

**IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA**

**CHRISTOPHER MOORE, FREDDY AND  
SHERRY PEAKS, KIM RAY, KEITH FREY,  
AND MARGIE SHAW, on their own behalf and  
on behalf of all others similarly situated,**

**Plaintiffs,**

v.

**Case No.** \_\_\_\_\_

**SMITH MANAGEMENT LLC, HOMES  
OF AMERICA LLC, GARDNER MHP LLC,  
ELK VIEW MHP LLC, COUNTRY ROADS  
MHP LLC, DELANEY MHP LLC, SHADOW  
WOOD MHP LLC, and XENIA CUNNINGHAM,**

**Defendants.**

**CLASS ACTION COMPLAINT**

**INTRODUCTION**

1. The rent structure of Mercer County manufactured housing communities (“MHCs”) has generally remained stable for many years, as these MHCs historically were owned and managed by local families and individuals. This case arises out of the purchase of five MHCs in Mercer County, and the out-of-state owners and managers sudden, exploitative hike in lot rent, in violation of the West Virginia law and the leases governing the lot rental agreements. The infrastructures in the communities at issue suffer from long term underinvestment and management indifference, resulting in significant health, maintenance, and safety issues adversely affecting the tenants’ quality of life, such as faulty sewer systems and standing water. These conditions have resulted in unsanitary living conditions, insect infestations, property damage to tenants’ homes, and in some cases, the inability to relocate the homes because of the saturated land upon which the homes sit.

2. On October 1, 2022, the Defendants effectively terminated the tenants' existing lease rights in five MHCs—Gardner Estates, Elk View, Country Roads, Delaney, and Shadow Wood—by (1) unilaterally raising lot rents to unconscionable levels, as much as doubling the rent due that the tenants were entitled to pay under their continuing, valid leases; and (2) demanding tenants sign new leases, in violation of both West Virginia law and these lease agreements.

3. And since then, Defendants have issued new utility notices and new “Community Rules & Regulations” set to take effect March 1, 2023, which materially alter the lease rights of the tenants, add additional monthly fees not bargained for, and require tenants to invest heavily in their homes in order to comply with Defendant’s arbitrary cosmetic rules or face eviction.

4. This Class Action seeks injunctive relief to forestall continuing and future illegal actions, and damages to compensate the Plaintiffs and putative Class Members for injuries still being inflicted as of the filing of this suit.

### **PARTIES**

5. Plaintiff Christopher Moore: (a) Chris Moore resides in the MHC called Gardner Estates in a single-section manufactured home, where he has lived for the past four years with his wife and two children.

(b) Mr. Moore is a high school graduate and works third shift at Wal-Mart.

(c) Mr. Moore’s address is 247 Begonia Way, Princeton, Mercer County, West Virginia 24740.

(d) Since he began residing in Gardner Estates, his lot rent has been \$300.00.

(e) As of December 1, 2022, the new rent has increased to \$495.00.

6. Plaintiffs Freddie and Sherry Peaks: (a) Freddie and Sherry Peaks are a married couple residing in the MHC called Delaney, where they have lived for the past six years.

(b) The Peaks' lot address is 159 Delaney Lane, Princeton, Mercer County, West Virginia 24739.

(c) The Peaks are an elderly couple who live on a fixed income of Social Security Retirement benefits. Their household monthly expenses attributable to necessary medicine are approximately \$1,700.00.

(d) The Peaks cashed out Mr. Peak's 401K retirement savings to purchase their triple-wide section manufactured home for \$30,000 in 2016.

(d) Their lot rent in Delaney was \$300.00.

(e) As of December 1, 2022, the new rent has increased to \$525.00.

7. Plaintiff Kim Ray: (a) Plaintiff Kim Ray lives in a double wide manufactured home with her husband and her daughter in the MHC called Shadow Wood, where she has resided for over eighteen years.

(b) Her lot address is 199 Lurray Avenue, Princeton, Mercer County, West Virginia 24740.

(c) Ms. Ray works at her husband's body shop but does not draw a wage. The total household income for the Rays is approximately \$42,000 a year before taxes.

(d) Ms. Ray's lot rent was \$225.00.

(e) As of December 1, 2022, the new rent has increased to \$495.00.

8. Plaintiff Margie Shaw: (a) Plaintiff Margie Shaw has resided at the MHC called Country Roads for 28 years.

(b) Her lot address is 913 Washington Avenue, Princeton, Mercer County, West Virginia 24740.

(c) Due to the age of Ms. Shaw's home, it is unable to be moved.

(d) Ms. Shaw's lot rent raised from \$300 to \$450 on December 1, 2022.

9. Plaintiff Valeria Steele: (a) Plaintiff Valeria Steele has had her home located in the MHC called Elk View for over fourteen years, and she resides in the home, as a single mother with a fixed income, with her adult son, who has autism (disintegrative disorder). Because of her son's need for round-the-clock care, she is his paid caretaker through the Medicaid ID/DD Waiver Program.

(b) Ms. Steele's lot address is 196 Glenair Street, Princeton, West Virginia 24739.

(c) Ms. Steele's lot rent increased to \$525 per month from \$225 per month.

10. Plaintiffs and all occupants of their homes are "tenants" pursuant to *West Virginia Code* § 37-15-2(n).

11. Controlling Defendant No.1: (a) Defendant Smith Management, LLC ("Smith Management") is a foreign limited liability company with a principal place of business located at 885 3rd Avenue, Floor 34, New York, New York, 10022, and a service of process address at 1 Engle Street, Suite 201, Englewood, New Jersey, 07631. Defendant Smith Management and its subsidiary Alden Global Capital, upon information and belief, formed a legal limited liability company named Homes of America, LLC, to manage its MHCs, consummated prior to the purchase of the MHCs of Defendant Landlords. Upon information and belief, Defendant Smith Management is a tightly held business owned by Randall Smith, who is the co-founder of Alden Global Capital. Defendant is the "landlord" and "owner" of Plaintiffs' communities, pursuant to *West Virginia Code* § 37-15-2(g), (k).

(b) On information and belief, Smith is the principal owner and operator of, or one of the owners and operators of, each of the five separately owned, jointly operated limited liability corporations which hold title to the MHCs in which Plaintiffs and the class members pay lot rent.

(c) On information and belief, Defendants Smith, and the other Defendants have combined their financial resources, skill, and knowledge to purchase and operate jointly—through separate shell corporations, for profit as a single business enterprise—the five West Virginia MHCs in which the Plaintiffs and the class reside.

(d) On information and belief, Defendant Smith Management, directly or indirectly conducts, controls, manages, maintains, or operates these five MHCs in Mercer County as a joint enterprise for profit with the other Defendants pursuant to oral or written, express or implied, contracts to further that enterprise, including but not limited to an express contract with Defendant Homes of America, LLC (a Delaware limited liability corporation) to provide daily management of these five communities under their oversight.

(e) On information and belief, Defendant Smith Management and the other Defendants, share in the profits and losses of the business enterprise consisting of the operation of these five manufactured home communities in Mercer County.

(f) Defendants Smith Management and Homes of America, LLC have a pattern and practice of the predatory behavior alleged herein, having purchased other manufactured housing communities across the United States to take advantage of the captive tenants to drastically increase lot rents. *See, e.g., After gutting local newspapers, hedge fund Alden Global is going after mobile home parks*, NPR Weekend Edition (Nov. 26, 2022)( (Ex. 1), <https://www.npr.org/2022/11/26/1139266706/after-gutting-local-newspapers-hedge-fund-alden-global-is-going-after-mobile-hom>; Randy Walker, *A hedge fund-linked company bought a mobile home park. Many residents were told to pay hundreds more or be evicted*, <https://cardinalnews.org/2022/11/02/a-hedge-fund-linked-company-bought-a-mobile-home-park-many-residents-were-told-to-pay-hundreds-more-or-be-evicted/> (last viewed Dec. 15, 2022)

(Ex. 2); Charles Crane, *Mobile home parks' residents seek answers, accountability*, <https://www.minotdailynews.com/news/local-news/2022/10/mobile-home-parks-residents-seek-answers-accountability/> (Oct. 19, 2022) (Ex. 3); Julia Reynolds, *Boundless Greed* (Sept. 23, 2022), <https://dfmworkers.org/boundless-greed/> (last view Jan. 27, 2023) (Ex. 4).

(g) Upon information and belief, Defendant Smith Management provided the initial capital contribution for the purpose of buying and managing the properties that are now Defendant Landlords.

