

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA
CIVIL DIVISION**

EILEEN POSNER and BRIAN POSNER,

Case #: 05-2025-CA-

Plaintiffs,

v.

WHISPERING PINES MH & RV, LLC,
a Delaware limited liability company;

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Eileen Posner and Brian Posner (collectively, “Plaintiffs”), by and through undersigned counsel, sue Defendant, Whispering Pines MH & RV, LLC (“WPMH”), and allege as follows:

I. INTRODUCTION

1. This action arises from Defendant’s unlawful collection of rent and imposition of charges at Whispering Pines Manufactured Home & RV Community (“Whispering Pines” or “Park”), an age-restricted (55+) mobile home park located at 359 Cheney Highway, Titusville, Brevard County, Florida. The Park contains approximately 137 home sites and is subject to regulation under Chapter 723, Florida Statutes (the “Florida Mobile Home Act”).

2. Since May 2022, Defendant WPMH has demanded and collected rent and other fees from residents despite lacking legal title to the property and failing to comply with the procedures required under Chapter 723, Florida Statutes, for lawfully imposing such charges. Public records reflect that title remains with a different entity, and the 2022 deed on which WPMH relies is legally defective.

3. When residents, including Plaintiffs, sought to organize a homeowners’ association and retain legal counsel to assert their rights under Chapter 723, WPMH responded with cease-and-

desist letters, threats of eviction, and efforts to interfere with the Posners' right to retain legal representation, including the filing of a Florida Bar grievance against Plaintiffs' counsel. That grievance was later dismissed for lack of probable cause, but it delayed their retention of counsel by nearly one year.

4. Plaintiffs seek declaratory and injunctive relief, restitution of unlawfully collected sums, statutory and compensatory damages, treble damages under Florida's civil theft statute, attorney's fees, and such other relief as the Court deems just and proper.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to Article V, Section 20 of the Florida Constitution and Fla. Stat. § 26.012, as the claims involve equitable relief, declaratory judgments, and damages exceeding \$50,000, exclusive of interest, attorney's fees, and costs.

6. This Court also has jurisdiction pursuant to Fla. Stat. § 86.011, which authorizes circuit courts to declare rights, status, and other legal or equitable relations under the Florida Declaratory Judgment Act.

7. Venue is proper in Brevard County, Florida pursuant to Fla. Stat. § 47.011, because the acts and omissions giving rise to this action occurred in Brevard County, and the subject mobile home park is located in Brevard County.

III. PARTIES

8. Plaintiff Eileen Posner is a sui juris resident of Brevard County, Florida. She has resided in Whispering Pines since 2017, owns her manufactured home located at 4910 Clover Lane, and leases the underlying lot.

9. Plaintiff Brian Posner is the husband of Eileen Posner and is also a sui juris resident of Brevard County, Florida. He has jointly resided in the same home and lot at Whispering Pines since 2017.

10. Defendant Whispering Pines MH & RV, LLC ("WPMH") is a Delaware limited liability company registered to do business in Florida. Since May 2022, WPMH has acted as the de facto

owner and operator of Whispering Pines, collecting rent, issuing notices, and enforcing community rules while representing itself as the lawful titleholder of the Park property.

11. For ease of reference, the following abbreviations are used throughout this Complaint: “WPMH” refers to Whispering Pines MH & RV, LLC; “WPT Inc.” refers to Whispering Pines of Titusville, Inc.; “WPT LLC” refers to Whispering Pines of Titusville, LLC; and “Division” refers to the Florida Division of Condominiums, Timeshares, and Mobile Homes.

IV. FACTUAL BACKGROUND

A. Mobile Home Parks and Florida’s Protective Framework

12. Mobile home parks are a critical component of Florida’s affordable housing infrastructure, especially for retirees, fixed-income seniors, and working-class residents. Many tenants in these communities own their homes but lease the land underneath them, creating a unique hybrid ownership model that places them at a distinct legal and economic disadvantage. Relocating a mobile home is not only logistically burdensome — it is often physically or financially impossible. The homes are frequently decades old and require thousands of dollars in structural repairs, axle retrofitting, and code compliance to make them roadworthy. Suitable destination parks are increasingly scarce due to regulatory, zoning, and market pressures.

13. The Florida Legislature has expressly recognized these “unique factors” in the relationship between mobile home owners and park owners. In enacting Chapter 723, Florida Statutes, the Legislature declared:

“Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected.”

— Fla. Stat. § 723.004(1)

B. Protections Beyond Chapter 83

14. Unlike tenants under Chapter 83 — who can be evicted in a matter of days under Florida’s streamlined summary procedure — mobile home park residents are entitled to far greater stability. Recognizing that eviction from a park can amount to constructive loss of the home itself, the Legislature built additional safeguards into Chapter 723, including:

- a. ***Mandatory minimum lease terms.*** Park residents are entitled to written rental agreements with a minimum one-year duration. See Fla. Stat. § 723.031(4).
- b. ***Heightened notice requirements.*** Evictions under Chapter 723 require cause and a multi-step process depending on the ground asserted — such as nonpayment, rule violation, or change in land use — with advance notice, an opportunity to cure, and, in some cases, mandatory mediation. See Fla. Stat. §§ 723.061, 723.0615, 723.038.
- c. ***Prohibition on retaliatory conduct.*** Chapter 723 prohibits mobile home park owners from taking retaliatory action against residents who exercise their statutory rights. Retaliatory conduct includes — but is not limited to — eviction or threats of eviction, increases in rent, reduction of services, imposition of fines or penalties, refusal to renew leases, or other forms of discrimination, harassment, or interference.

