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Case No. 2025-1116-DH

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE MALLARD LAKE COMMUNITY ASSOCIATION, INC.,	)	
Plaintiff,	)	C.A. No. 2025-1116-DH
v.	)	
SIMONE REBA,	)	
Defendant.	)	

PLAINTIFF THE MALLARD LAKE COMMUNITY ASSOCIATION, INC.'S ANSWERING BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND FOR FEES AND PUNITIVE DAMAGES

Dated: March 16, 2026

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INTRODUCTION

Defendant's Motion (as defined below) overreaches considerably. In her effort to dismiss Plaintiff's amended complaint (the "Amended Complaint"; D.I. 15) in this action, Defendant spills a great deal of ink shadowboxing with strawman opponents. Defendant focuses entirely on "core political speech" that Plaintiff has never attempted to stifle and resists the imposition of a "gag order" that Plaintiff has never sought. Plaintiff is not "trying to stop one of its residents from engaging in public commentary and core political speech." Further, despite the urging of repeated mischaracterizations of the Amended Complaint throughout Defendant's Opening Brief, Plaintiff has never objected "to the fact that Reba…has sought political solutions to the community's flooding issues," nor is Plaintiff "attempting to silence those with whom it disagrees." Rather, Plaintiff seeks only to protect its legitimate interest in controlling who speaks or purports to speak on the Association's behalf to, *inter alia*, avoid potentially irreparable harm which may flow from the apparent authority of individual homeowners to bind the Association.[1]

Defendant's *Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6) and UPEPA and for Fees and Punitive Damages* (the "Motion," originally styled only as a *Motion to Dismiss*; D.I. 18) should be denied in its entirety, including any

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Amended Complaint.

request for fees and/or punitive damages.

Defendant's effort to convert this case into a referendum on "core political speech" mischaracterizes the pleadings and ignores that courts may enjoin misleading claims of agency that interfere with established organizational governance and create concrete risks of imminent harm. At the pleading stage, the Amended Complaint states reasonably conceivable claims for targeted relief. UPEPA does not bar those claims and does not warrant fee shifting or punitive damages.

FACTUAL BACKGROUND

The facts relevant at this procedural stage are those set forth in the Amended Complaint and in documents incorporated by reference therein, and the Court should disregard other purported facts in the Opening Brief that are not drawn from the Amended Complaint. In the interest of brevity, Plaintiff will not restate all of the Amended Complaint's factual allegations here.

The Association is governed by the Governing Documents, and all Unit Owners in the Condominium take their Units subject to the Governing Documents, which form a contract between the unit owners. Amd. Compl. ¶ 8. Individual unit owners are not responsible for the maintenance or repair of the structural elements of the Condominium and may not commit the Association to any obligations related to the common elements. *Id.* ¶ 9.

Additionally, any application to a governmental authority for a permit to make changes to a common element must be executed by the Council, not by individual owners. *Id*. ¶ 11. The authority to make improvements to the common elements, and to raise or expend funds for such purposes, is vested exclusively in the Council, acting on behalf of the Association. *Id*. Any attempt by an individual owner to independently make improvements to the buildings or to raise money from third parties, including government grants, for such improvements is expressly prohibited and constitutes a violation of the Governing Documents. *Id*.

By reason of the foregoing, any act by a unit owner to undertake or authorize maintenance, repair, or improvement of the common elements, including the structural elements of the buildings, or to solicit or accept funds from third parties or government sources for such purposes, without the express authorization of the Council, is *ultra vires*, in direct violation of the Declaration and Code, and subject to enforcement action by the Association. *Id*. ¶ 12.

As described more fully in the Amended Complaint, the Condominium has long experienced issues with tidal flooding. *See id*. ¶¶ 15-24. The Association is hopeful that a governmental solution to the water flow issues will present itself through future governmental programs. *Id*. ¶ 24. Until that occurs, the Association is maintaining good working relationships with all governmental agencies and is constantly seeking the advice of professionals and government officials to mitigate

and reduce flood risks. *Id*.