12. Controlling Defendant No. 2: (a) Defendant Homes of America, LLC (“Homes of America”) is a Delaware limited liability company with a service of process address located at 1209 Orange Street, Wilmington, Delaware, 1980. Defendant has a pattern and practice of identifying 10 Sterling Boulevard, Suite 302, Englewood, New Jersey, 07631 as its office. Defendant Homes of America is the “landlord” and “owner” of Plaintiffs’ communities, pursuant to West Virginia Code § 37-15-2(g), (k).

(b) Defendant Homes of America engages in the business of commercial management of manufactured home communities and has engaged in a pattern of increasing the rent unreasonably and not ensuring the safety and habitability of those communities. *See, e.g.*, Charles Crane, Minot Daily News: “Homes of America, LLC, hikes lot rent for Holiday Park,” (Oct. 6, 2022) (Ex. 5). Defendant Smith Management routinely engages the affiliated Defendant Homes of America to manage manufactured housing communities they acquire.

(c) Upon information and belief Defendant Homes of America is engaged in the commercial management of the five manufactured home communities in which the Plaintiffs and the class reside, under an agreement with and the direction and control of Defendant Smith Management and its employees Thomas Del Bosco and Yousef Khalil in order

to directly or indirectly conduct, control, manage, maintain, or operate these five manufactured home communities in Mercer County.

13. Defendant Gardner MHP LLC (“Gardner”) is a New Jersey limited liability company registered to conduct business in West Virginia. Its principal place of business is listed as 1 Engle Street, Suite 201, Englewood, New Jersey 07631, and its manager is listed as Defendant Homes of America LLC. It purchased the MHC Gardner Estates, located at 292 Auto Lane, Princeton, West Virginia, on or about March 22, 2022, for \$9 million. There are 190 lots in the community. This same community sold approximately two years prior for just \$5.4 million. Defendant Gardner, along with the other Defendants, directly or indirectly conducts, controls, manages, maintains, or operates the Gardner Estates MHC.

14. Defendant Elk View MHP LLC (“Elk View”) is a Delaware limited liability company that registered to conduct business in West Virginia on October 28, 2022. Its principal place of business is listed as 10 Sterling Boulevard, Englewood, New Jersey 07631, and its manager is listed as Yousef Khalil, Accounting Manager at Defendant Smith Management. It purchased the MHC Elk View, located at 410 Glenair Street, Princeton, West Virginia, on or about December 8, 2021, for \$2,949,254. There are fifty-two (52) lots in the community. This same property sold on October 19, 2020, for just \$219,254. Defendant Elk View, along with the other Defendants, directly or indirectly conducts, controls, manages, maintains, or operates the Elk View MHC.

15. Defendant Country Roads MHP LLC (“Country Roads”) is a Delaware limited liability company that registered to conduct business in West Virginia on October 28, 2022. Its principal place of business is listed as 10 Sterling Blvd, Englewood, New Jersey 07631, and its manager is listed as Yousef Khalil, Accounting Manager at Defendant Smith Management. It

purchased the MHC Country Roads, located at 800 Washington Ave, Princeton, West Virginia, on or about December 8, 2021, for \$1,814,925. There are 162 lots in the community. This same property sold a year prior for just \$75,000. Defendant Country Roads, along with the other Defendants, directly or indirectly conducts, controls, manages, maintains, or operates the Country Road MHC.

16. Defendant Delaney MHP LLC (“Delaney”) is a Delaware limited liability company that registered to conduct business in West Virginia on October 28, 2022. Its principal place of business is listed as 10 Sterling Boulevard, Englewood, New Jersey, 07631, and its manager is listed as Yousef Khalil, Accounting Manager at Defendant Smith Management. It purchased the MHC Delaney, located at 156 Delaney Lane, Princeton, West Virginia, on or about December 8, 2021, for \$2,268,675. There are 162 lots in the community. This same property sold just six months prior for only \$600,000. Defendant Delaney, along with the other Defendants, directly or indirectly conducts, controls, manages, maintains, or operates the Delaney MHC.

17. Defendant Shadow Wood MHP LLC (“Shadow Wood”) is a Delaware limited liability company that registered to conduct business in West Virginia on October 28, 2022. Its principal place of business is listed as 10 Sterling Boulevard, Englewood, New Jersey 07631, and its manager is listed as Yousef Khalil, Accounting Manager at Defendant Smith Management. It purchased the MHC Shadow Wood, located at 181 Yukon Street, Princeton, West Virginia, on or about December 8, 2021, for \$9,244,776. There are one hundred and sixty-two (162) lots in the community. This same property sold on October 19, 2020, for just \$1,674,818. Defendant Shadow Wood, along with the other Defendants, directly or indirectly conducts, controls, manages, maintains, or operates the Shadow Wood MHC.



18. Collectively, Defendants Gardner, Elk View, Country Roads, Delaney and Shadow Wood are referred to herein as “Defendant Landlords.”

19. Defendant Manager: (a) Defendant Xenia Cunningham is the local property manager employed by Defendants Homes of America and Smith Management to act as on-site agent for the joint enterprise, which commonly operates Gardner, Elk View, Country Roads, Delaney, and Shadow Wood MHCs, and the separately incorporated entities through which this enterprise operates.

(b) Defendant Cunningham stated both under oath and in writing that she manages each of the communities in which the named Plaintiffs reside, and that tenants like the class members must pay lot rent and late charges through her and to notify her of any conditions or repairs needed.

(c) Defendant Cunningham’s communications are signed by her, but do not feature any indication on whose behalf Defendant Cunningham works or any indication of the true owner or manager of the communities.

(d) Indeed, each Plaintiff and absent class member pays lot rent each month to or through Defendant Cunningham, as agent for Defendants Smith, Homes of America and the separately incorporated entities.

(e) In that capacity, as an employee of the Controlling Defendants and the joint enterprise, and on its behalf, Ms. Cunningham directly or indirectly conducts, controls, manages, maintains, or operates these five manufactured home communities in Mercer County.

(f) Certain misrepresentations made to the Plaintiffs and the putative Class Members were made orally or in writing by Defendant Cunningham.

20. Although established as separate entities, Defendants are in actuality so interrelated that they are nearly indistinguishable from one another to the public, including, but not limited to:

- (a) Sharing common office space, office numbers, and website portals;
- (b) Homes of America and Defendant Landlords Elk View, Country Roads, Delaney and Shadow Wood share the same office location in New Jersey;
- (c) Smith Management and Defendant Landlord Gardner Estates share the same office location in New Jersey;
- (d) Upon information and belief, Homes of America operates as the employer for the other Defendants, and all those employees were shared by Smith Management including Yousef Khalil, who is the Accounting Manager for Smith Management and Homes of America; Bryon Fields, who is the Chief Operating Officer of Homes of America and previously worked for Defendant Smith Management's subsidiary company, Alden Global Capital;
- (e) Yousef Khalil, Accounting Manager at Smith Management, is the listed manager on Defendant Landlords' West Virginia business filings;
- (f) The financial records of Defendants are filtered through Defendant Cunningham and/or through Defendant Homes of America's website;
- (g) The scanned copies of tenants' information are placed onto a shared drive for Defendants;

#### **CLASS DEFINITION**

21. (a) Plaintiffs propose a Class be certified pursuant to Rule 23(b)(2) and Rule 23(b)(3) of the *West Virginia Rules of Civil Procedure* for the purposes of Count III and defined as "All past and current tenants of Shadow Wood, Delaney, Gardner Estates, Elk View, and Country Roads MHCs from the time Defendants became owners."

(b) Plaintiffs propose a Subclass be certified pursuant to Rule 23 (b)(2) and Rule 23(b)(3) of the *West Virginia Rules of Civil Procedure* for the purposes of Counts I, II, IV

and V be defined as “All tenants residing in Shadow Wood, Delaney, Gardner Estates, Elk View, and Country Roads MHCs who received a notice of rent increase dated October 1, 2022.”

### **CLASS ALLEGATIONS**

22. Plaintiffs bring this action for damages and equitable relief pursuant to Rules 23(a) and 23(b) of the *West Virginia Rules of Civil Procedure*, on behalf of themselves and all others similarly situated.

23. It is impractical to join each member of the putative Class, because the total number of persons residing in these five manufactured home communities exceeds 700 tenants.