15. Florida Statutes § 723.0615(1) provides:

“It is unlawful for a park owner to discriminatorily increase a resident's rent, decrease services to such resident, or bring or threaten to bring an action for possession or other civil action primarily because the park resident has:

- (a) Complained in good faith to a governmental agency;
- (b) Exercised or attempted to exercise any right or remedy granted under this chapter;
- (c) Joined with other residents for the purpose of negotiating with the park owner; or
- (d) Become a member or officer of a homeowners' association.”

16. If a park owner takes adverse action within six months after a resident has engaged in protected activity—such as filing complaints, asserting rights under Chapter 723, organizing with other residents, or joining a homeowners’ association—the law creates a rebuttable presumption that the action was retaliatory. See Fla. Stat. § 723.0615(2). The burden then shifts to the park owner to demonstrate that the action was not motivated by retaliation. Florida law

also provides special protections in cases of hardship: courts may extend the time to vacate when necessary to prevent undue hardship, particularly for elderly or disabled tenants. See Fla. Stat. § 723.061(5). These protections reflect the Legislature’s recognition that displacement from a mobile home park often results in the constructive loss of the home itself. Because most mobile homes are not easily relocatable—due to age, expense, or zoning limitations—the loss of lot access often renders the home effectively worthless and uninhabitable.

C. Prospectus as a Binding Safeguard

17. To provide transparency and limit predatory conduct, Chapter 723 requires park owners to deliver a prospectus — a comprehensive disclosure of all terms of tenancy, services, fees, and conditions. This prospectus is not optional: it becomes part of the binding rental contract. See Fla. Stat. § 723.031(10); *Tara Woods SPE, LLC v. Cashin*, 116 So. 3d 492, 498–99 (Fla. 2d DCA 2013).

18. Any change to key terms of tenancy—such as removing water and sewer services from base rent or increasing the rent amount—triggers strict statutory requirements under Chapter 723. Specifically, the park owner must first submit and obtain approval of an amended prospectus from the Florida Division of Condominiums, Timeshares, and Mobile Homes. See Fla. Stat. § 723.031(7). Once approved, the amended prospectus must be delivered to the tenants along with a written 90-day advance notice before any changes may lawfully take effect. See Fla. Stat. § 723.037(1); Fla. Admin. Code R. 61B-31.001(12). These statutory safeguards are designed to ensure that tenants receive meaningful and timely notice of material changes, which is essential given that noncompliance can result in eviction or loss of access to the lot—outcomes that may equate to catastrophic housing loss for mobile home residents.

D. Whispering Pines Mobile Home Park

19. Whispering Pines is an age-restricted (55+) manufactured housing community located at 359 Cheney Highway, Titusville, Brevard County, Florida. The Park comprises approximately 137 home sites and operates primarily under a land-lease model in which most residents own their manufactured homes and lease the underlying lots from the Park owner. These tenancies are

governed by Chapter 723, Florida Statutes (the “Florida Mobile Home Act”), which provides enhanced statutory protections for mobile home owners. See *1987 Prospectus*, Exhibit B; *2022 Prospectus (Approved)*, Exhibit E.

20. The Park offers basic amenities including a clubhouse, laundry facilities, and communal recreational areas. Its population primarily consists of elderly residents and retirees on fixed incomes, as confirmed by resident declarations and Park literature. See *Resident Declarations*, Exhibit U; *Parakeet Management Introduction Letter*, Exhibit F.

21. Plaintiffs Eileen and Brian Posner have resided continuously at Whispering Pines since 2017. They own a manufactured home located at 4910 Clover Lane, and lease the lot upon which it sits. See *Property Record Card for 4910 Clover Ln*, Exhibit H. Because they own their home but lease the land, their tenancy is regulated under Chapter 723, Florida Statutes, and not Chapter 83. This legal status entitles them to protections such as minimum one-year lease terms, limits on rent increases, mandatory notice provisions, and restrictions on eviction or retaliatory conduct. See Fla. Stat. §§ 723.031(4), 723.037, 723.061, 723.0615.

22. While a limited number of Whispering Pines residents may rent both the home and the lot—potentially implicating Chapter 83—Plaintiffs’ tenancy falls squarely within the framework of Chapter 723. This distinction is critical. Unlike Chapter 83, which governs ordinary residential leases, Chapter 723 imposes heightened legal obligations on park owners, including requirements to deliver a Division-approved prospectus, seek regulatory approval for material changes, and provide residents with a minimum 90 days’ notice prior to implementing rent increases or reductions in services. See Fla. Stat. §§ 723.031(7), 723.037; Fla. Admin. Code R. 61B-31.001(12). These obligations form the statutory foundation for the violations alleged herein.

E. Title Defect Undermining WPMH’s Authority

23. On August 3, 1982, Patricia C. Firmat, Linda J. Derwick, and Anne M. Booth conveyed multiple parcels of land in Brevard County, Florida—including the land that would become Whispering Pines—to Whispering Pines of Titusville, Inc. (“WPT Inc.”), a Florida corporation. This transfer was formalized by a warranty deed recorded in the Official Records of Brevard

County at Book 2395, Page 1611, establishing WPT Inc. as the legal titleholder. (*Warranty Deed to WPT Inc.*, Exhibit A).

