LCR | LAWYERS FOR CIVIL RIGHTS BOSTON

April 18, 2024

VIA EMAIL AND CERTIFIED MAIL

Parakeet Communities
c/o Robert Kraus
Kraus & Hummel LLP
420 Washington St., Ste. 104
Braintree, MA 02184

Re: G.L. c. 93A Demand Letter RE Parakeet Communities' Mobile Home Park Practices

Dear Attorney Kraus:

Lawyers for Civil Rights ("LCR") has previously communicated with you regarding the misconduct of your client, Parakeet Communities ("Parakeet"), at two mobile home parks it owns and operates in Auburn, MA—American Mobile Home Park and Whispering Pine Estates (the "Parks"). In partnership with Anderson & Kreiger LLP, LCR represents several residents of the Parks, including Amy Case, Charles Sveden, Maria Velez, Walter Wassell, and Mark Raymond. On behalf of those individuals (the "Class Representatives") and a class of similarly situated people living at the Parks (together, the "Park Residents"), we now write to make formal demands of Parakeet pursuant to the Commonwealth's Consumer Protection Act, G.L. c. 93A.

Parakeet is liable under G.L. c. 93A §§ 2 and 9 because it has subjected Park Residents to a series of unfair and deceptive practices. As explained in greater detail below, Parakeet has repeatedly and knowingly ignored, misrepresented, and otherwise violated the Park Residents' tenancy rights and other legal protections. This pattern of exploitation—some of which LCR outlined in its letter dated January 17, 2024—has severely harmed the Park Residents, and is precisely the type of unscrupulous conduct covered by Chapter 93A.

Please be advised that if Parakeet does not make a reasonable settlement offer within thirty (30) days of receipt of this letter as required by Chapter 93A the Park Residents intend to file a class action lawsuit seeking not only their direct damages, but also multiple damages, attorney's fees and costs, pre-and-post-judgment interest, and injunctive relief. We sincerely hope, however, that this matter can be resolved amicably and expeditiously short of litigation.

I. Factual Background

A. Park Residents

The Parks—as Parakeet is well-aware—are largely inhabited by people living on low and fixed incomes, often due to advanced age or disability. The Massachusetts Legislature and courts have recognized that "manufactured housing communities provide a viable, affordable housing option to many elderly persons and families of low and moderate income, who are often lacking in resources and deserving of legal protection." *See Layes v. RHP Props., Inc.*, 95 Mass. App. Ct.

804, 810 (Mass. App. Ct. 2019). Within the Parks' population, there are two classes of tenants: "owner-tenants" and "renter-tenants." Owner-tenants are those who own their unit and pay Parakeet rent to keep the unit on a lot within one of the Parks. And renter-tenants are those who do not own their unit and pay rent to use and occupy both the unit and the lot. Whispering Pine is exclusive to owner-tenants and American has a mix of the two classes.

Each of the Class Representatives typifies the financially vulnerable population of the Parks. Amy Case is a renter-tenant at American who lives at lot # 38. She is financially constrained by costly ongoing medical problems related the surgical removal of a brain tumor in 2021. Charles Sveden and Maria Velez are owner-tenants at American who live together at lot # 21. They rely on a fixed income as they are both disabled and unable to work—Charles due to a cancer diagnosis and Maria due to a traumatic brain injury. Walter Wassell is a renter-tenant at American who lives at lot #1B. He is seventy-five years old, retired, and living on a fixed income. Mark Raymond is an owner-tenant at Whispering Pine who lives at lot # 43. Mark is sixty-six years old and unable to work due to nerve damage in his foot caused by diabetes.

B. First Round of Illegal Lease Offers

In November 2023, Parakeet sent all Park Residents notices of rent increase and new proposed leases. Each notice asserted that "[a]ll existing rental agreements will be terminating effective the end of December 31, 2023," stated that each tenant was being offered a new lease to begin on January 1, 2024, and listed the proposed increase in base rent for the relevant resident. The notices also threatened that "[i]f we do not receive a signed, new Rental Agreement from you by [December 31, 2023], then your tenancy will become terminated at the end of December 31, 2023, and you are required to vacate the premises by then."