24. There are questions of law or fact common to members of the class.

25. Common questions of law or fact include:

(a) Whether the Defendants are operated jointly as a common enterprise;

(b) Whether there is a common pattern of joint activity in operating these communities, including using the same lease template with the same lease terms for each community, whether the Controlling Defendants or Defendant Landlords compensate Defendants Homes of America and Xenia Cunningham for management services, whether the Defendant Landlords have any employees or individual members whatsoever, whether Controlling Defendants have the right to make all management decisions for the Defendant Landlords, and whether the Controlling Defendants enjoy a financial benefit by combining their resources to manage the Defendant Landlords.

(c) Whether there is a common pattern of failing to properly grade and maintain common areas in the communities resulting in pooling of standing water and associated health risks, property damage, and insect infestations creating situations in which these five communities fail to comply with the implied warranty of habitability enjoyed by each class member.

- (d) Whether the leases comply with law;
- (e) Whether the communities meet the minimum requirement for habitability;
- (f) Whether there is a common pattern of failing to cap or otherwise properly prepare exposed sewer pipes allowing noxious odors to predominate common areas in these communities;
- (g) Whether there is a common pattern of failing to maintain common sanitary sewer systems in the communities.
- (h) Whether the Defendants are eligible to seek or obtain the rent increases it has noticed during the period of a fixed lease term and with less than ninety (90) days notice;
- (i) Whether the Defendants may change the community rules and regulations;
- (j) Whether members of the class have been injured by Defendants' conduct; and
- (k) Whether members of the class are entitled to relief, and the amount and nature of such relief.

26. The claims of the named Plaintiffs are typical of the claims of the Class as a whole. Each of the named Plaintiffs has been subject to misrepresentations, violation of their lease rights and their rights under law, and unsafe and unhealthy conditions under the Defendants' common pattern of behavior alleged above. Each faces the threat of increased lot rent in violation of the lease contract, West Virginia law, and the implied warranty of habitability. Consequently, the named Plaintiffs are members of the Class themselves and share the questions and claims common to the class.

27. The claims of the named Plaintiffs and the putative Class will require the same evidence and proof to establish Defendants' liability including proof of the Defendants' common practices as alleged; proof of the actual health and safety defects in the communities; proof of the corporate structure and joint contributions of each of the Defendants to the enterprise, which have

and continue to injure the Class; and proof of the common lease rights and legal rights shared by the Class, as well as the Defendants' violations of those rights.

28. Once liability is established, damages arising from the claims of the named Plaintiffs and the putative Class Members are calculable by a common method to measure the damages of each Class Member. Certain class wide damages are determinable from a paper review and calculations or otherwise through a common methodology.

29. The named Plaintiffs will fairly and adequately represent and advance the interests of the Class. By filing this action on behalf of all their fellow tenants, the Plaintiffs have displayed a strong interest in vindicating the rights of all who face the same type of harm as they do. By aggressively pursuing their own interests in prevailing on the claims advanced here, the Plaintiffs will be advancing and proving the claims and rights of absent class members at the same time.

30. There are no antagonistic interests between the named Plaintiffs and the absent members of the Class, and the relief sought by the named Plaintiffs for the Class is the same as Plaintiffs seek for themselves.

31. The named Plaintiffs are represented by Mountain State Justice, Inc., a non-profit, public interest legal services firm with long and substantial expertise in class litigation on behalf of low-income West Virginians. Counsel for the putative Class is skilled and experienced in conducting class litigation and has the resources to do so.

## **STATEMENT OF FACTS**

### **Background on Manufactured Home Communities**

32. According to the 2020 census, 13% of West Virginians live in manufactured homes, more than double the national average.

33. In rural, low median income counties, the percentage of persons residing in manufactured homes is often even greater.

34. A high percentage of persons who own their manufactured home have them sited in privately run MHCs. In Mercer County, a county of just over 59,000 people, there are eighty-three (83) MHCs serving an essential need in providing affordable housing for the citizens of the county.

35. Those MHCs charge the homeowners a monthly lot rent, and sometime separate utility costs, for the right to have their homes set up on a lot in the community, which in addition to the utility connections often provide other benefits of community such as street maintenance, parks, and other amenities.

36. The tenants of most MHCs in West Virginia include comparatively high numbers of low-income families, disabled households dependent on Social Security Disability or SSI benefits, and elderly persons on fixed retirement and/or Social Security incomes.

37. As has been recognized nationally, these realities often leave homeowners in MHCs at the mercy of unscrupulous landlords, both as to rent demands and refusals or failures to keep the community in a safe and habitable condition. *See, e.g.*, Chris Arnold and Robert Benincasa, NPR Investigative Report: “From Floods to Slime,” (Aug. 21, 2022) (Ex. 6).

### **The Lease**

38. The West Virginia Legislature enacted Article 15 of Chapter 37 of the *West Virginia Code* to specifically address the unique nature of the landlord/tenant relationship when a leased lot in a MHC is involved, giving protections for tenants of MHC.

39. Once a manufactured home is situated on a MHC site, the difficulty and cost of moving the home gives the Defendants disproportionate power over the tenant to change rules, rental rates, or other terms of tenancy.

40. In such a relationship, the MHC operator/landlord is required to provide a written agreement governing the rental and occupancy of a leased lot to the tenant resident. Under West Virginia law, the written lease agreement must provide the following:

(a) term and rent for the tenancy,  
(b) the rules and regulations of the community,  
(c) a copy of *West Virginia Code* § 37-15-3 or include the language in the agreement,

(d) a provision listing which services will be provided through the lease in addition to other services that will be offered and the fee for each, and

(e) that for a factory-built home site on which is placed a factory-built home that is comprised of one section, the written agreement may not allow for the termination of the tenancy by the landlord during the first twelve months that the factory-built home is placed on the site except for good cause, and that for a factory-built home that is comprised of more than one section, the written agreement may not allow for the termination of the tenancy by the landlord during the first five years the factory-built home is placed on the site except for good cause. *See W. Va. Code* § 37-15-3.

(f) The lease cannot contain any provision in which a tenant waives any rights under the statute. Nor may the agreement contain any provision that impairs a tenants' right to sell his or her home and requires the community owner to approve any potential buyer who meets the same standards and restrictions contained in the prior rental agreement. *Id.*

(g) Any tenancy that has not reached the end of its stated term may only be terminated for good cause. Even then, the law requires the party that desires to terminate the tenancy to provide a three-month notice to the other party. W. Va. Code § 37-15-6(b)(3), (c).

(h) Defendants have followed a standard policy and practice of requiring Class Member tenants to sign lease agreements but not providing a copy of the signed agreement to tenants as required by law.

41. During a lease term, tenants can only be evicted from the rented lot for good cause.

42. To operate a MHC after purchase, Defendants must apply for and obtain legal permits from the Mercer County Health Department to operate.

43. In addition to the added protections provided for tenants in MHCs, applicable West Virginia law applies including, but not limited to the following:

(a) Protections from abandonment and disposition of property;

(b) Right to remain in the home;

(c) That the landlord shall deliver the surrounding premises in safe, clean, and sanitary condition;

(d) That the landlord shall provide property that meets the requirements of applicable health, safety, fire and housing codes; and

(e) That the landlord shall ensure the MHC is in good repair.

44. As successor in interest to previous park owners, the Defendants were assigned existing leases containing similar terms and conditions, including automatic renewal, notice requirements, fees, modification requirements, who can perform work on the home, restrictions on selling the home, and other similar terms besides the lease start date and the monthly rental amount, which are handwritten into the leases.



45. In the lease summary, Defendants demand tenants to identify the basic “tenant information,” including, in part, the number of adults and children, who will be residing as tenants on the Defendants’ properties.

46. As a result, Defendants are aware of the number of tenants who reside in the MHCs, and furthermore, the number of tenants who they are evicting and/or terminating their leases.

47. Plaintiffs and the absent Class Members have leases with Defendants which contain identical lease terms, including:

(a) The lease is for a term of one year, “thereafter automatically renewing from year to year, until terminated by either party.”

(b) The amount of the monthly lot rent that is to be filled in.

(c) That the lease “shall be binding upon the parties hereto and to their . . . successors.”

(d) Tenants are to be billed separately each month for water, sewer, and trash;

(e) Defendants could prevent the sale of tenants’ homes to a third-party of their choosing by exercising a “right of first refusal;”

(f) That if the landlord sold the community, it would provide Plaintiffs with the name, address, and telephone number of the purchaser.

*Pl. Margie Shaw’s Lot Lease Ag. (Ex. 7.)*

48. Plaintiffs’ leases do not include the language contained in W. Va. Code § 37-15-3.

49. At the time of purchase and continuing until this day, Defendants did not have valid permits issued by the Health Department to operate these MHCs.