24. On August 13, 1987, WPT Inc. issued the governing prospectus for Whispering Pines, which set forth the rules and conditions of tenancy, and incorporated statutory restrictions under Chapter 723, Florida Statutes. Among other protections, the 1987 Prospectus barred unilateral rent increases or reductions in services unless approved by the Florida Division of Condominiums, Timeshares, and Mobile Homes (“Division”) and properly delivered to residents. (*1987 Prospectus*, Exhibit B).

25. On August 1, 2011, WPT Inc. filed Articles of Conversion with the Florida Division of Corporations, converting from a Florida corporation into a Florida limited liability company under the new name Whispering Pines of Titusville, LLC (“WPT LLC”). (*Articles of Conversion*, Exhibit C). Although this filing changed the entity’s legal form, Florida law expressly states that a corporate conversion does not, by itself, transfer title to real property. See Fla. Stat. § 607.11933(2)(b). A separate deed or recorded instrument is required to effectuate any such transfer.

26. No deed, corrective instrument, affidavit of title continuity, or other conveyance has ever been recorded transferring title from WPT Inc. to WPT LLC. A certified search of Brevard County’s public land records confirms that legal title remains vested in WPT Inc. and has never lawfully passed to WPT LLC.

27. Nevertheless, on May 14, 2022, WPT LLC executed a warranty deed purporting to convey the Whispering Pines property to Defendant Whispering Pines MH & RV, LLC (“WPMH”), a Delaware entity. (*May 2022 Warranty Deed from WPT LLC to WPMH*, Exhibit D). That deed is facially and legally defective. It lacks a legally sufficient property description, fails to identify or authorize the signatory with appropriate corporate authority, and attempts to transfer property that WPT LLC does not own. Under Florida law, such a deed is void and conveys no interest in real property. See Fla. Stat. §§ 689.01, 695.01.

28. Because constructive notice of real property ownership arises only from properly recorded instruments in the official land records—and not from business entity filings with the Division of Corporations—WPT LLC’s status on Sunbiz or other corporate registries does not

cure the title defect. See *Blanton v. City of Pinellas Park*, 887 So. 2d 1224, 1229 (Fla. 2004); *Suntrust Bank v. Riverside Nat'l Bank*, 792 So. 2d 1222, 1225 (Fla. 4th DCA 2001).

29. As a result, WPMH is not the legal owner of the Park and lacks standing to act as a landlord under Florida law. It has no authority to collect rent, impose rent increases, serve eviction notices, or enforce lease terms under Chapter 723. This defect affects all residents of Whispering Pines—approximately 137 households—including Plaintiffs Eileen and Brian Posner, and raises serious questions as to the enforceability of all rental agreements and prospectuses currently in use at the Park.

F. Unauthorized Rent and Utility Increases and Non-Compliant Notices

30. Before WPMH assumed operational control of Whispering Pines, monthly lot rents for the South Section — where Eileen and Brian Posner reside at 4910 Clover Lane — were approximately \$320 per month, as reflected in historical rent roll data (Exhibit C). Following successive rent increases imposed by WPMH, their lot rent was raised to \$640 per month by November 2024, effectively doubling the original rent amount in under three years without the approval or delivery of a valid amended prospectus, in violation of Chapter 723.

31. Between May 14, 2022, and June 3, 2022, WPMH issued notices announcing rent increases while the 1987 Prospectus (Exhibit B) remained the only governing prospectus on file. That Prospectus prohibits unilateral rent increases absent Division approval and proper delivery to residents. No amended prospectus had been approved or delivered to the Posners during this period (Exhibit B, Ex. 3).

32. On May 18, 2022, Parakeet, the new management company for WPMH, issued a letter to residents — including the Posners — announcing its takeover and intent to modernize operations at the Park (Exhibit F). On June 3, 2022, WPMH submitted and obtained limited Division acknowledgment of an amended 2022 Prospectus that stated 5,000 gallons per month of water and sewer were included in the base rent (Exhibit E, p. 18). However, a conflicting version of the prospectus issued the same day omitted this provision entirely (Exhibit G), creating material ambiguity in violation of Fla. Stat. § 723.012(7).

33. To date, and to the best of Plaintiffs' knowledge, information, and belief, WPMH has never delivered a valid amended prospectus to the Posners, as required by Fla. Stat. § 723.031(7) and Fla. Admin. Code R. 61B-31.001(12).

34. WPMH nevertheless issued the following rent increase notices to the Posners, each without prior approval of a corresponding amended prospectus or proper statutory delivery:

- a. August 1, 2022: WPMH introduced a new three-tier rent structure, raising the Posners' monthly rent from \$320 to \$440, effective November 1, 2022, and removed trash services from the base rent (Exhibit L, Ex. 6).
- b. July 28, 2023: WPMH imposed a second increase, raising the Posners' rent to \$540, effective November 1, 2023, again without delivering an amended prospectus (Exhibit L, Ex. 7).
- c. July 29, 2024: A third notice raised the Posners' rent to \$640, effective November 1, 2024 (Exhibit N, Ex. 9). No amended prospectus was delivered.
- d. February 29, 2024: WPMH issued a notice of a \$220.06 annual property tax pass-on, effective July 1, 2024, again without delivering an amended prospectus or obtaining Division approval (Exhibit: Notice of Increase in Lot Rents.pdf).
- e. February 28, 2025: WPMH issued a further notice imposing a \$242.45 annual property tax pass-on and \$1.13 monthly non-ad valorem charge, based on the increase in 2024 ad valorem taxes compared to the 2021 base year. The notice included contradictory language, describing the \$242.45 as both a recurring monthly charge and a one-time payment due July 1, 2025 (Exhibit Q, Exs. 10–11).