The Defendant openly admits that she purchased her Unit in 2023 sight unseen based on listing photographs and only learned during her post-closing physical visit to the community that her building is constructed on pilings and that water from the tidal lake on the premises encroaches beneath the building on a frequent basis. *Id*. ¶ 27. After learning of the proximity of water to the Unit, the Defendant began to undertake an aggressive campaign to obtain governmental intervention related to the tidal water. *Id*. Since that time, Defendant has engaged in a pattern of holding herself out to federal and state agencies, local government representatives, elected officials, and other third parties as someone who speaks on behalf of the Association or the Council. *See id*. ¶¶ 28-37.

At a recent public hearing in Sussex County on July 15, 2025, Defendant improperly and confusingly represented herself as speaking for the Association and/or the community as a whole rather than as an individual homeowner speaking only for herself. *Id*. ¶ 30. She spoke between 1:48 and 5:00 of the 2:19:19 recording of the hearing and requested a $500,000 grant for the Association to cover the cost of a civil engineering study and other undertakings that had never been approved by the Association or Council. *Id*. Notably, Defendant said during those remarks:

(a) at 2:08 – "…Thank you…for meeting with **us**."

(b) at 2:18 – that she wants to "restate **our** discussion and ask for

your help…."

(c) at 2:47 – "**We** know real solutions aren't cheap."

(d) at 2:55 – "…**We** need a clear plan."

(e) at 3:27 – "If **we** can secure [funding]…."

(f) at 4:00 – "**We** would potentially require a 10% cost-share to the non-federal partner."

(g) at 4:22 – "**We** respectfully ask…."

(h) at 4:37 – "…**We** ask you…."

Id. Defendant beginning her remarks by identifying herself as a Unit Owner in the Condominium is hardly a "disclaimer" at all when every member of the Association and Council are necessarily Unit Owners and does nothing to disambiguate the Defendant's status as a single homeowner with no official role in the Association from a Unit Owner with apparent authority to speak for and potentially bind the Association.

Moreover, Defendant's requests to the Sussex County Council are requests that can only be properly made by the Association's Council and not by a homeowner who holds no position within the Association and has no authority to request anything on its behalf. Amd. Compl. ¶ 31. Defendant owns a single unit within a building containing several other connected units. *Id*. ¶ 32. There is not a scenario where a government entity could award grant funds or some other form of

funding to address tidal water issues affecting Defendant's unit alone, and Defendant would have no authority to approve any expenditure of funds that she might succeed in getting awarded anyway. *Id*. Accordingly, any time Defendant requests that the government take action to provide funds for addressing tidal water issues at Mallard Lakes (as she did during the Sussex County Council meeting) she is improperly requesting those funds on behalf of the Association and community as a whole *by necessity*. *Id*.

Further, on or about April 1, 2025, Defendant contacted University of Delaware staff via email concerning funding sources for tidal water remediation, repeatedly referring to "we" and directing the recipients to "our website," which was her unofficial Website. *Id*. ¶ 33. She then followed up on that correspondence with emails to DNREC officials regarding "our engineering study." *Id*. Upon information and belief, Defendant has contacted and continues to contact public officials falsely implying that she speaks on behalf of the Association. *Id*. ¶ 34.

While Defendant is certainly free to espouse her own opinions and speak in her own self-interest in accordance with her acknowledged First Amendment right, and the Association does not seek to infringe upon that right, Defendant is not entitled to cause harm to the community by falsely implying that she is speaking on behalf of the Association, the Council, or some nonexistent coalition of the unit owners generally. *Id*. ¶ 35. Defendant's actions have harmed the reputation of the

Association, created confusion about who is authorized to speak for the Association, and made future discussions with or requests to relevant government agencies unquestionably more difficult for the Association. *Id*. ¶ 36.

Contrary to unfounded assertions in the Opening Brief, the Association did not "[sit] on its hands and [do] nothing with respect to the flooding issue." Similarly, Plaintiff's Motion to Expedite and Motion for Preliminary Injunction were not "an attempt to run up litigation costs," and Plaintiff in fact saved the parties' further litigation costs by withdrawing them. Notably, Defendant has since sought to expedite the proceedings (*see* D.I. 19) and multiplied the proceedings with unfounded assertions of UPEPA violations and requests for fees and punitive damages.