50. Further, on information and belief, once Defendants obtain an eviction order, Xenia Cunningham, in the course and scope of her employment by Defendants, and at their direction or

approval, has a practice of refusing to allow the homeowner to move the home, claiming that the owner was evicted but the home then belongs to the community.

51. When each of the five MHCs were purchased by Defendants, Defendants were bound by predecessor lease agreements with Plaintiffs and putative Class Members.

52. Defendant Cunningham appeared in the communities after the sale of the communities and advised tenants she was the new property manager, and all payments should be made to her or through Defendant Homes of America's website. Defendant Xenia Cunningham, on letterhead identifying the five MHCs, explained when payments were to be made to them; ramifications for failure to pay, including late fees and eviction threats; extra, added fees; how tenants were to maintain their lots and trash; email contact information for her, her cell phone, her office, Defendant Homes of America's website, and their office hours; and instructions on how she could set tenants up for Defendants' payment portal. (Ex. 8.)

53. Defendant Cunningham's written representations were in part false and inconsistent with the tenants' rights under their leases.

54. After purchasing the communities, all assigned leases from prior owners, by their terms, rolled over for new one-year periods on the same terms as the original lease with the prior owners.

55. Defendants took no steps to terminate or modify Plaintiffs' leases prior to their October 1, 2022 correspondence notifying tenants of the illegal rent increases.

56. Neither when Plaintiffs and putative Class Members signed their lease agreements nor anytime thereafter did they receive from any Defendant a copy of the Legislative Rules for Manufactured Home Communities, W. Va. Code St. R. § 64-40-1 *et seq.*, § 64-40-116, nor a copy of the language of W. Va. Code § 37-15-3, both of which Defendants are required to provide.

57. Thus, Plaintiffs and the Class face an irreparable harm for which they have no adequate remedy at law unless this Court enters injunctive relief requiring Defendants to abide by the law and the leases.

### **Unenforceable Lease Terms**

58. In addition, the leases in these five MHCs include the same or similar following terms or provisions, which cannot lawfully be enforced against the Plaintiffs or putative Class Members:

(a) Despite the clear dictates of West Virginia law, the leases contain a provision that Defendants could terminate the lease at any time and for any reason after giving sixty (60) days' notice. *But see* W. Va. Code §§ 37-15-2(e), -3(c)-(d); -6.

(b) The Plaintiffs and putative Class Members' leases also state the community operator has the right to unilaterally modify any term or condition of the lease, in violation of West Virginia law.

(c) Similarly, the leases falsely assert the community landlord operator can unilaterally increase the rent, in violation of West Virginia law.

59. Additionally, these leases violate West Virginia law by including the following same or similar terms:

(a) falsely stating that tenants waive all rights to their personal property (such as a home after the tenant is evicted);

(b) claiming a right to limit tenants in choosing who can perform work on their home;

(c) eliminating Defendants' responsibility to provide water and sewer services;

(d) identifying fluctuating fees and charges by Defendants to include lawn maintenance charges and late fees;

(e) adding late fees onto existing late fees,

(f) threatening and requiring homeowners to pay recurring pet fees.

**By Notice Dated October 1, 2022, Defendants Dramatically Increased Lot Rent in the Five MHCs**

60. Although West Virginia law prohibits a community operator from changing any term of this lease or requiring a new lease save upon written notice requiring specific language given 90 days prior to the next automatic renewal date for that lease, in violation of that lease and the law, on or around October 1, 2022, Defendants effectively terminated the leases of Plaintiffs and all Class Members by wildly increasing the lot rents effective December 1, 2022 – within 60 days and regardless of the Plaintiffs’ and Class Members’ lease terms.

61. By a form letter dated October 1, 2022, Defendants distributed to the Plaintiffs and the absent Class Members a “Rent Increase Notice” (hereinafter “Notice”) by placing said notices in tenants’ doors. (Ex. 9).

62. Plaintiffs have attempted to pay lot rent at their lease rates, but Defendant Cunningham threatened tenants that anyone who fails to pay the new lot rent for December 2022 would receive an eviction notice on or about January 1, 2023.

63. Class Members who have continued to tender their lot rent at their lease rates have, since January 1, 2023, received threats to immediately pay the difference between the monthly lot rent provided for in their leases and the new, wrongfully increased amounts demanded by Defendants. Some Plaintiffs and Class Members fear they will be evicted for failure to pay the increased rent amounts due to the threats of Defendant Cunningham.

64. To relocate a home from Defendants Landlords' communities, at a minimum, tenants would have to pay thousands of dollars in relocation costs.

65. In addition to not being able to afford \$6,000-\$15,000 dollars to have homes moved to another location, a manufactured home moving contractor physically cannot move many of the Class Members' homes due to a number of factors: (1) the age of the home; (2) the overwhelming demand for relocation of homes in the five MHCs since the lot rate hike; (3) the home amenities Class Members have added in good faith reliance of their lawful rights; and (4) lots are saturated due to Defendants' failures to maintain the premises in a safe and habitable condition.

66. Defendant Xenia Cunningham personally distributed or directed the distribution of the October 1, 2022 Notice and identified herself as the contact for the Notice.

67. These notices advised that the five MHCs were under new ownership, but failed to indicate who were the new owners, providing no contact information other than Defendant Cunningham's telephone number.

68. Despite the Plaintiffs' and the Class Members' existing leases and the law, these Notices intentionally and falsely represented all tenants could be required to sign new leases shortly.

69. These Notices were signed by Thomas Del Bosco, who is both corporate manager of Defendant Homes of America and vice president of Defendant Smith Management.

70. By these Notices dated October 1, 2022, Defendants intentionally and falsely misrepresented a legal right to terminate class members' existing leases and lease rights in violation of the law and existing lease terms.

71. The Notices further represented, intentionally, falsely and in violation of law and the Class Members' existing lease rights, that in sixty days, effective December 1, 2022,

the Defendants would require all tenants to pay an increased monthly lot rent, approximately double or more in amount.

72. Other than the specific increases for each MHC, these Notices were identical and, upon information and belief, distributed personally by Defendant Cunningham, or at her direction, on behalf of Defendants.

73. On or around February 9, 2023, Defendants distributed a lease renewal notice (“New Lease Notice”) to all tenants that, before February 17, 2023, tenants were required to schedule an appointment to pickup their new lease. (Ex. 10.)

74. The Notice, concomitant rate hikes on December 1, 2022, and New Lease Notice effectively terminated or evicted more than twenty-five tenants’ occupancies within two-months’ time.

75. Indeed, the Notice provided that, in the next few months, new leases were going to be in place, and accordingly, in early February, Defendants provided the New Lease Notice.

76. By terminating Plaintiff Valeria Steele’s lease agreement, Defendants have terminated the tenancy of Ms. Steele *and* her son. Likewise, other Class Members and their families’ tenancies are terminating.

77. Defendants intentionally misrepresented to Class Members in Shadow Wood that the monthly rent they must pay would increase to \$495.00.

78. Defendants intentionally misrepresented to Class Members in Delaney that the monthly rent would increase to \$525.00.

79. Defendants intentionally misrepresented to Class Members in Gardner Estates that the monthly rent would increase to \$495.00.

80. Defendants intentionally misrepresented to Class Members in Country Roads that the monthly rent would increase to \$ 450.00.

81. Defendants intentionally misrepresented to Class Members in Defendant Elk View were intentionally falsely told the monthly rent would increase to \$525.00.

82. The representations in these Notices were intentional, false, and deceptive in that neither the law nor the Class Member's existing leases allowed the imposition or enforcement of such increases or change.

83. The harm these false and deceptive representations of rent increases, noticed to take effect during the holiday season, caused Class Members manifested in a number of ways including:

(a) Class Members suffered actual damages in the amount of the increased lot rent, and to the detriment of their other expenses, including during the holiday gift season;

(b) Class Members suffered fear they may lose their homes in winter, during the holiday season;

(c) Class Members suffered fear they would not be able to afford a suitable holiday for their families if they were forced to pay the higher rent to save their homes;

(d) Class Members suffered anxiety from the fear t they would lose their homes, the largest asset of most;

(e) Class Members suffered anxiety that they would not be able to relocate their home or find a location they could relocate their home to in such a short period of time; and

(f) Class Members that could afford to relocate their homes suffered actual damages in the amount paid to relocate their homes and in the amount of the cost to acquire a new space to situate their home upon.