35. On December 1, 2023, WPMH transitioned to the Zego billing platform, which added pro rata trash billing, a 9% electronic payment processing fee (capped at \$5.50), and mandatory online payment requirements. These changes were implemented without an amended prospectus or required written notice, in violation of Chapter 723 (Exhibit I).

36. In March 2025, the Posners submitted two written protest letters objecting to the February 28, 2025 rent increases. The letters cited multiple statutory violations:

- a. Fla. Stat. § 723.031(6): Non-ad valorem assessments (e.g., for stormwater or fire services) do not qualify as "ad valorem property taxes" or "utility charges" and are not authorized for pass-through.

- b. Fla. Stat. § 723.037(2): The \$1.13 non-ad valorem charge was labeled “subject to change pending final property tax assessment,” rendering it impermissibly vague.
- c. Fla. Stat. § 723.012(7) and Rule 61B-31.001(12), F.A.C.: The governing prospectus does not authorize such charges, and no amended prospectus was filed or delivered. The conflicting language in the \$242.45 pass-on notice created ambiguity regarding whether it was a recurring monthly fee or a one-time demand (Exhibit Q).

37. The Posners paid all rent, fees, and pass-through charges under protest, to avoid eviction, expressly reserving their rights to challenge the legality of the charges (Exhibit P). Between November 2022 and March 2025, they consistently paid all amounts due—ranging from \$440 to \$640 in monthly rent, plus utility and administrative fees, trash reimbursements, and property tax pass-ons—under protest and on time (Exhibit P). These coercive charges have continued beyond that period. For example, the June 15, 2025 billing statement (Exhibit V) shows that the Posners were billed \$916.86 for July 1, 2025, consisting of \$640.00 in base rent, \$251.62 in property tax pass-throughs, and \$25.24 in trash and administrative fees—all imposed without a valid amended prospectus or lawful title authority.

38. All conditions precedent to bringing this action have been satisfied, waived, or excused.

V. CAUSES OF ACTION

COUNT I:

Declaratory Judgment (Fla. Stat. § 86.011)

39. Plaintiffs Eileen and Brian Posner repeat and re-allege the allegations contained in paragraphs 1 through 38, above, as if fully set forth herein.

40. An actual, present, and adverse controversy exists between the Plaintiffs and Defendant WPMH concerning their respective rights and obligations under Florida law. Specifically, Plaintiffs are in doubt as to:

- a. Whether WPMH has any legal authority to act as landlord, demand or collect rent, issue notices, or enforce lease terms given the absence of a recorded deed transferring legal title;

- b. Whether WPMH may impose rent increases or pass-through charges without first obtaining Division approval and delivering a valid amended prospectus as required by Fla. Stat. §§ 723.031(7) and 723.037 and Rule 61B-31.001(12), F.A.C.;
- c. Whether the current governing prospectus remains the 1987 Prospectus (Exhibit B), or whether any superseding prospectus has been lawfully adopted or delivered.

41. Plaintiffs seek a judicial declaration under Fla. Stat. § 86.011 et seq. to resolve these controversies. Specifically, Plaintiffs request a determination that:

- a. The 1987 Prospectus remains the only valid and binding disclosure document governing the terms of tenancy, and no valid amended prospectus has been approved by the Division or delivered to residents, as required by Fla. Stat. § 723.031(7) and Rule 61B-31.001(12), F.A.C.
- b. Defendant WPMH lacks standing or legal authority to act as landlord under Chapter 723, Florida Statutes, due to the absence of any recorded deed conveying legal title from the prior owner and in violation of Fla. Stat. §§ 689.01 and 695.01.
- c. All charges, lease amendments, rent increases, and other conduct by WPMH that occurred without a valid Division-approved and delivered prospectus are ultra vires, void, and unenforceable under Fla. Stat. §§ 723.031(6)–(7), 723.037, and 723.012(7), and Fla. Admin. Code R. 61B-31.001(12).
- d. Plaintiffs lack an adequate remedy at law, and the continuing imposition of unlawful or ambiguous charges creates irreparable harm and coercive pressure to pay under protest, threatening their housing security.

42. Plaintiffs have an actual, present, and adverse interest in the subject matter. A bona fide dispute exists over whether Defendant has any enforceable landlord rights under Chapter 723 given the defects in title, lack of proper prospectus delivery, and statutory noncompliance. No other remedy at law provides the necessary clarity. A declaratory judgment is therefore essential to resolve uncertainty and protect Plaintiffs from further coercion, unlawful rent increases, and retaliatory enforcement. The relief sought here mirrors the structure approved in *Abner v. Mobile*

Home Park Mgmt., Inc., and is necessary to define the parties' rights and obligations under state law.

WHEREFORE, Plaintiffs Eileen and Brian Posner respectfully request that this Court enter a declaratory judgment in their favor, declaring that Defendant WPMH lacks legal title to the Park and may not lawfully collect rent or enforce lease provisions; that the 1987 Prospectus remains binding and controlling; and that all subsequent rent increases, fees, and lease amendments imposed without statutory compliance are null and void.

This declaratory relief is sought pursuant to Fla. Stat. § 86.021, as Plaintiffs are in doubt as to their legal and equitable rights and obligations concerning tenancy, rent enforcement, and title to the real property at issue. A present, actual controversy exists, and Plaintiffs have no adequate remedy at law.

