pine Haven from year-round to seasonal until February 23, 2023. Finding of Fact 16. That process requires one-year termination or non-renewal notice. 25 *Del. C.* § 7024(b);

Conclusion of Law 24. Accordingly, between acquisition and at least February 22, 2024, Pine Haven was not exclusively a seasonal community, but rather remained a manufactured home community.

28. Conclusion of Law 28: Rent increases for tenants at Pine Haven from acquisition until February 23, 2023 were required to comply with the rent increase requirements of the MHMHCA.

Because "the difficulty and cost of moving [a manufactured home in a manufactured home community] gives the community owner disproportionate power in establishing rental rates," 25 *Del. C.* § 7050, the MHMHCA provides specific requirements on the rental rate increase that is permissible and the process by which a rental rate increase must be implemented. 25 *Del. C.* §§ 7050-56. Applicable to the time frame at issue here are limitations on the amount rent can be increased, 25 *Del. C.* § 7052A(a)-(d), and any such increases must go through a process including certification from DEMHRA, 25 *Del. C.* § 7052A(c)(3). A manufactured home community owner may increase rent by one-half of the 24-month CPI-U plus 3.5% (unless such CPI-U is greater than 7%, in which case the limit is the 24-month CPI-U). Any rental rate increase for tenants in violation of those requirements is subject to specific penalties and CPU enforcement authority. 25 *Del. C.* § 7055.

29. Conclusion of Law 29: Any rent increases for tenants at Pine Haven issued after February 23, 2023, violated the MHMHCA.

Pine Haven was a manufactured home community at acquisition. Conclusions of Law 23, 24. A landlord "may not increase the lot rental amount of an affected tenant after giving notice of a change in use." 25 *Del. C.* § 7024(b)(1). Respondent provided a change in use notice for Pine Haven on February 23, 2023, Finding of Fact 16, and thus was prohibited from increasing lot rental for tenants at Pine Haven thereafter.

30. Conclusion of Law 30: It is a violation of the MHMHCA if unauthorized rent increases (both any rent increases for tenants at Pine Haven issued in excess of the amount permitted by the MHMHCA (*see* Conclusion of Law 28) and any rent increases for tenants issued after February 23, 2023 and until on or about February 22, 2024 (*see* Conclusion of Law 29)) were not immediately reduced to the amount in effect before the unauthorized increase and any excess amounts rebated to the tenants with interest. Respondent has collected numerous rent payments in excess of the amount permitted by the MHMHCA and Respondent is accordingly ordered to rebate all excess rental payments with interest to the affected tenants.

The MHMHCA provides that any community owner who raises rent for any tenant more than that permitted by the MHMHCA "must immediately reduce rent to the amount in effect before the unauthorized increase" and must "rebate the unauthorized rent collected to the homeowners with interest." 25 *Del. C.* § 7055. CPU has enforcement authority over this section. *Id.* Two types of unauthorized rent increases occurred: (i) between acquisition and February 22, 2023, Respondent implemented rent increases for tenants that were in excess of the permitted increase

under the MHMHCA and/or were not in compliance with the process required by the MHMHCA, and (ii) rent increases on or after February 23, 2023. Where Respondent implemented rent increases that violated the MHMHCA (*see* Conclusions of Law 28, 29) and those increases were not immediately reduced to the prior amount and any excess amounts rebated to the tenants with interest, that failure to immediately reduce and rebate with interest is itself also a violation of the MHMHCA over which CPU has enforcement authority. 25 *Del. C.* § 7055.

Respondent concedes that the rebate of excess rent with interest is within the scope of relief allowed in this administrative proceeding. Docket No. 71 at 25-28. I find that Respondent violated the MHMHCA through rent increases in excess of that permitted by the MHMHCA before the issuance of the change-of-use notice and by continuing to collect those rents after the issuance of the change-of-use notice, and did so at least 126 times. Findings of Fact 16, 19; Conclusions of Law 28-29. In the absence of a definite rent roll in the record of this proceeding (although Respondent's personnel testified that such a record exists, *see* Finding of Fact 19), **I order Respondent to (1) rebate overpaid rent with pre- and post-judgment interest at the legal rate to all Pine Haven residents who made such overpayments within 30 days of the date of this order; and (2) submit to CPU, with a copy filed on the docket of this matter, a rent roll or other similar**

documentation detailing the overpayments and a certification that the rebates have been paid.