**By Notice Dated January 27, 2023, Defendants Materially Alter Utility Charges**

84. By form letter dated January 27, 2023, Defendants distributed to the Plaintiffs and the absent Class Members a utility “Notice” (hereinafter “Utility Notice”). (Ex. 11.)

85. The Utility Notice states tenants will be passing through utility charges to tenants with all tenants paying an equally split, pro-rata share of the total MHC bill.

86. Accordingly, even if tenants were paying for their utilities separately and/or as part of their lot rent, they will now be sharing the costs equally with their neighbors throughout the MHCs.

87. This Utility Notice substantially modifies the lease agreements that provided that each tenant was billed separately for their own respective usage.

**Defendants Pass Out Community Rules and Regulations that Substantially Modify the MHCs**

88. In or around February 1, 2023, Defendants began distributing new “Community Rules & Regulations” (“New Community Rules”) that are effective March 1, 2023. (Ex. 12).

89. The New Community Rules substantially modifies the existing lease agreements, including, but not limited to following:

(a) Restricting tenants’ ability to sell their home, and making tenants liable for liquated damages of \$5,000 plus Defendants’ attorney’s fees;

(b) Charging fees for tenants to sell their homes;

(c) Charging administrative fees for utility bills and/or modifying the Utility Notice that Defendants sent out just days prior;

(d) Converting fees, charges, assessments, etc. to be classified as additional rent;

(e) Altering tenants’ right to water;



- (f) Requiring tenants' homes to be changed to the color white;
  - (g) Modifying tenants' rights to the use of air conditioners;
  - (h) Extending the time required for tenants' to notify Defendants of their intent to move their homes;
  - (i) Increasing the fees for lawn maintenance and edging to \$50 per occasion;
- and
- (j) Restricting tenants' parking rights and charging new and excessive fees of \$40 per month for a tenants' third vehicle.

90. Despite having lease agreements, Defendants' New Community Rules substantially modify the tenants' original rental agreement and seek a new effective date, in violation of West Virginia law. *See* W. Va. Code § 37-15-3a.

**Defendants' Failure to Provide Safe and Habitable Communities**

91. In every landlord/tenant relationship there exists an implied warranty of the habitability of the premises. *See Teller v. McCoy*, 162 W. Va. 367, 253 S.E.2d 114 (1978). Tenants should be provided safe, sanitary, and decent housing, to include the landlord's obligation of delivering the surrounding premise in a fit and habitable condition and maintaining the lease property in such condition. *Teller*, 162 W. Va. at 381 n.11, 253 S.E.2d at 123 n.11, has explained the minimum requirements, including:

- (a) The landlord shall deliver the surrounding premises in "fit and habitable condition" and shall maintain the premises in such condition;
- (b) The landlord shall provide property that meets the requirements of applicable health, safety, fire and housing codes; and
- (c) The landlord shall make repairs to keep the property habitable.

(d) Providing tenants whose properties are unsafe and unsanitary to recover damages for the difference of the property as warranted and the fair market value of the property as it was during the state of occupancy, and to recover damages for annoyance and inconvenience.

92. Additionally, by law Defendants were and are required to keep the ground and paved surfaces in all parts of the communities graded and equipped to drain water in a safe and efficient manner, and maintain streets, roads, and walkways in good repair. *See* W. Va. Code St. R. § 64-40-7.1.a; § 64-40-7.4.

93. Additionally, Defendants were and are required to operate the sewer as to not create unsanitary conditions or be a nuisance to the community, including plugging and capping sewer rise pipes. *See* W. Va. Code St. R. § 64-40-9.

94. Defendants are to operate the MHCs without unsanitary conditions or hazards to public health. *See* W. Va. Code St. R. § 64-40-5.3.

95. Defendants are to operate the MHCs with easily accessible and safe supply of potable water. *See* W. Va. Code St. R. § 64-40-8.

96. Defendants were and are required to maintain their grounds free from insect breeding grounds. *See* W. Va. Code St. R. § 64-40-12.1.

97. Under applicable law, Defendants were and are required to maintain all grounds and common areas in a clean and safe condition. *See* W. Va. Code St. R. § 64-40-10.

98. Defendants were and are required to maintain appropriate conveniences for the removal of garbage, rubbish, and other waste, and in good repair. *See* W. Va. Code St. R. § 64-40-11.

99. Defendants shall maintain the MHCS in good repair and in a clean and sanitary condition. *See* W. Va. Code St. R. § 64-40-15.

100. In each of the parks at issue, Defendants have and are continuing to violate these common law, contractual and legal obligations due Class Members.

**Gardner Estates**

101. Since March 22, 2022, Defendants have failed and continue to fail to satisfy the common law and/or statutory warranty of habitability owed to Plaintiff Christopher Moore and Class Members in Gardner Estates.

102. As well known to these same Defendants, the sewage system servicing the community does not effectively transmit wastewater out of the tenants' homes. The pump station does not work properly, frequently causing sewage to back up into both the toilets and sinks of tenants' homes, and into the lots throughout the park.

103. Defendants are also aware or should be aware that Class Members in Gardner Estates experience significant standing water in their yards and around their homes most of the time.

104. The standing water results in infestations of flies and mosquitoes.

105. As a result of the failures of the sewage system and standing water problems, tenants of the Gardner Estates experience frequent unbearable noxious odors, unsanitary conditions, loss of use of their lots, violation of their right to quiet enjoyment of their tenancy, and significant and unnecessary health risks to them and their children and elderly.

106. Furthermore, even if the tenants wanted to move their home from the site, it is impractical. Many tenants of Gardner Estates are impaired by these conditions from moving their homes to a different site or community because the ground is so saturated that contractors cannot safely or appropriately move the home off the lot.

### **Elk View**

107. Since December 13, 2021, Defendants have failed and continue to fail to satisfy the common law and/or statutory warranty of habitability owed to Plaintiff Valeria Steele and Class Members in Elk View.

108. Specifically, conditions in the community fail to meet the requirements for health and safety as contained in the Bureau for Public Health's legislative rule.

109. Water accumulates around and under homes causing tenants' homes to sink and bend, and the doors of the homes to bind.

110. Water often saturates underneath the homes, promoting mold and corrosion of the home structure.

111. During the warmer months there is a detectable odor of sewage emanating from the community.

112. There are deep potholes in the common roadways and the road is not maintained during the winter, causing unsafe conditions for all persons exiting or entering the park to/from Maple Acres Road.

113. Water drainage is poor near the homes at the entrance of the community, such that driveway and parking areas for those lots often leave the tenants' vehicles in standing water.

114. Several Elk View tenants have had to pay for pest treatment because of the insect populations resulting from the standing water in the community.

### **Country Roads**

115. Since December 16, 2021, Defendants have failed and continue to fail to satisfy the common law and/or statutory warranty of habitability owed to Plaintiff Margie Shaw and Class Members in Country Roads.

116. Specifically, conditions in the community fail to meet the requirements for health and safety as contained in the Bureau for Public Health’s legislative rule.

117. Rain continually washes away the gravel from the unpaved gravel driveways and roads in the community, and it not replaced.

118. The sewage system regularly backs up, including into the homes and causing blockages that require maintenance.

119. The sewage system failures also result in standing water in the yards of homes causing mosquito infestations.

120. The community is also littered with trash.

121. On or about December 20, 2022, the Mercer County Health Department inspected the grounds of the Country Roads community. That inspection concluded, “[f]oremost among [the issues observed] is the waterlogged condition of the lots abutting the hillside along the western side of the park. These lots were so saturated that it was difficult to walk around many of the homes. Likewise, there is a saturated condition along the property’s southeastern edge. . . the second issue...the presence of garbage and clutter. . . in combination with the presence of water, make for excellent rodent and pest harborage areas.”

**Delaney**

122. Since December 16, 2021, Defendants have failed and continue to fail to satisfy the common law and/or statutory warranty of habitability owed to Plaintiffs Freddie and Sherry Peaks and Class Members in Delaney.

123. Specifically, the conditions in the community fail to meet the requirements for health and safety as contained in the Bureau for Public Health’s legislative rule.

124. Tenants of Delaney have standing water both under their home and in their yards.

125. The standing water creates a breeding ground for mosquito larvae.

126. The standing water poses a threat to the tenants' homes which are susceptible to deterioration and mold in the wet conditions.

127. During the summer months, there is a prominent sewer smell that coats the community.

128. On or about December 19, 2022, the Mercer County Health Department inspected the grounds of the Delaney community. That inspection observed the conditions complained of above noting not only the general waterlogged nature of many of the lots but also "standing water under some homes."