COUNT II:

**Violation of the Florida Mobile Home Act
(Fla. Stat. § 723.001 et seq.)**

43. Plaintiffs Eileen and Brian Posner repeat and re-allege the allegations contained in paragraphs 1 through 38, above, as if fully set forth herein.

44. Plaintiffs are “mobile home owners” within the meaning of Fla. Stat. § 723.003(12), owning their manufactured home and leasing the lot from the Park operator.

45. Defendant WPMH operates a “mobile home park” within the meaning of Fla. Stat. § 723.003(6), and is subject to all obligations imposed by the Florida Mobile Home Act (“FMHA”), Fla. Stat. § 723.001 et seq.

46. The FMHA imposes statutory duties on park owners, including but not limited to:

- a. Delivering a Division-approved prospectus prior to occupancy and amending it only with Division approval and proper tenant delivery. Fla. Stat. §§ 723.031(7), 723.037; Fla. Admin. Code R. 61B-31.001(12).
- b. Prohibiting unauthorized rent or fee increases not specified in the governing prospectus. Fla. Stat. §§ 723.012(7), 723.031(6).

- c. Requiring legal standing, including record title, to enforce rental obligations and lease terms. Fla. Stat. §§ 689.01, 695.01.
 - d. Prohibiting retaliatory conduct against homeowners exercising statutory rights. Fla. Stat. § 723.0615.
47. Defendant WPMH violated these provisions by:
- a. Collecting rent and enforcing lease obligations while lacking legal title to the property (Exhibits A, D), in violation of Fla. Stat. §§ 689.01 and 695.01.
 - b. (b) Imposing three successive rent increases (from \$320 to \$640/month), property tax pass-ons, and other charges between 2022 and 2025 without a Division-approved and delivered prospectus, in violation of Fla. Stat. §§ 723.031(6)–(7), 723.037, and Fla. Admin. Code R. 61B-31.001(12) (Exhibits L, N, Q). These unlawful charges have continued beyond the initial period. For example, between 2022 and 2024, Plaintiffs were overcharged a total of \$6,720 in lot rent alone—comprised of \$240 in 2022, \$2,640 in 2023, and \$3,840 in 2024—based solely on rent increases that lacked statutory authority. In addition, the June 15, 2025 billing statement (Exhibit V) shows that WPMH demanded \$916.86 from Plaintiffs for July 1, 2025, including \$640 in rent, \$251.62 in property tax pass-ons, and \$25.24 in trash and administrative fees—none of which were disclosed or authorized in a compliant prospectus. *This pattern of unauthorized billing continues as of at least July 2025.*
 - c. Failing to include or omitting material terms (e.g., water/sewer inclusion) in the prospectus, or providing conflicting versions, in violation of Fla. Stat. § 723.012(7) (Exhibits E, G).
 - d. Engaging in retaliatory conduct against Plaintiffs for protected organizing and legal activity, including issuing cease-and-desist threats and initiating a meritless Florida Bar complaint against their counsel, in violation of Fla. Stat. § 723.0615 (Exhibits J, K, A.7).
 - e. Obstructing Plaintiffs’ statutory rights through ambiguous billing changes and failure to deliver written protestable notices, contrary to Fla. Stat. §§ 723.037 and 723.031.
48. As a direct and proximate result of these statutory violations, Plaintiffs Eileen and Brian Posner have suffered substantial harm, including: financial injury in the form of overpayments totaling \$15,391.22 made under protest—including \$6,720 in base rent overcharges between

2022 and 2024—emotional distress, reputational harm, and anxiety resulting from coerced payments, unlawful notices, and retaliatory conduct; disruption of legal access, including the loss of legal representation and delays in asserting protected statutory claims; and continuing vulnerability to further economic and legal harm due to WPMH’s ongoing noncompliance with Chapter 723.

WHEREFORE, Plaintiffs Eileen and Brian Posner respectfully request that this Court enter judgment against Defendant Whispering Pines MH & RV, LLC and: award compensatory damages for financial harm and statutory violations; grant declaratory and injunctive relief enforcing compliance with Chapter 723; award statutory damages pursuant to Fla. Stat. § 723.068; award reasonable attorneys’ fees and costs; and enter a permanent injunction prohibiting Defendant from collecting rent, issuing rent increases, pursuing evictions, or otherwise engaging in conduct inconsistent with Chapter 723 until legal title and prospectus compliance are lawfully resolved, along with such other and further relief as the Court deems just and proper.

**COUNT III:
Civil Theft
(Violation of Fla. Stat. § 772.11)**

49. Plaintiffs Eileen and Brian Posner repeat and re-allege the allegations contained in paragraphs 1 through 38, above, as if fully set forth herein.

50. Under Fla. Stat. § 772.11, any person who knowingly obtains or uses, or endeavors to obtain or use, the property of another with the intent to either temporarily or permanently deprive that person of a right to the property or a benefit therefrom, or to appropriate the property to their own use, commits theft as defined in Fla. Stat. §§ 812.012(3)(c) and 812.014. Victims of such theft may recover treble damages, attorneys’ fees, and costs in a civil action, provided a written demand for return of the property is served at least 30 days prior to filing suit.

51. Between November 2022 and March 2025, Defendant Whispering Pines MH & RV, LLC (“WPMH”) collected \$15,391.22 in lot rent and related charges from Plaintiffs, who paid under protest and expressly reserved their rights (Exhibit P). This total includes \$6,720 in base rent

overcharges for the years 2022 through 2024, calculated by comparing actual monthly payments to the amount lawfully permitted under the governing 1987 Prospectus.