E. Conclusions of Law Relevant to Motion for Sanctions.

31. Conclusion of Law 31: For purposes of the Motion for Sanctions, Respondent has conceded the applicability of the Summary Cease and Desist Order.

As detailed in Conclusion of Law 7, the Summary Cease and Desist Order was validly issued. However, for purposes of the Motion for Sanctions, that validity has been conceded by Respondent. Respondent entered into numerous stipulations in this proceeding stipulating that "WHEREAS the Summary Cease and Desist order will remain in effect until the issuance of an opinion or order by the Hearing Officer or until vacated by the Hearing Officer." *See* Docket Nos. 7, 12, 16, 19, 25, 36, 41, 49, 55, 70, 74. Accordingly, for purposes of evaluating the Motion for Sanctions, Respondent has stipulated that it would be bound by the Summary Cease and Desist Order during the relevant period.

32. Conclusion of Law 32: For purposes of the Motion for Sanctions, the procedural requirements of 29 *Del. C.* §2524(b), including notice and an administrative hearing, have been satisfied.

Section 2524(b) of Title 29 requires that an administrative penalty for "any wilful violation of… a lawful cease and desist order of the Director" be ordered only "[a]fter notice and an administrative hearing." Those requirements are met here. Respondent was on notice of CPU's request for sanctions through the filing of the

Motion for Sanctions. Docket Nos. 35, 35.1. That Respondent did in fact receive notice is certain and demonstrated by Respondent's filing of responsive briefing to the Motion for Sanctions. Docket Nos. 37, 37.1, 38, 46, 51, 53. Notice is further confirmed through scheduling stipulations that Respondent agreed to for briefing and the administrative hearing on the Motion for Sanctions. Docket Nos. 36, 41, 49. An administrative hearing on the Motion for Sanctions was held on July 10 and 11 and August 1, 2023, at which Respondent presented evidence and cross-examined witnesses. The procedural requirements of Section 2524(b) have been satisfied.

33. Conclusion of Law 33: For purposes of the Motion for Sanctions, the violations of the Summary Cease and Desist Order set forth in Conclusion of Law 34, below, were wilful.

Section 2524(b) provides that "any wilful violation of… a lawful cease and desist order… may be sanctioned by an administrative penalty up to $5000 per violation…." Section 2525(c)(6), specifically addressing summary cease and desist orders, similarly provides that "Any person who wilfully violates a cease and desist order may be sanctioned as provided in § 2524(b) or § 2526 of this title."[13] Although "wilful" is not defined in Section 2524, that section references both the CFA and DTPA and "wilful" is defined in both the CFA and DTPA with identical meanings. For purposes of both the CFA and the DTPA, "a wilful violation occurs when the

[13] Section 2526(b) provides for the possibility of "an enhanced civil penalty of not more than $25,000 per violation." CPU has requested only $5,000 per violation pursuant to Section 2524(b). Docket 35.1 at 1-2, n. 1.

person committing the violation knew or should have known that the conduct was of the nature prohibited by this subchapter." 6 *Del. C.* § 2522(b), 2533(e). Accordingly, the "knew or should have known" standard is applicable to the Motion for Sanctions.[14]

Prior to the issuance of the Summary Cease and Desist Order, CPU placed Respondent on written notice of the conduct that gave rise to the Summary Cease and Desist Order. Finding of Fact 21. To the extent there was any uncertainty, the Summary Cease and Desist Order identified the specific conduct that Respondent had been ordered to cease and desist. Docket No. 4. The Summary Cease and Desist Order was accompanied by the Complaint, further detailing the types of conduct that had given rise to the Summary Cease and Desist Order and the conduct that CPU had ordered Respondent to Cease and Desist. *See generally* Docket No. 2. There is no dispute that Respondent had notice of the Summary Cease and Desist Order given its participation in this proceeding. *See also* Docket Nos. 3, 5. Throughout the entire relevant period, Respondent was represented by counsel and cannot disclaim

[14] CPU discusses a test set forth in *United States v. Reader's Dig. Ass'n, Inc.*, 662 F.2d 955, 967 (3d Cir. 1981), but argues that the test is not applicable and that if it were applicable it has been met. Docket No. 72 at 29-37. Respondent agrees that *Reader's Digest* is not applicable. Docket No. 76 at 38, n.21. I agree. I hold that the applicable test is that set forth in statute as the standard in both the CFA and the DTPA. That statutory standard is clear and unambiguous, and therefore that plain language controls. *See Sun Life Assur. Co. of Canada (U.S.)*, 21 A.3d 15 at 20 ("If the statute is found to be clear and unambiguous, then the plain meaning of the statutory language controls.").

understanding the effect of the Summary Cease and Desist Order. Respondent thus "knew or should have known" the conduct that was prohibited by the Summary Cease and Desist Order.