129. Defendants additionally fail to provide necessary repairs in Delaney, which failures threaten the health and safety of the community, including removal of dangerous or damaged trees, repair of broken street lights, and community blight from abandoned homes.

130. Defendants and Xenia Cunningham have refused to allow a property owner(s) to access their home(s) because of unpaid rent and prohibited them from relocating the home.

### **Shadow Wood**

131. Since December 8, 2021, Defendants have failed and continue to fail to satisfy the common law and/or statutory warranty of habitability owed to Plaintiff Kim Ray and Class Members in Shadow Wood.

132. Specifically, conditions in the community fail to meet the requirements for health and safety as contained in the Bureau for Public Health's legislative rule.

133. There is standing water under in the community and under homes, which creates a breeding ground for mosquito larvae. Standing water under manufactured homes can lead to deterioration of the home and toxic mold infesting the home.

134. Additionally, the common area basketball courts are in disrepair, including broken backboards; trash often scatters throughout the community; and abandoned trailers blight the community.

135. Further, Defendants fail to maintain the roads so as to allow safe travel, especially in the winter.

### **CLAIMS FOR RELIEF**

#### **COUNT I – UNLAWFUL TERMINATION OF TWENTY-FIVE OR MORE LEASE AGREEMENTS (W. Va. Code § 37-15-6a)**

136. Plaintiffs incorporate by reference the allegations of all the preceding paragraphs.

137. Defendants, as “landlords,” W. Va. Code § 37-15-2, contracting with Plaintiffs and putative Class Members, injured each individual Plaintiff and Class Member, in their capacity as “tenants,” W. Va. Code § 37-15-2(n).

138. West Virginia law prohibits a landlord from the termination or to otherwise evict more than twenty-five tenants within a single eighteen-month period. W. Va. Code § 37-15-6a.

139. By notice dated October 1, 2022, Defendants effectively terminated Plaintiffs’ and Class Members’ leases and/or evicted tenants effective December 1, 2022.

140. By Utility Notice and New Community Rules in early 2023, Defendants effectively terminated Plaintiffs’ and Class Members’ existing leases.

141. By New Lease Notice in or around February 9, 2023, Defendants required Plaintiffs’ and Class Members to sign new leases.

142. Defendants notified tenants that they were providing them new leases, which terminated their existing leases.

143. Accordingly, Defendants terminated more than twenty-five tenants within an eighteen-month period.

144. Defendants failed to provide six months' notice to Plaintiffs and Class Members to terminate the agreements.

145. Defendants failed to obtain any written agreement from Plaintiffs or Class Members to voluntarily vacate.

146. Defendants' termination of Plaintiffs' and Class Member' lease agreements was not based on any breach by Plaintiffs or Class Members.

147. Many Class Members were forced to incur thousands of dollars to relocate their homes as a result of Defendants' unlawful termination of their lease agreements.

148. As a direct result of Defendants' violation of the statute, Plaintiffs have suffered damages.

**WHEREFORE**, Plaintiffs respectfully request the following relief:

- (a) Certify a subclass of all tenants residing in Shadow Wood, Delaney, Gardner Estates, Elk View, and Country Roads MHCs who received a notice of rent increase dated October 1, 2022, pursuant to Rule 23(b)(3) of the *West Virginia Rules of Civil Procedure*, and appoint the named Plaintiffs as Class Representatives;
- (b) Class wide actual damages resulting from Defendants' violations of W. Va. Code § 37-15-6a;
- (c) The costs of relocation resulting from Defendants' violations of W. Va. Code § 37-15-6a;
- (d) Treble damages or the aggrieved tenant's rent for one year, whichever is greater, pursuant to W. Va. Code § 37-15-6a.



- (e) Plaintiffs' reasonable attorneys' fees and costs in prosecution of this action;
- (f) Any other relief the Court determines is just and equitable.

**COUNT II – VIOLATIONS OF MANUFACTURED HOME ACT**  
**(W. Va. Code § 37-15-1 *et seq.*; and Legislative Rules, W. Va. Code St. R. § 64-40-1 *et seq.*)**

149. Plaintiffs incorporate by reference the allegations of all the preceding paragraphs.

150. Defendants together operating a joint enterprise for the ownership and management of the five parks at issue as principals and/or agents or representatives authorized to act on behalf of, as the alter egos of, or at the direction of the same are “landlords” as defined by W. Va. Code § 37-15-2(g).

151. Defendants failed to provide Plaintiffs and putative Class Members a copy of the Legislative Rules for Manufactured Home Communities, W. Va. Code St. R. § 64-40-16, or a copy of the language of West Virginia Code § 37-15-3, both of which Defendants are required to provide.

152. Defendants have violated W. Va. Code § 37-15-3(d)(2) by including in lease agreements the impermissible and unreasonable recurring fees, including, but not limited to late fees for services not provided by Defendants and pet fees like charging \$10 per day for any pets greater than one in tenants' own homes.

153. Defendants violated W. Va. Code § 37-15-3(d)(3) by including in the leases that Plaintiffs waive their right to their abandoned property.

154. Defendants violate W. Va. Code, § 37-15-5(c) by including lease terms that restrict Plaintiffs' and putative Class Members' ability to choose contractors to do work on their own home.

155. The form lease agreements restrict Plaintiffs' and Class Members' ability to sell their homes in violation of W. Va. Code § 37-15-3(d)(1).

156. The form lease agreements violate W. Va. Code § 37-15-3(d)(1), which prohibits “[a]ny provisions contrary to the provisions of this article,” including W. Va. Code § 37-15-3a(b) (prohibiting substantial modifications to the lease prior to the end of the term) and W. Va. Code § 37-15-6 (providing the terms of tenancy for factory built homes), by providing that the community operator has the right to unilaterally modify any term or condition of the lease.

157. By New Community Rules in or around February 1, 2023, Defendants further violated W. Va. Code § 37-15-1 *et seq.* when it couched new lease terms as community rules that, including, but not limited to:

- (a) Restricted tenants’ ability to sell their home;
- (b) Created liable for liquated damages of \$5,000 and threatened Defendants’ attorney fees;
- (c) Charged fees for tenants to sell their homes;
- (d) Charged administrative fees for utility bills;
- (e) Altered tenants’ right to water;
- (f) Extending the time required for tenants to notify Defendants of their intent to move their homes; and
- (g) Required tenants to pay unlawful fees.

158. Plaintiffs and the putative Class Members suffer irreparable harm and have no adequate remedy at law for correction of these illegal lease terms and provisions.

**WHEREFORE**, Plaintiffs request that this Court grant the following relief:

- (a) The Court certify a subclass of all tenants residing in Shadow Wood, Delaney, Gardner Estates, Elk View, and Country Roads MHCs who received a notice of

- rent increase dated October 1, 2022, pursuant to Rule 23(b)(2) of the *West Virginia Rules of Civil Procedure* and appoint the named Plaintiffs as Class Representatives;
- (b) Issue a temporary restraining order and preliminary injunction requiring Defendants to immediately:
- i. Cease unilateral changes to the Plaintiffs’ and Class Members’ written rental agreements, including lot rent increases, and implementation of New Community Rules, Utility Notice, or new leases;
  - ii. Enjoin Defendants from terminating the tenancy of any Plaintiff or Class Member; and
  - iii. Enjoin Defendants from initiating or advancing any eviction proceedings against any Plaintiff or Class Member.
- (c) A declaration that Plaintiffs’ rental agreements “that results in a substantial modification of the tenant’s original rental agreement does not become effective until the current rental agreement expires and a new agreement is made in writing and in accordance with law,” W.Va. Code §37-15-3a(b);
- (d) The Court order restitution to Plaintiffs and Class Members as necessary to restore an interest in any money or property which may have been acquired by means of an act prohibited by W. Va. Code § 31-15-1 *et seq.*;
- (e) The Court reform the written rental agreements to strike any lease term or provision that violates W. Va. Code § 37-15-1 *et seq.*;
- (f) Award Plaintiffs reasonable attorney’s fees and costs in prosecution of this action;
- (g) Any other relief the Court determines is just and equitable.

### COUNT III – BREACH OF THE WARRANTY OF HABITABILITY

159. Plaintiffs incorporate by reference the allegations of all the preceding paragraphs.

160. Implied in every lease agreement is a warranty of habitability. *See Teller v. McCoy*, 162 W. Va. 367, 253 S.E.2d 114 (1978). In West Virginia, a landlord is responsible to make a tenant's living space habitable.