52. WPMH collected these sums without legal entitlement. It relied on a May 14, 2022 warranty deed issued by Whispering Pines of Titusville, LLC—an entity that never held record title to the Park. The deed was facially defective and legally insufficient to convey ownership (Exhibits A, D).

53. WPMH further violated Chapter 723 by failing to deliver an amended and Division-approved prospectus prior to imposing rent increases and pass-through charges. These omissions rendered the rent and surcharges unlawful under Fla. Stat. §§ 723.031(7), 723.037, and Fla. Admin. Code R. 61B-31.001(12) (Exhibits E, G, Q).

54. Despite lacking legal title and failing to comply with statutory notice and disclosure requirements, WPMH continued to demand payment through threat of eviction, cease-and-desist letters, and mandatory electronic billing protocols (Exhibits J, K, O).

55. On April 3, 2025, the Posners issued a formal civil theft demand under Fla. Stat. § 772.11, requesting return of the \$15,391.22 unlawfully collected, along with treble damages and \$20,000 in consequential losses (Exhibit R).

56. The demand cited WPMH's lack of recorded title, failure to deliver a compliant prospectus, and retaliatory interference with the Posners' legal representation—including a knowingly false Florida Bar complaint filed against their attorney (Exhibits R, A.1, A.2).

57. The demand was delivered via certified mail on April 7, 2025 (Exhibit S). WPMH failed to return the funds or otherwise respond.

58. As a direct and proximate result of WPMH's unlawful conduct, the Posners have suffered substantial harm, including monetary loss in the amount of \$15,391.22, including \$6,720 in rent overcharges from 2022 to 2024 alone; emotional distress, reputational harm, and anxiety stemming from coerced payments and retaliatory actions; disruption of their legal access, including the loss of representation and a resulting delay in pursuing this action; and continued economic and legal vulnerability caused by WPMH's ongoing noncompliance with statutory requirements.

59. Pursuant to Fla. Stat. § 772.11, Plaintiffs Eileen and Brian Posner are entitled to recover treble damages in the amount of \$46,173.66, plus consequential damages for emotional distress, reputational harm, and obstruction of legal representation. They also seek recovery of all reasonable attorneys' fees, litigation costs, and both pre- and post-judgment interest as provided by law.

WHEREFORE, Plaintiffs Eileen and Brian Posner respectfully request that this Court enter judgment against Defendant Whispering Pines MH & RV, LLC and: (a) award treble damages pursuant to Fla. Stat. § 772.11 in the amount of \$46,173.66; (b) award consequential damages resulting from emotional distress, reputational harm, and interference with legal representation; (c) award reasonable attorneys' fees, litigation costs, and pre- and post-judgment interest as provided by law; (d) enter a permanent injunction prohibiting Defendant from collecting rent, issuing rent increases, pursuing evictions, or otherwise engaging in conduct inconsistent with Chapter 723 until legal title and prospectus compliance are lawfully achieved; and (e) grant such other and further relief as the Court deems just and proper.

COUNT IV:

**Violation of Florida Deceptive and Unfair Trade Practices Act (FDUTPA)
Fla. Stat. § 501.201 et seq.**

60. Plaintiffs Eileen and Brian Posner repeat and re-allege the allegations contained in paragraphs 1 through 38, above, as if fully set forth herein.

61. This is an action for damages, declaratory, and injunctive relief under the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201 et seq.

62. At all times material, Plaintiffs were "consumers" as defined under Fla. Stat. § 501.203(7), as they were natural persons who paid money for housing-related services primarily for personal and household purposes.

63. Defendant WPMH was engaged in "trade or commerce" within the meaning of Fla. Stat. § 501.203(8) by operating Whispering Pines Mobile Home Park and collecting rent, utilities, and related housing charges from residents, including Plaintiffs.

64. Defendant WPMH engaged in unfair and deceptive practices prohibited under Fla. Stat. § 501.204(1), including:

- a. ***False Representation of Ownership:*** Misrepresenting itself as the lawful titleholder of the Park while knowingly lacking recorded legal title, in violation of Fla. Stat. §§ 689.01, 695.01 (Exhibits A, D);
- b. ***Unlawful Rent Collection:*** Collecting rent, property tax pass-throughs, and other fees without complying with Fla. Stat. § 723.031(7) and Fla. Admin. Code R. 61B-31.001(12), including failure to deliver an amended and Division-approved prospectus to Plaintiffs (Exhibits E, F, G, L, N, Q);
- c. ***Ambiguous and Unapproved Charges:*** Imposing conflicting and unauthorized charges, including a \$242.45 annual property tax pass-on that was simultaneously described as a one-time payment, in violation of Fla. Stat. § 723.012(7) and § 723.037 (Exhibit Q);
- d. ***Retaliatory Legal Threats and Interference:*** Engaging in coercive conduct, including threats of eviction and filing a knowingly baseless Florida Bar complaint against Plaintiffs' attorney to interfere with protected legal rights under Fla. Stat. § 723.0615 (Exhibits A.7, J, K).

65. Defendant's conduct also constitutes per se violations of FDUTPA under Fla. Stat. § 501.203(3)(c) by violating specific regulatory statutes, including but not limited to:

- a. Fla. Stat. § 723.031(7) (prospectus delivery requirements);
- b. Fla. Stat. § 723.037 (notice before rent increases);
- c. Fla. Stat. § 723.012(7) (clarity of rental charges);
- d. Fla. Admin. Code R. 61B-31.001(12) (amendments must be approved and delivered);
- e. Fla. Stat. § 723.0615 (prohibition on retaliation).