ARGUMENT

Preliminarily, Plaintiff has made clear to Defendant that it is willing to agree to a status quo order or voluntarily dismiss Count I of the Amended Complaint without prejudice, which seeks injunctive relief, and seek to transfer the remaining legal claims to Superior Court to be resolved. While discussions continue, the parties have not yet reached a more global agreement to narrow the dispute. Putting aside the issue of injunctive relief, Defendant's Opening Brief completely fails to engage with Count II of the Amended Complaint and explain why Plaintiff is not entitled to declaratory relief confirming that Defendant has no authority to speak on behalf of

the Association or Council under the Condominium's Governing Documents and applicable Delaware statutory law. To the extent Defendant's Motion seeks the dismissal of Count II but fails to address Count II, it must be denied and, given that Plaintiff has at the very least stated a claim under Count II, Defendant is not entitled to any relief or damages under UPEPA.

I. Standards of Review

a. Rule 12(b)(1)

At the pleading stage, this Court "must review the request for injunctive relief to be sure there is a reasonable, non-speculative concern about future harm. Thus, in the pleading the plaintiff must state a reasonably conceivable claim that the wrongs complained of are likely to be continued unless restrained." *HB Next LLC v. Goodman*, 2025 WL 3174629, at *6 (Del. Ch. Oct. 31, 2025) (citing *Kroll v. City of Wilm.*, 2023 WL 6012795, at *4-5 (Del. Ch. Sept. 15, 2023); *In re COVID-Related Restrictions on Religious Servs.*, 285 A.3d 1205, 1233 (Del. Ch. 2022)) (internal quotations omitted).

b. Rule 12(b)(6)

"The governing pleading standard in Delaware to survive a motion to dismiss is reasonable conceivability." *Los Angeles City Employees' Ret. Sys. v. Sanford*, 2026 WL 125986, at *13 (Del. Ch. Jan. 16, 2026) (quoting *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Hldgs. LLC*, 27 A.3d 531, 536 (Del. 2011)) (internal

quotations omitted). "When considering a motion under Rule 12(b)(6), the court must 'accept all well-pleaded factual allegations in the [c]omplaint as true ..., draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.' " *Id*. (quoting *Cent. Mortg. Co.*, 27 A.3d at 536). "The court, however, need not 'accept conclusory allegations unsupported by specific facts or ... draw unreasonable inferences in favor of the non-moving party.' " Id. (quoting *Price v. E.I. du Pont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011), overruled on other grounds by *Ramsey v. Georgia S. Univ. Advanced Dev. Ctr.*, 189 A.3d 1255, 1277 (Del. 2018)).

II. Defendant's UPEPA Arguments Misstate This Case and Must Fail

Defendant is correct that case law in Delaware interpreting UPEPA appears to be non-existent, and Defendant is also correct that UPEPA is an "anti-SLAPP" law intended to address the problem of "strategic lawsuits against public participation" (*i.e.*, lawsuits which serve no purpose except to have a chilling effect on protected speech). Where Defendant is entirely wrong is in her assertions that the "Amended Complaint falls squarely within the scope of UPEPA" and that "It is more [sic] difficult to conceive of a set of facts to which UPEPA would be more applicable." One such set of facts would be a case where the plaintiff *was actually trying to stifle the defendant's core political speech*, but that is not this case.

UPEPA applies to certain claims based on communications with government or on matters of public concern and provides a procedural screening, but it directs courts to consider the pleadings and materials it might consider at the summary judgment stage of the case, and to dismiss only if the plaintiff fails to establish a prima facie case or fails to state a claim. Here, Plaintiff has made out a prima facie case and stated a claim, and UPEPA does not counsel in favor of dismissal or awarding any damages to Defendant.