161. Defendants together operating a joint enterprise for the ownership and management of the five MHCs at issue as principals and/or agents or representatives authorized to act on behalf of, as the alter egos of, or at the direction of the same are "landlords" for all purposes of applicable law.

162. Defendants have engaged in the following violations of the law:

(a) Failure to deliver dwellings and surrounding premises to Plaintiffs in a fit and habitable condition, when Plaintiffs' communities were, including, but not limited to, saturated with excessive amounts of water, both under and around Plaintiffs' homes and in communal areas, like roadways; tainted with sewer contamination and exposed pipes; and infested with insects;

(b) Failure to maintain the leased property in a condition that meets requirements of applicable health, safety, and housing codes, when Plaintiffs' communities were, including, but not limited to, saturated with excessive amounts of water, both under and around Plaintiffs' homes; tainted with sewer contamination and exposed and/or uncapped pipes; infested with insects; subjected to incomplete repairs, like the removal of dangerous or damaged trees; darkened by Defendants' failure to repair of broken street lights; and subjected to abandoned homes.

(c) Failure to keep the MHCs in good repair and in safe and sanitary condition, when Plaintiffs' communities were, including, but not limited to, saturated with excessive amounts

of water, both under and around Plaintiffs' homes; tainted with sewer contamination and exposed pipes; infested with insects; subjected to incomplete repairs, like the removal of dangerous or damaged trees; darkened by Defendants' failure to repair of broken street lights; and subjected to abandoned homes;

(d) Failure to maintain in good and safe working order and condition all plumbing, sanitary, and other facilities supplied or required to be supplied by Defendant Landlords, when Plaintiffs' and Class Members' communities were, including, but not limited to, tainted with sewer contamination and exposed uncapped sewage pipes; and infested with insects; and

(e) The form lease agreements absolve Defendants of the responsibility to provide water and sewer services, in violation of applicable law.

163. As a direct result of Defendants' breach of warranty of habitability, Plaintiffs and putative Class Members have suffered damages.

**WHEREFORE**, Plaintiffs request that this Court grant the following relief:

- (a) Certify a class of all past and current tenants of Shadow Wood, Delaney, Gardner Estates, Elk View, and Country Roads MHCs from the time Defendants became owners pursuant to Rule 23(b)(3) of the *West Virginia Rules of Civil Procedure*, and appoint the named Plaintiffs as Class Representatives;
- (b) Class wide actual damages caused by Defendants' breach of the warranty of habitability;
- (c) Restitution to disgorge the rent amounts Defendants charged Plaintiffs and Class Members while the MHCs experienced the uninhabitable conditions alleged herein;

- (d) Order that Defendants, jointly and severally, contribute funds in excess of the rents collected to cure violations and assuring any conditions that threaten habitability are corrected;
- (e) Award Plaintiffs reasonable attorney's fees and costs in prosecution of this action; and
- (f) Any other relief the Court determines is just and equitable.

#### **COUNT IV – BREACH OF CONTRACT**

164. Plaintiffs incorporate by reference the allegations of all the preceding paragraphs.

165. The rental and occupancy of the MHCs at issue by the Plaintiffs and Class Members is governed by W. Va. Code § 37-15-3 and W. Va. Code St. R. 64-40-16.

166. The written rental agreements in question were in violation of West Virginia law, including, but not limited to the following:

- (a) Failure to include the rules and regulations of Defendants' communities;
- (b) Failure to include the language of W. Va. Code § 37-15-3;
- (c) Failure to provide the Legislative Rules for Manufactured Home Communities in violation of W. Va. Code St. R. § 64-40-16;
- (d) Failure to include and identify parties who had a security interest;
- (e) Restricting Plaintiffs and Class Members from selling their homes in violation of W. Va. Code §§ 37-15-3 and 37-15-6(f).
- (f) Defendants violated West Virginia law by including in the form leases that Plaintiffs and Class Members waive their right to their personal property if Defendants gain possession of their lot.

167. Furthermore, Defendants have terminated the existing leases by providing Utility Notices, New Community Rules, and New Lease Notices that substantially modify and terminate the Plaintiffs' and Class Members' agreements;

168. At all relevant times, in violation of law, Defendants have engaged in behaviors including, but not limited to the following:

(a) Constructively evicting tenants prior to the termination of their tenancy by delivering the October 1, 2022 Notice of Rent Increase and/or by the February 9, 2023 New Lease Notice, which:

- i. Failed to identify good cause to provide termination; and
- ii. Unilaterally accelerated requirements for providing notice to Plaintiffs;

(b) Restricting Plaintiffs' ability to sell their homes to buyers of their choosing;

(c) Imposing a lot rent increase that is unreasonable in relation to the cost incurred by landlord;

(d) Providing Utility Notices, New Community Rules, and New Lease Notices that substantially modify the tenants' agreements;

(e) Depriving Plaintiffs of 90-day notice and refusing to honor Plaintiffs fixed term leases in violation of W. Va. Code §§ 37-15-1; and

(f) Depriving tenants of habitable living conditions and unreasonably increasing lot rents as a means to pressure tenants to abandon their tenancy.

169. By including illegal terms in the form lease agreements with Plaintiffs and Class Members, Defendants breached these agreements.

170. At all relevant times, Plaintiffs and Class Members have performed all obligations under the lease agreements that they are legally obligated to perform.

171. As a direct result of Defendants' breach of the written rental agreement, Plaintiffs and putative Class Members suffer irreparable harm, for which they have no adequate remedy at law.

**WHEREFORE**, Plaintiffs respectfully request the following relief:

- (a) Certify a subclass of all tenants residing in Shadow Wood, Delaney, Gardner Estates, Elk View, and Country Roads MHCs who received a notice of rent increase dated October 1, 2022, pursuant to Rule 23(b)(2) and Rule 23(b)(3) of the *West Virginia Rules of Civil Procedure*, and appoint the named Plaintiffs as Class Representatives;
- (b) Enjoin Defendants from unilaterally changing the written rental agreements, including lot rent increases, and implementing New Community Rules, Utility Notice, or new leases;
- (c) Reform the written lease agreements to strike those provisions or terms that violate the law;
- (d) Enjoin Defendants from terminating the tenancy of any Plaintiff or Class Member;
- (e) Enjoin Defendants from initiating or advancing an eviction or foreclosure proceedings;
- (f) Award Plaintiffs their reasonable attorney's fees and costs in prosecution of this action;
- (g) Any other relief the Court determines is just and equitable.

**COUNT V – FRAUD**

172. Plaintiffs incorporate the preceding paragraphs by reference.



173. Defendants' have uniformly and consistently misrepresented a legal right to increase the lot rent for Plaintiffs and Class Members and fraudulently induced tenants to pay increased lot rents when neither the law nor the lease agreements allow a unilateral increase.

174. Defendants' have uniformly and consistently misrepresented a legal right to adopt New Community Rules or provide New Lease Notice for Plaintiffs and Class Members and fraudulently induced tenants to sign new leases when neither the law nor the lease agreements allowed such modifications.

175. These misrepresentations were material and were made intentionally, recklessly, and/or knowingly.

176. Plaintiffs and Class Members reasonably relied on the expectations that Defendants would not lie or deceive them, and reasonably relied on the misrepresentations in believing Defendants had the legal authority to raise their lot rent or change their lease terms.

177. Plaintiffs and Class members were damaged as the result this fraudulent conduct, including by paying amounts in excess of the lawful rent; suffering the cost of relocating moving their homes; being unlawfully evicted; suffering anxiety, fear, and mental distress and fear of eviction because of these fraudulent acts.

**WHEREFORE**, Plaintiffs respectfully request the following relief:

- (a) Certification of a subclass of all tenants residing in Shadow Wood, Delaney, Gardner Estates, Elk View, and Country Roads MHCs who received a notice of rent increase dated October 1, 2022, pursuant to Rule 23(b)(3) of the *West Virginia Rules of Civil Procedure*, and appoint the named Plaintiffs as Class Representatives;
- (b) Class wide actual damages;

- (c) Punitive damages;
- (d) Plaintiffs' reasonable attorney's fees and the costs of prosecuting this action; and
- (e) Such other relief as the Court deems equitable and just.

#### **COUNT VI – JOINT VENTURE/CONSPIRACY**

178. Plaintiffs incorporate the preceding paragraphs by reference.

179. Defendant Smith Management, an out-of-state venture capital fund, as a primary element of a joint enterprise including Defendant Homes of America, purchased five residential MHCs in Mercer County—Gardner Estates, Elk View, Country Roads, Delaney, and Shadow Wood using newly-created, eponymous shell corporations (the Defendant Landlords) to hold title for more than \$17 million more than the enterprise's straw buyer paid the original local family owners of those communities a short time previously.