66. Plaintiffs Eileen and Brian Posner paid \$15,391.22 in rent and related charges under protest from November 2022 through March 2025 (Exhibit P), including \$6,720 in base rent overcharges across 2022 (\$240), 2023 (\$2,640), and 2024 (\$3,840). They suffered additional harm including emotional distress, obstruction of legal representation, and deprivation of statutory protections.

WHEREFORE, Plaintiffs Eileen and Brian Posner respectfully request that this Court enter judgment against Defendant Whispering Pines MH & RV, LLC, and: (a) award actual damages pursuant to Fla. Stat. § 501.211(2); (b) grant declaratory and injunctive relief pursuant to Fla. Stat. § 501.211(1); (c) award reasonable attorneys’ fees and costs pursuant to Fla. Stat. § 501.2105; and (d) enter a permanent injunction prohibiting Defendant from collecting rent, issuing rent increases, pursuing evictions, or otherwise engaging in conduct inconsistent with Chapter 723 until legal title and prospectus compliance are lawfully achieved.

COUNT V:

Violation of the Florida Consumer Collection Practices Act (FCCPA)

Fla. Stat. § 559.72(9)

67. Plaintiffs Eileen and Brian Posner repeat and re-allege the allegations contained in paragraphs 1 through 38, above, as if fully set forth herein.

68. Plaintiffs Eileen and Brian Posner are each a “consumer” within the meaning of Fla. Stat. § 559.55(8), as natural persons allegedly obligated to pay rent, fees, and charges for the lot they lease at Whispering Pines for personal, family, or household use.

69. Defendant Whispering Pines MH & RV, LLC (“WPMH”) is a “person” subject to the FCCPA, engaged in the collection of consumer debt within the meaning of Fla. Stat. §§ 559.55(2) and 559.72.

70. Plaintiffs were “the object of collection activity” arising from consumer debt, including demands for monthly lot rent, administrative utility fees, pass-through tax charges, and miscellaneous billing fees from WPMH between November 2022 and March 2025.

71. At all relevant times, WPMH lacked legal authority to collect rent or fees from the Posners due to its failure to hold recorded title to the Park property (Exhibits A, D), and its failure to deliver an amended prospectus as required by Fla. Stat. § 723.031(7) (Exhibits E, G, P, Q).

72. Notwithstanding its lack of authority, WPMH issued billing statements, rent increase notices, and payment demands on at least five occasions between 2022 and 2025, all of which were paid by the Posners under protest (Exhibit P), including:

- a. August 1, 2022 – rent increased from \$320 to \$440/month without delivery of a valid prospectus (Exhibit L, Ex. 6);
- b. July 28, 2023 – rent increased to \$540/month (Exhibit L, Ex. 7);
- c. July 29, 2024 – rent increased to \$640/month (Exhibit N, Ex. 9);
- d. February 29, 2024 – \$220.06 annual property tax pass-on imposed;
- e. February 28, 2025 – additional increase of \$242.45/month plus \$1.13/month in non-ad valorem assessments (Exhibit Q).

73. WPMH’s rent and fee demands were not based on a valid prospectus, were issued without Division approval, and were unsupported by a lawful right to collect under Chapter 723 or recorded land title, as required by Fla. Stat. §§ 723.031, 723.037, 689.01, and 695.01. These demands continued into 2025. For example, the June 15, 2025 billing statement (Exhibit V) constitutes a communication attempting to collect \$916.86 in charges due July 1, 2025—including rent, property tax pass-throughs, and utility/admin fees—despite WPMH’s continuing lack of statutory authority and valid title. The statement itself expressly declares: *“The purpose of this communication is to collect a debt.”*

74. These facts establish a continuing violation of Fla. Stat. § 559.72(9), which prohibits any person from “[c]laim[ing], attempt[ing], or threaten[ing] to enforce a debt when such person knows that the debt is not legitimate or assert[s] the existence of some other legal right when such person knows that the right does not exist.” WPMH has continued to issue collection demands—such as the June 15, 2025 billing statement (Exhibit V)—despite its longstanding and unresolved lack of recorded title and failure to deliver a compliant prospectus. These facts support the conclusion that WPMH knew, or should have known, that it had no legitimate legal basis to impose or collect these charges.

75. WPMH knew, or should have known, that it had no lawful right to collect rent or impose additional charges on the Posners during the period from May 2022 through March 2025, given the known title defect and statutory restrictions.

76. As a direct and proximate result of WPMH’s violations of Fla. Stat. § 559.72(9), Plaintiffs have suffered actual damages, including the coerced payment of \$15,391.22 under protest between 2022 and 2025 (Exhibit P), with \$6,720 of that amount representing overcharges on base rent in 2022, 2023, and 2024. Unlawful charges have continued thereafter—such as the \$916.86 billing demand for July 1, 2025 (Exhibit V). Plaintiffs have also endured emotional

distress, fear of eviction, and interference with their access to legal counsel. They are entitled to actual and statutory damages, prejudgment interest, reasonable attorneys' fees, and litigation costs under Fla. Stat. § 559.77.