Defendant's UPEPA theory presumes that the Association has sued her because it dislikes her policy advocacy. Not so. The Association challenges specific, repeated misrepresentations of organizational authority and affiliation in dealings with officials and the public that risk concrete governance harms. The Association's claims are not barred merely because the misstatements occur in public fora, and UPEPA does not immunize misrepresentations of identity or source (*e.g.*, repeatedly speaking in public fora using plural pronouns which not only have the potential to create confusion about Defendant's role or authority but have actually created that confusion, and making requests for funding that can only appropriately be made by the Council on behalf of the Association). SLAPP lawsuits are traditionally filed in advance of a scheduled public hearing with the strategic intent of suppressing anticipated speech by the targeted party. The timing of SLAPP suits is rarely coincidental. Unlike here, SLAPP suits are typically initiated when the filer becomes

aware that an individual or group intends to speak, testify, or otherwise participate in an upcoming government proceeding in which the party has an interest with the very purpose of chilling public participation before it can occur.

Yet, in this action there is no upcoming hearing or scheduled public event to target. Plaintiff has made it abundantly clear in these proceedings that it takes issue only with statements by the Defendant that falsely imply she speaks for the Association or the Mallard Lakes community at large. Plaintiff has not sought to restrain Defendant from contacting or petitioning her government representatives, speaking in public fora about flood mitigation, or criticizing the Association or Council. Plaintiff has sought to prevent Defendant from stating or implying that she speaks for the Association and to require clear, accurate source identification in her controlled media.

Here, Plaintiff does not allege any defamation or seek relief that reflects any hint of viewpoint discrimination. The requested relief is content-neutral as to viewpoint and instead targets misleading representations of source, a basis for relief that does not impose any prior restraint on ideas or advocacy. Defendant's reliance throughout the Opening Brief on broad prior-restraint rhetoric is misplaced because Plaintiff seeks only accuracy in attribution, not suppression of messages generally.

The issue is also not whether allegedly false statements of fact are immune from equitable correction; the issue is whether the Court can prevent misstatements

of agency and affiliation that cause confusion and create harm, and it can under its broad equitable powers. By way of analogy, "Unlike defamation, injunctive relief is a common and non-controversial remedy for tortious interference with prospective economic advantage." *Organovo Holdings, Inc. v. Dimitrov*, 162 A.3d 102, 122 (Del. Ch. 2017). "Courts have recognized that a request for equitable remedies for tortious interference with prospective economic advantage can provide the requisite basis for equitable jurisdiction that can justify a related injunction against future speech." *Id*. Here, a request for relief targeted at misstatements of agency and affiliation that harm the Association is more similar to interference with prospective economic advantage than it is to a defamation or libel claim where one party badmouthing the other is the problem.

Moreover, Defendant's UPEPA motion should be denied for the wholly separate reason that it is time-barred. Pursuant to 10 *Del C.* § 6003, "[n]ot later than 60 days after a party is served with a complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this chapter applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to dismiss the cause of action or part of the cause of action." Defendant was served with a complaint asserting causes of action to which UPEPA purportedly applies on October 1, 2025. The date 60 days after that was in November 2025. Defendant did not file her UPEPA motion until January 15, 2026,

and has not offered any explanation of good cause for missing the deadline by months. Defendant cannot point to the filing of the Amended Complaint in December 2025, as it asserts claims that were already asserted months earlier in the original complaint.

III. Defendant's Reliance Upon the First Amendment and the Delaware Constitution are Misplaced in These Circumstances

Defendant's Opening Brief relies heavily on opinions of the U.S. Supreme Court and Delaware Supreme Court concerning "core political speech," but they are all inapposite here where Plaintiff has not sought relief targeted at Defendant's political speech at all. Defendant asserts that "Plaintiff is unhappy that Reba is speaking during the public comment section of governmental meetings, speaking to her elected officials, and posting on her website, about issues of public concern such as budgeting money for flood mitigation." Not so. To be clear, Plaintiff takes absolutely no issue with Defendant doing any of those things.

As discussed above, Plaintiff seeks only targeted relief that prevents misrepresentation of agency or affiliation which creates confusion and interferes with the Association's statutory governance structure, but Plaintiff does not take issue with any of Defendant's purely expressive conduct. For example, attending a Sussex County Council meeting, identifying yourself as a resident of the county affected by tidal flooding, and asking the Council to take actions to address tidal flooding or complaining about a perceived lack of action is much different from

introducing yourself as being from the Mallard Lakes community and then telling the Council about what "we ask" and what "we" need for "our engineering report." Who is "we" if Defendant is merely expressing her own views? The necessary implication in the latter scenario is that Defendant speaks for the Association or the community as a whole, misrepresenting her agency and/or affiliation, rather than as an individual resident of the county voicing her own views and concerns.