Although not directly relevant in determining wilful under the "knew or should have known" standard, Respondent's disregard for the Summary Cease and Desist Order is noteworthy. One particular example of that disregard was the testimony of Respondent's general manager of Pine Haven, Mr. Elliott. Mr. Elliott handled numerous aspects of Respondent's operations at Pine Haven, including various interactions with Pine Haven residents, including related to the eviction of Ms. Brown and Mr. Freudenthral. Despite this direct implementation of acts on behalf of Respondent that were implicated by the Summary Cease and Desist Order, Mr. Elliott testified that he had not been made aware of the Summary Cease and Desist Order by Respondent or Respondent's counsel and instead only learned about it from residents mentioning it. Docket No. 52 at 311. Additionally, despite the Summary Cease and Desist Order's specific prohibition of communications to residents "claiming that the community is and has been, seasonal," and the determination in the August 29, 2023 Order that Pine Haven was a manufactured home community and "was not exclusively a 'seasonal property'" under the MHMHCA (Docket 56 at Conclusions of Law 16, 17, 19, 20), throughout the administrative hearing Respondent's witnesses continued to assert that Pine Haven

was a seasonal property. *See, e.g.*, Docket No. 67 at 13-14, 24-25; Docket No. 68 at 50-51; *see also* Docket No. 43.2 at 248, 271.

34. Conclusion of Law 34: For purposes of the Motion for Sanctions, Respondent has violated the Summary Cease and Desist Order multiple times and sanctions will be imposed pursuant to 29 *Del. C.* §§ 2524(b), 2525(c)(6), and 2526.

Respondent has violated the Summary Cease and Desist Order on numerous occasions. First, the Summary Cease and Desist Order prohibits "any false or misleading communications… including, but not limited to: … (2) claiming that the community is and has been, seasonal." Respondent knew the terms of the Summary Cease and Desist Order and indeed had stipulated to it remaining in effect through stipulations entered in this proceeding. Despite this, Respondent, through its employees, agents, and attorneys, communicated to residents of Pine Haven on multiple occasions that Pine Haven was seasonal.

- On or about June 28, 2023, Respondent communicated to Jennifer Brown and Richard Freudenthral that Pine Haven was seasonal. Finding of Fact 23. This communication was made to two individuals and the evidence supports a second communication reiterated that they could not remain in Pine Haven past the end of the season. Although this might support four violations (two communications each to two individuals), CPU did not specifically seek sanctions for the second communication (*see* Docket No. 54 at 16-17), so I do not award

additional sanctions, but it demonstrates Respondent's disregard for the Summary Cease and Desist Order. (I do not find CPU has met its burden of showing that Kyle Freudenthral received this communication.) CPU has met its burden of proof in showing that Respondent wilfully violated the Summary Cease and Desist Order through these communications. **Accordingly, I find this to constitute two wilful violations of the Summary Cease and Desist Order and award $5,000 for each violation for a total of $10,000 pursuant to 6 *Del. C.* §§ 2524(b), 2525(c)(6) and 2526.**

- On or about July 27, 2023, Respondent communicated to resident Sherry Rollman in a proposed stipulated agreement that Pine Haven was seasonal. Finding of Fact 22. CPU has met its burden of proof in showing that Respondent wilfully violated the Summary Cease and Desist Order through this act. **I find this to constitute a wilful violation of the Summary Cease and Desist Order and award $5,000 for the violation pursuant to 6 *Del. C.* §§ 2524(b), 2525(c)(6) and 2526.**

Second, the Summary Cease and Desist Order prohibits "any false or misleading communications… including, but not limited to: … (3) threatening the residents with eviction in violation of Chapter 70", and "Threatening or attempting

to evict tenants/residents… in violation of Chapter 70." Respondent knew the terms of the Summary Cease and Desist Order and indeed had stipulated to it remaining in effect through stipulations entered in this proceeding. Despite this, Respondent, through its employees, agents, and attorneys, threatened residents of Pine Haven with eviction and threatened or attempted to evict tenants in violation of Chapter 70.