WHEREFORE, Plaintiffs Eileen and Brian Posner respectfully request that this Court enter judgment against Defendant Whispering Pines MH & RV, LLC, and:

- A. Award statutory damages of \$1,000 per violation pursuant to Fla. Stat. § 559.77(2);
- B. Award actual damages in the amount of \$15,391.22 for sums paid under protest (Exhibit P), and any additional amounts billed thereafter, including the \$916.86 reflected in the June 15, 2025 billing statement (Exhibit V);
- C. Award prejudgment interest on all unlawfully collected sums;
- D. Award reasonable attorneys' fees and litigation costs pursuant to Fla. Stat. § 559.77(2);
- E. Enter a permanent injunction prohibiting Defendant from collecting rent, issuing rent increases, pursuing evictions, or otherwise engaging in conduct inconsistent with Chapter 723 until recorded title and prospectus compliance are fully resolved;
- F. Grant such other and further relief as this Court deems just and proper.

COUNT VI:

Retaliation

(Violation of Fla. Stat. § 723.0615)

77. Plaintiffs Eileen and Brian Posner repeat and re-allege the allegations contained in paragraphs 1 through 38, above, as if fully set forth herein.

78. Section 723.0615, Florida Statutes, prohibits a mobile home park owner from retaliating against a resident for engaging in any activity protected under Chapter 723. Specifically, it is unlawful for a park owner to discriminatorily increase rent, decrease services, or initiate or threaten any legal action primarily because the resident has:

- a. Complained in good faith to a governmental agency;
- b. Exercised or attempted to exercise any right or remedy under Chapter 723;

- c. Joined with other residents to negotiate with the park owner; or
- d. Become a member or officer of a homeowners' association.

79. Pursuant to Fla. Stat. § 723.0615(2), if any such adverse action is taken within six months of a protected activity, a rebuttable presumption arises that the conduct was retaliatory. The burden then shifts to the park owner to demonstrate a legitimate, non-retaliatory reason for its action.

80. Between late 2022 and 2025, Plaintiffs Eileen and Brian Posner engaged in multiple forms of protected activity under Fla. Stat. § 723.0615, including:

- a. Organizing with other residents to explore the formation of a homeowners' association under Fla. Stat. § 723.075;
- b. Retaining legal counsel to investigate and challenge Defendant's statutory violations, including unauthorized rent increases, noncompliant prospectuses, and improper billing practices; and
- c. Submitting two formal written protest letters in March 2025 challenging unlawful rent and tax pass-through charges and citing specific violations of Fla. Stat. §§ 723.031, 723.037, and applicable administrative rules.

81. In direct response to the Posners' protected activities, Defendant Whispering Pines MH & RV, LLC ("WPMH"), acting through its attorney Lovings, its park manager Skelly, and its collections agent Vector, engaged in a pattern of retaliatory conduct that was designed to silence, intimidate, and punish the Posners for asserting their legal rights. These retaliatory acts included:

- a. On January 6 and February 16, 2023, attorney Lovings issued two cease-and-desist letters to Eileen Posner falsely accusing her of defamation, harassment, and "disruptive conduct," and threatening eviction for her role in organizing an HOA and raising concerns about Park conditions and compliance (Exhibits J & K).
- b. On April 23, 2024, WPMH, through Lovings and Skelly, filed a Florida Bar complaint against the Posners' attorney, George Gingo, alleging a conflict of interest. The complaint was filed within six months of the Posners' retention of counsel and HOA organizing efforts in late 2023, triggering the statutory presumption of retaliation under Fla. Stat. § 723.0615(2). The Bar complaint was dismissed on February 26, 2025, with a formal finding of no probable cause and no conflict (Exhibit A.7).
- c. The filing of the Bar complaint forced Mr. Gingo to withdraw from representing the Posners, derailing their planned class action litigation under Chapter 723 and

the Florida Consumer Collection Practices Act (FCCPA), and substantially weakening tenant organizing efforts at the Park.

82. WPMH's retaliatory conduct was intended to obstruct the Posners' legal access, suppress tenant advocacy, and chill further protected organizing. Because WPMH took these adverse actions within six months of Plaintiffs' protected activities—including HOA organizing and legal counsel retention—it is presumed under Fla. Stat. § 723.0615(2) that such conduct was retaliatory. WPMH has not rebutted this presumption or produced any credible, non-retaliatory justification for its actions.

83. As a direct and proximate result of WPMH's retaliatory actions, the Posners suffered significant harm, including emotional distress, anxiety, and reputational injury; loss of legal representation and interference with their protected right to counsel; delays in asserting their statutory and contractual rights; chilling and suppression of their organizing and advocacy efforts under Chapter 723; and damage to the momentum and cohesion of the tenant community they sought to support.

WHEREFORE, Plaintiffs Eileen and Brian Posner respectfully request that this Court enter judgment against Defendant Whispering Pines MH & RV, LLC, and:

- A. Declare that Defendant's conduct violated Fla. Stat. § 723.0615;
- B. Award compensatory damages for emotional distress, reputational harm, interference with legal access, and delay in asserting protected rights;
- C. Award statutory damages pursuant to Fla. Stat. §§ 723.0615 and 723.068;
- D. Award reasonable attorneys' fees and costs pursuant to Fla. Stat. § 723.068;
- E. Enter a permanent injunction pursuant to Fla. Stat. § 723.0615(4) prohibiting Defendant from engaging in further retaliatory conduct against Plaintiffs or others similarly situated;
- F. Enter a permanent injunction prohibiting Defendant from collecting rent, issuing rent increases, pursuing evictions, or engaging in conduct inconsistent with Chapter 723 until legal title and prospectus compliance are lawfully achieved;
- G. Grant such other and further relief as this Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

84. Plaintiffs demand a trial by jury on all triable issues.

/s/ George Gingo

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