Telling a government council what you think and would like them to do is core political speech; misrepresenting your agency or affiliation with respect to a distinct legal entity (the Association) is not. Consider an analogous scenario if undersigned counsel, an attorney who appears before the Court of Chancery but otherwise has no office with the Court, were to attend legislative hearings of the General Assembly and make requests on the Court's behalf demanding new legislation to expand the Court's jurisdiction. Suggesting as a concerned practitioner that new legislation is desirable would be core political speech; suggesting that you are asking for that legislation on behalf of the Court of Chancery is a false representation of agency and affiliation that could justifiably result in disciplinary action. Whether done out of habit or to convey an air of authority, Defendant's repeated implication that she speaks for the Association, not her political advocacy, is the problem for which Plaintiff seeks redress from this Court.

Further, to the extent the Opening Brief can be read to suggest that injunctive

relief which restrains speech is unavailable as a general principle, that is not accurate. For example, "it is well settled that false commercial speech is not protected by the First Amendment and may be banned entirely." *Castrol Inc. v. Pennzoil Co.*, 987 F.2d 939, 949 (3d Cir. 1993). "…[T]he prior restraint doctrine does not apply in this case because there has been an adequate determination that the expression is unprotected by the First Amendment." *Id*. (internal quotations omitted). "The injunction is also not overbroad because it only reaches the specific claims that the district court found to be literally false." *Id*. In *Castrol*, Pennzoil was enjoined from making various claims about the performance of its products relative to its competitors because the district court determined that those claims were literally false. While this case does not involve commercial speech, Plaintiff's requests for relief are targeted at literally false statements or implications of fact concerning Defendant's agency or affiliation with Plaintiff, not at expressive speech by the Defendant. Of course, falsely suggesting that you speak on behalf of a distinct legal entity or have authority to make requests on its behalf is not an "inevitable" "erroneous statement" that must be protected to ensure the survival of freedom of expression. It is also not something that Plaintiff merely "disagrees with" or believes is incorrect – it is completely false.

Moreover, the U.S. Supreme Court has opined numerous times over the years that "[f]alse statements of fact are particularly valueless [because] they interfere

with the truth-seeking function of the marketplace of ideas," *Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46, 52 (1988), and that false statements "are not protected by the First Amendment in the same manner as truthful statements," *Brown v. Hartlage,* 456 U.S. 45, 60–61 (1982). *See also, e.g., Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc*., 425 U.S. 748, 771 (1976) ("Untruthful speech, commercial or otherwise, has never been protected for its own sake"); *Herbert v. Lando,* 441 U.S. 153, 171 (1979) ("Spreading false information in and of itself carries no First Amendment credentials"); *Garrison v. Louisiana,* 379 U.S. 64, 75 (1964) ("[T]he knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection"). Notably, the U.S. Supreme Court has clarified that false statements of fact do not enjoy First Amendment protection in situations, like this one, involving a legally cognizable harm associated with the false statement(s), which are otherwise protected where the issue is their falsity and nothing more. *See, e.g.*, *United States v. Alvarez*, 567 U.S. 709, 719 (2012).

Here, Plaintiff does not target Defendant's statements merely because they are false or suggest a false conclusion. Instead, Plaintiff targets only those statements or implications of fact which create a legally cognizable harm to Plaintiff – harm to its relationships with important third parties and threats to its proper governance arising from statements by Defendant that falsely suggest authority for her to speak on

behalf of and potentially bind the Association, create confusion about agency or affiliation, etc.

IV. The Court Has Subject Matter Jurisdiction and Plaintiff Seeks an Injunction Based on a Reasonable Apprehension of Risk of Future Harm

While Defendant attempts to recast Plaintiff's request for injunctive relief as a totally speculative request based on "conclusory allegations," the Amended Complaint actually pleads multiple, specific instances of ongoing and repeated misrepresentations of Defendant's agency and affiliation that have created confusion and made future relations with government partners more difficult for the Association. The Amended Complaint also alleges that Plaintiff believes Defendant's pattern of conduct is continuing.