- On June 28, 2023, Respondent caused Jennifer Brown, Richard Freudenthral, and Kyle Freudenthral to be removed from their home and the locks to their home changed by a locksmith hired by Respondent. Finding of Fact 24. Respondent did so without providing the required notice, because all notices had been addressed to a different person, Ms. Bowles, and therefore these threats of eviction or attempts to evict were in violation of the MHMHCA. Finding of Fact 24; 25 *Del. C.* § 7015. CPU has met its burden of proof in showing that Respondent wilfully violated the Summary Cease and Desist Order through these acts. This constitutes three acts for purposes of the Motion for Sanctions, one as to each individual. **I find this to constitute three wilful violations of the Summary Cease and Desist Order and award $5,000 for each violation for a total of $15,000 pursuant to 6 *Del. C.* §§ 2524(b), 2525(c)(6) and 2526.**

- Respondent similarly attempted to evict Ashley Bowles without providing the required notice, because all notices had been sent to a different address despite Ms. Bowles being employed by Respondent or an affiliate, and therefore these threats of eviction or attempts to evict were in violation of the MHMHCA. Finding of Fact 24; 25 *Del. C.* § 7015. CPU has met its burden of proof in showing that Respondent wilfully violated the Summary Cease and Desist Order through these acts. **I find this to constitute a wilful violation of the Summary Cease and Desist Order and award $5,000 for such violation pursuant to 6 *Del. C.* §§ 2524(b), 2525(c)(6) and 2526.**

Third, the Summary Cease and Desist Order prohibits "threatening the residents with illegal rent increases" and "Threatening or attempting to… raise their rent, in violation of Chapter 70." Respondent knew the terms of the Summary Cease and Desist Order and indeed had stipulated to it remaining in effect through stipulations entered in this proceeding. Despite this, Respondent, through its employees, agents, and attorneys, raised and/or continued to receive rental payments at a rate that violated Chapter 70 on multiple occasions. These included:

- As detailed above, Chapter 70 permits only very specific rental increases. *See* Conclusions of Law 28-30. Any rental increases whatsoever are prohibited after a change-of-use filing. *Id.* Despite this,

Respondent continued to accept rental payments in excess of that permitted by the MHMHCA, without either notifying tenants of the overpayment or rebating the overpayments as required by the MHMHCA. *See* Finding of Fact 19; Conclusions of Law 28-30. This occurred either through false or misleading communications seeking such excess rental payments, or through material omissions by Respondent failing to notify tenants that they were paying in excess of the permissible amount. Thus, this conduct is directly in violation of the Summary Cease and Desist Order's prohibition on "any false or misleading communications… threatening the residents with illegal rent increases. [Or] [t]hreatening or attempting to… raise their rent, in violation of Chapter 70." Ms. DeMarco, admitted that at minimum nine (9) people paid rent in a given month, and as many as 20. Finding of Fact 19. It is reasonable to conclude that many of these residents paid the excess rent multiple months. *See id.* However, given the evidence in the record, I find that at minimum nine violations per month between the issuance of the Summary Cease and Desist Order on April 3, 2023 and Ms. DeMarco's testimony at the administrative hearing on sanctions on July 11, 2023, continuing for three months' rent (between April and July) for a total of 27 violations. I will award less than the

maximum $5,000 per wilful violation given that these violations arise from the same facts supporting rent increase violations addressed under the CFA and MHMHCA. CPU has met its burden of proof in showing that Respondent wilfully violated the Summary Cease and Desist Order through these acts. **I find 27 wilful violations of the Summary Cease and Desist Order and award $2,000 for each violation (for a total of $54,000) pursuant to 6 *Del. C.* §§ 2524(b), 2525(c)(6) and 2526.**

Fourth, the Summary Cease and Desist Order prohibits "Making any false or misleading communications to residents/tenants of Pine Haven, including, but not limited to: …." CPU asserts that numerous actions violated the good faith requirement in the MHMHCA. *See* Docket No. 54 at 17-19. To meet its burden of proof, CPU must show not only that the acts violated the good faith requirement, but also that the act was a "wilful" violation of the Summary Cease and Desist Order, or stated otherwise that Respondent "knew or should have known that the conduct was of the nature prohibited" by the Summary Cease and Desist Order through application of the good faith requirement in the landlord tenant code. I find that implying a violation of the Summary Cease and Desist Order through implication of the good faith requirement, rather than an explicit prohibition in the plain language of the Summary Cease and Desist Order is generally a bridge too far, with one clear

exception. Accordingly, I do not find that CPU has met its burden of proof on these requests for sanctions, except with respect to one act:

- Ms. Bowles testified that, prior to Ms. Bowles testimony in this matter, the General Manager of Pine Haven warned her to "watch what she said" and indicated that her job might be implicated if she did not. Respondent was at this time in the process of pursuing eviction against Ms. Bowles. The Summary Cease and Desist Order is clear in totality that it prohibits various forms of "false or misleading communications to residents/tenants," including threats related to evictions. Any fair reading of the Summary Cease and Desist Order would place Respondent in a position of either knowing or that it should have known that threatening a tenant that Respondent was seeking to evict, who was also an employee of Respondent or an affiliate, and who would be testifying in this proceeding, violated the Summary Cease and Desist Order's prohibition on "any false or misleading communications" and threats with respect to eviction. **I find this act in violation of the Summary Cease and Desist Order and CPU has met its burden of proof in showing that Respondent wilfully violated that Order through these acts and award $5,000 for this violation pursuant to 6 *Del. C.* §§ 2524(b), 2525(c)(6) and 2526.**

The Summary Cease and Desist Order prohibits "any false or misleading communications… including, but not limited to: … (3) threatening the residents with eviction in violation of Chapter 70", and "Threatening or attempting to evict tenants/residents… in violation of Chapter 70." CPU seeks sanctions for Respondent's continued pursuit of 10 additional eviction cases in Justice of the Peace Court (in addition to those addressed above). *See* Docket No. 54 at 18-19. The Summary Cease and Desist Order, however, prohibits "threatening the residents with eviction in violation of Chapter 70" and "Threatening or attempting to evict tenants/residents… in violation of Chapter 70." Docket No. 4 at 2 (emphasis added). Although it is clear that Respondent "attempt[ed] to evict" these tenants after the issuance of the Summary Cease and Desist Order, CPU has not met its burden of proof that these evictions were themselves wilfully "in violation of Chapter 70." Accordingly, I do not award sanctions for these acts.

I do not find CPU to have met their burden of proof in proving any other conduct sufficient to support imposition of sanctions.

VI. Statement of Sanctions

As set forth in detail in the findings of fact and conclusions of law above, Respondent wilfully violated the Summary Cease and Desist Order and I accordingly order sanctions in a total amount of $94,000 as set forth below and as more fully detailed in Conclusion of Law 34.

- First, three (3) violations of the prohibition on communications that Pine Haven was seasonal, sanctioned with a penalty of $5,000 per violation for a total of $15,000.
- Second, four (4) violations of the prohibition on threatening or attempting to evict residents, sanctioned with a penalty of $5,000 per violation for a total of $20,000.
- Third, 27 violations of the prohibition on illegal rent increases, sanctioned with a penalty of $2,000 per violation for a total of $54,000.
- Fourth, one (1) violation of the prohibition on false or misleading communications, including threats, sanctioned with a penalty of $5,000 per violation for a total of $5,000.

VII. Conclusion

For the reasons set forth above, I hereby ORDER this 4th day of April, 2024:

(1) The Summary Cease and Desist Order was validly issued and I therefore affirm the issuance of the Summary Cease and Desist Order.

(2) Respondent has wilfully violated the CFA numerous times, as detailed above. For those wilful violations of the CFA, I award an administrative penalty of $737,500 pursuant to 6 *Del. C.* § 2524(b)

(3) CPU has not met their burden of proof to demonstrate Respondent wilfully violated the DTPA.

(4) Respondent has violated the MHMHCA and shall rebate to all tenants (and former tenants) any excess rental payments made in excess of that permitted by the MHMHCA with pre- and post-judgment interest at the legal rate. Such rebates shall be paid within 30 days of the date of this order. Respondent shall submit to CPU, with a copy filed on the docket of this matter documentation detailing these rebates and a certification that these rebates have been paid.

(5) Respondent has wilfully violated the Summary Cease and Desist Order numerous times, as detailed above. For those wilful violations of the Summary Cease and Desist Order, pursuant to 6 *Del. C.* § 2524(b), Respondent shall pay an administrative penalty of $94,000.

/s/Jameson Tweedie

Hearing Officer