180. Presumably, the straw purchases and the final, inflated price purchases followed a due diligence investigation by Defendants Smith Management as to Mercer County's current and historical manufactured home community and existing housing rent values; the terms and conditions of the existing resident lease agreements which would follow the sale of each community; the actual physical, upkeep, and maintenance condition of each of the five communities; and the current and historical acreage price and "going concern" market price for manufactured home communities in Mercer County that are not congruent with the actual fair market value of the communities. Accordingly, upon information and belief, the inflated price paid for the MHCs will benefit the joint venture by allowing the Defendants to leverage their holdings and/or take advantage of beneficial tax treatments, none of which correspond to the MHCs' actual fair market value in their current condition as a going concern.

181. Defendant Landlords are merely shell companies operated by Controlling Defendants.

182. Upon information and belief, Defendant Homes of America is wholly owned and/or controlled by Defendant Smith Management LLC.

183. Defendant Smith Management LLC has acquired and purchased manufactured home communities throughout the United States, including those of Defendant Landlords. Defendants Smith Management and Homes of America share the same executive officers, including Thomas Del Bosco.

184. Defendant Smith Management LLC, through its Accounting Manager Yousef Khalil, acted as the manager for each of the Defendant Landlords.

185. The purchase, and the monetary support thereof, of each community was facilitated by funds from Controlling Defendants and Defendant Landlords could not develop without the contributions of Controlling Defendants.

186. Defendant Landlords, in their applications to operate their communities, identified the Operator as Defendant Homes of America.

187. Furthermore, Defendant Landlords completed and signed off on their permit applications for each community, including their applications to the county health department.

188. Upon information and belief, Defendant Landlords regularly transferred funds to Controlling Defendants.

189. At each respective community, the Defendant Landlords and Defendant Xenia Cunningham were involved in the marketing, upkeep, and day-to-day operations, including taking payments, passing out rent and default notices, filing eviction actions, and communicating on Defendants' social media platforms.

190. Defendant Xenia Cunningham identified as an employee of Controlling Defendants and receives her paycheck from Controlling Defendants.

191. Defendant Xenia Cunningham, on letterhead identifying the five manufactured home communities and identifying herself as the property manager, explained to all tenants the financial obligations of tenants to the Defendants, and informed them of their payment instructions, and directed them to Defendant Homes of America's website.

192. Each Defendant had an agreement, either written, oral, constructive, or otherwise for a single business enterprise, that is the purchase/selling/managing mobile home community lots at issue in this case.

193. Each Defendant shared in the profits and losses of the single business enterprise.

194. The Defendants combined their money, skill, and/or knowledge to carry out this single business enterprise.

195. Each of the acts of the Defendants were done in furtherance of a joint venture in which each of the acts of the said Defendants were pursued with a joint purpose, and each of the acts of one is the act of the others.

196. Controlling Defendants exercised a degree of control over the remaining Defendants in carrying out the single business enterprise.

197. At all times relevant hereto, the acts of the Defendant rental manager were done on behalf of the Defendant Smith Management and Homes of America. Each of the Defendants' acts were conducted as a part of the principal agency relationship between the Defendants.

198. Accordingly, all Defendants acted in concert to squeeze profit from their inflated investment and/or to drive current tenants from the Defendant Landlords' communities to free the lots for different uses, Defendants unilaterally and intentionally issued notices in and around

October 1, 2022, and early 2023 that false purporting to terminate the tenants' existing lease rights by (1) raising lot rents to unconscionable and inequitable levels, as much as doubling the rent due the tenants were entitled to pay under their continuing, valid leases, (2) falsely representing that tenants could be required to sign new leases at defendants' demand, and (3) falsely representing that New Community Rules and Utility Notices were effective, in violation of both West Virginia law and these leases, inflicting continuing injury upon the tenants of each of these communities.

**WHEREFORE**, the Plaintiffs respectfully request that the Court declare the Defendants jointly and severally liable.

**PLAINTIFFS DEMAND A JURY TRIAL ON ALL CLAIMS SO TRIABLE**

**Respectfully Submitted,  
CHRISTOPHER MOORE,  
FREDDY AND SHERRY PEAKS,  
KIM RAY, VALERIA STEELE, and  
MARGIE SHAW, on their own behalf  
and on behalf of all others similarly  
situated,**

**By Counsel,**

s/Michael Nissim-Sabat

Bren J. Pomponio (WVSB # 7774)  
Colten L Fleu (WVSB # 12079)  
Michael Nissim-Sabat (WVSB #12233)  
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Adam Wolfe (WVSB # 12312)  
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Facsimile: (681) 207-7513  
Email: [adam@msjlaw.org](mailto:adam@msjlaw.org)  
*Counsel for Plaintiffs*

VERIFICATION OF Valeria L. Steele

STATE OF WEST VIRGINIA  
COUNTY OF MERCER, TO-WIT:

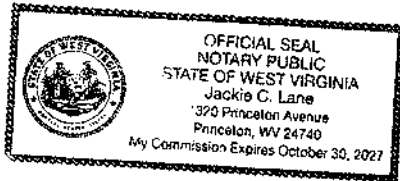
Plaintiff, named in the foregoing Complaint, having being first duly sworn, says the facts and allegations therein contained are true, except insofar as they are herein stated to be on information, and so far as they are therein stated to be on information, I believe them to be true.

Valeria L. Steele

Taken, subscribed and sworn to before me this 30<sup>th</sup> day of January, 2023.

My commission expires: October 30, 2027

Jackie C. Lane  
NOTARY PUBLIC



VERIFICATION OF Kimberly N. Ray

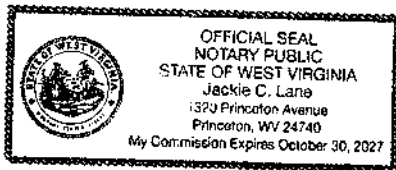
STATE OF WEST VIRGINIA  
COUNTY OF MERCER, TO-WIT:

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Kimberly N. Ray

Taken, subscribed and sworn to before me this 30th day of January, 2023.

My commission expires: October 30, 2027

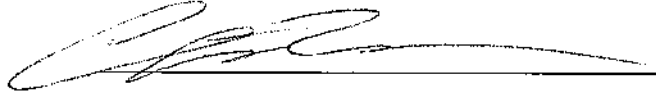


Jackie C. Lane  
NOTARY PUBLIC

VERIFICATION OF Christopher Moore

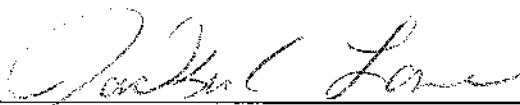
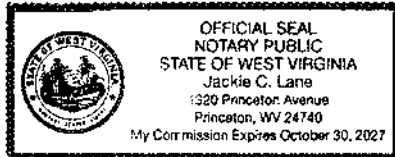
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Taken, subscribed and sworn to before me this 30th day of January, 2023.

My commission expires: October 30, 2027

  
\_\_\_\_\_  
NOTARY PUBLIC



VERIFICATION OF Sharon and Freddie L. Peaks

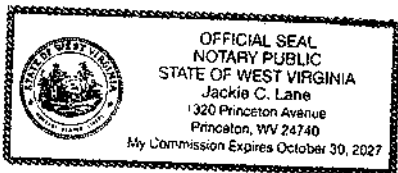
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Sharon and Freddie L. Peaks

Taken, subscribed and sworn to before me this 30th day of January, 2023.

My commission expires: October 30, 2027



Jackie C. Lane  
NOTARY PUBLIC

VERIFICATION OF Margie K Shaw

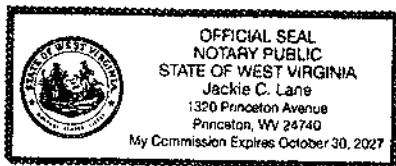
STATE OF WEST VIRGINIA  
COUNTY OF MERCER, TO-WIT:

Plaintiff, named in the foregoing Complaint, having being first duly sworn, says the facts and allegations therein contained are true, except insofar as they are herein stated to be on information, and so far as they are therein stated to be on information, I believe them to be true.

Margie K Shaw

Taken, subscribed and sworn to before me this 1st day of February, 2023.

My commission expires: October 30, 2027



Jackie C Lane  
NOTARY PUBLIC