As the Opening Brief correctly notes: "Injunctions may, of course, be issued where the evidence establishes a pattern of conduct from which a court may and does conclude that there is a reasonable apprehension of risk of future breaches of duty of a predictable type." *Thorpe v. Cerbco, Inc.*, 1996 WL 560173, at *4 (Del. Ch. Sept. 13, 1996). "A party requesting forward-looking injunctive relief must show a likelihood of harm absent relief, and assert facts showing a reasonable apprehension of future wrong…." *Preston Hollow Cap. LLC v. Nuveen LLC*, 2020 WL 1814756, at *22 (Del. Ch. Apr. 9, 2020). Plaintiff has asserted those facts in its Amended Complaint, and it is reasonably conceivable that Plaintiff will ultimately prevail on a reasonably conceivable set of circumstances susceptible to proof once a complete

factual record has been developed. Further, narrow injunctive orders clarifying speaker authority and mandating clear non-affiliation disclaimers are available equitable tools for preventing recurrence of predictable confusion.

Contrary to the assertions in the Opening Brief, Plaintiff does not seek "to enjoin Reba from making future comments to public officials," nor does Plaintiff seek to "place guardrails on what she may say in the future." Defendant is free to make any comments she may wish to make to public officials in the future, but she is not free to engage in a continuing pattern of mispresenting her authority or affiliation in a way that causes harm to the Association and interferes with its governance structure under its Governing Documents and applicable Delaware law. The apprehension of future harm arising from a continuing pattern of conduct that Defendant unapologetically engages in is not so "remote" and "speculative" to dismiss a request for permanent injunctive relief under Rule 12(b)(6), and the Motion should be denied.

V. Plaintiff Has Alleged Sufficient Facts to Meet Delaware's Liberal Pleading Standard and Justify Proceeding to Discovery

In her Opening Brief, Defendant essentially asks the Court to ignore the well-pleaded allegations of the Amended Complaint, to demand additional allegations above and beyond what is required by Delaware's notice pleading standard, and dismiss Plaintiff's claims on that basis. The Court should not accept that invitation.

First, Plaintiff's Amended Complaint adequately alleges a reasonable

apprehension of imminent, irreparable harm and identifies Plaintiff's protectable legal rights. *See, e.g.*, Amd. Compl. ¶¶ 11-12, 31-36. Further, Plaintiff, a distinct corporate entity, plainly seeks to protect a legitimate legal right well-recognized in Delaware. "[A] corporation, like any other entity is entitled to have the aid of the court in preventing persons from making continuous misrepresentations as to the authority given them by, or their connection with the corporation." *Empire S. Gas Co. v. Gray*, 46 A.2d 741, 744 (Del. Ch. 1946) (granting preliminary injunction concerning solicitation of proxies). As the Court noted in *Empire S. Gas Co.*, "This is simple [sic] an action to prevent and to undo misrepresentations made by the respondents. These misrepresentations consist of using documents which give the erroneous impression to the average reader that they are sent pursuant to authority given by those authorized by law to manager [sic] the business of the corporation, i.e., the board of directors." *Id*. "[T]he right of the incumbents to speak for the corporation is inherent in our system of corporation law itself, and a logical corollary is their right to prevent others from purporting to speak therefor." *Id*. Here, the Association seeks to protect the legal right of the Council to speak for the Association and prevent Defendant from purporting to do so. This is unquestionably a cognizable legal right which can support claims for relief from this Court.

Further, while the Court need not draw unreasonable inferences or accept "every strained interpretation of the allegations" when considering a motion to

dismiss pursuant to Rule 12(b)(6), the Court here should reject Defendant's efforts in her Motion to argue the ultimate merits of the case rather than addressing the liberal pleading standard that applies. Defendant attempts simply to wave away all of the detailed allegations in the Complaint, providing instead what she claims are the real facts, turning the Rule 12(b)(6) analysis on its head. Plaintiff has averred that statements made by Defendant at a Sussex County Council meeting at least implied a falsehood and had the effect of being misleading to third parties. So too with Defendant's communications with DNREC and other subsequent communications with third parties that Plaintiff believes and avers have continued to occur. Defendant argues that Plaintiff's allegations lack merit, but the Court's job in this procedural posture is not to determine whether Plaintiff will ultimately prevail on its claims, and the Court is instead tasked only with determining whether it is reasonably conceivable that Plaintiff could prevail on any set of facts susceptible to proof. *See Los Angeles City Employees' Ret. Sys.*, 2026 WL 125986, at *13 (the Court must "deny the motion [to dismiss] unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof"). The fact that Defendant claims now that her statements were not false or misleading is entirely immaterial. The Amended Complaint contains sufficient factual information to fairly put Defendant on notice of the claims against her, and the Motion should be denied.

VI. Defendant is Not Entitled to Fee-Shifting or Punitive Damages

Defendant has not met her burden to justify a departure from the American Rule based on any alleged "bad faith" or UPEPA. "Under the American Rule, litigants are expected to bear their own costs of litigation absent some special circumstances that warrant a shifting of attorneys' fees, which, in equity, may be awarded at the discretion of the court." *Beck v. Atl. Coast PLC*, 868 A.2d 840, 850 (Del. Ch. 2005). "The bad faith exception may apply if it is shown that a party has commenced an action in bad faith." *Lawson v. State*, 91 A.3d 544, 552 (Del. 2014) "The bad faith exception is not lightly invoked. The party seeking a fee award bears the stringent evidentiary burden of producing clear evidence of bad-faith conduct." *Id*. at 851. "Specific behavior that has been found to constitute bad faith in litigation includes misleading the court, altering testimony, or changing position on an issue." *Id*. "To award fees under the bad faith exception, the party against whom the fee award is sought must be found to have acted in *subjective* bad faith." *Arbitrium (Cayman Islands) Handels AG v. Johnston*, 705 A.2d 225, 232 (Del. Ch. 1997), *aff'd*, 720 A.2d 542 (Del. 1998) (emphasis in original). Defendant cannot meet this exceptionally high burden in this case.

Preliminarily, Plaintiff has already explained above why Defendant's claims for damages and fees under UPEPA are time-barred and would fail even if they had been timely asserted, and Plaintiff will not belabor that point again here.

Defendant's only other purported basis for shifting fees is that Plaintiff's counsel was previously denied different injunctive relief in a separate case under an entirely different set of facts. Assuming for the sake of argument that Plaintiff previously sought what the Court determined in another case roughly ten years ago to be an "impermissible restraint on First Amendment rights," Plaintiff has nonetheless explained herein why the relief sought in this case does not constitute that sort of restraint. Additionally, Plaintiff was not told previously that "injunctions against speech are not available" as a general matter, and as discussed above, that legal conclusion is not true.

Even if Defendant could establish that this action was brought in objectively bad faith (she cannot), she falls well short of demonstrating *subjective* bad faith on the part of the Plaintiff. Defendant certainly cannot credibly claim that Plaintiff acted in bad faith by amending its complaint pursuant to this Court's rules or by cooperatively removing an allegation from the original complaint that Defendant sought to strike. Defendant is not entitled to fee-shifting under any theory, nor is she entitled to punitive damages.

CONCLUSION

For all of the foregoing reasons, Defendant's motion to dismiss under Rules 12(b)(1) and 12(b)(6) and her UPEPA motion should be denied. Her requests for fees and punitive damages should also be denied. The case should proceed so the

Court can fashion, if appropriate on a full record, narrowly tailored relief that preserves both Defendant's right to advocate and the Association's right to be accurately represented in dealings with officials and the public.

Dated: March 16, 2026

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CERTIFICATE OF SERVICE

I, Chad J. Toms, Esquire, hereby certify that on this 16th day of March 2026, a true and correct copy of foregoing *Plaintiff The Mallard Lake Community Association, Inc.'s Answering Brief in Opposition to Defendant's Motion to Dismiss and for Fees and Punitive Damages* was served upon the following via File & Serve*Xpress*:

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