The proposed leases accompanying this notice and threat of termination (together, the "November Lease Offers") all carried exorbitant rent increases. At American, Parakeet sought to increase: Amy's monthly rent by 35% from $970 to $1,315; Charles and Maria's rent by 25% from $460 to $575; and Walter's rent by nearly 43% from $920 to $1,315. Mark's rent, according to Parakeet, would increase by 23% from $500 to $615. Since the turn of the year, Amy has not paid the increased rent amount. She is unable to afford it given her other expenses and Parakeet refuses to accept any payment lower than the full amount. However, to avoid an eviction due to her rent withholding, she has still had to set aside the full amount Parakeet is charging each month and is, therefore, unable to use that money. Charles, Maria, Walter, and Mark all began paying their increased rent amounts in January, despite the extreme financial strain it causes them, due in-part to Parakeet's threat of termination. Walter, for example, now must borrow money from relatives each month to cover all his expenses. The owner-tenants are unable to move their units and have nowhere else to go in the event of an eviction. Parakeet imposed similarly unconscionable rent increases on all the vulnerable Park Residents.

i. Renter-Tenant Lease Offers

In addition to those rent increases, the November Lease Offers failed to comply with numerous statutory and regulatory requirements designed to protect tenants, which are discussed below.

The proposed leases that Parakeet sent to Amy, and the other renter-tenants at American, impinged upon numerous tenancy rights and legal protections. First, the renter-tenants' lease offers were only for one year and did not include a written five-year lease option. This despite that both a statute, G.L. c. 140 § 32P, and Attorney General regulations, 940 C.M.R. 10.03(4)-(5), dictate that each "resident" of a manufactured housing community is entitled to the stability presented by a five-year lease option at the time of renewal.

Second, the renter-tenant lease offers omitted various legally required disclosures that were material not only to the renter-tenants' renewal decision, but also to their ability to exercise and safeguard their tenancy rights. Those disclosures included: Parakeet's name and address, the names of its beneficial owners, the community rules, an itemized list of usual charges or fees, the size and location of the relevant home site, a description of the common areas and facilities, and the notice dictated by G.L. c. 140 § 32P. Under 940 C.M.R. 10.03(4), community owners must make these disclosures to any "prospective resident," including anyone renewing a tenancy, at least seventy-two hours before a new lease or tenancy takes effect.

Parakeet's failure to make these disclosures was no accident. It deliberately omitted its name from the notices, referring to itself only as "Community Owner" and "Management." And, to sow more confusion among renter-tenants as to who they were dealing with, the leases listed "Irvin Velasquez"—someone unaffiliated with Parakeet—as the owner.

That is not all that Parakeet withheld from the renter-tenants. The leases omitted the identity and address of Parakeet's resident agent in violation of 940 C.M.R. 3.17(3)(b)(2), which requires rental agreements to identify the "person authorized to receive notices of violations of law and to accept service of process on behalf of the owner." Each lease offer also contained at least one illegal provision. Although Paragraph 8.7 of the proposed lease states that the tenant "shall" be liable to the landlord for attorney's fees if the landlord brings a successful action to enforce the lease, it excludes such a prevailing party clause in favor of the tenant. This is unfair and unlawful pursuant to 940 C.M.R. 10.03(2)(j). Further, many tenants that signed the November Lease Offers have not received a fully executed copy. This violates 940 C.M.R. 3.17(3)(c).

As LCR outlined in its January 2024 letter (the "January Letter"), Parakeet also imposed unequal monthly rent increases in the renter-tenant lease offers. Whereas some renter-tenant lease offers contained $345 increases, others, like Walter's, contained $395 increases. Such non-uniform "change[s] in rent" are presumptively unfair under G.L. c. 140 § 32L(2).

On behalf of the residents of American, Amy emailed Parakeet in December 2023 to register the residents' collective objections to the November 2023 rent increases. Maria added her name to that email to convey she and Charles' support for Amy's objections.

ii. Owner-Tenant Lease Offers

In contrast to the renter-tenant offers, the owner-tenant November Lease Offers included: five-year lease options with $100 annual rent increases for years two through five; as well as purported community rules and a "Notice Required by Law." But these offers and accompanying documents were similarly replete with legal violations detrimental to tenants.

The owner-tenant offers showed the same pattern of obfuscating Parakeet's ownership identity. Neither the notices of rent increase, nor the leases, nor any of the accompanying documents listed Parakeet's name or that of its resident agent as mandated by 940 C.M.R. 10.03(4) and 3.17(3)(b)(2) respectively. And Parakeet again failed to make many other disclosures required by 10.03(4) before the effective date of the leases, including the names of Parakeet's beneficial owners, the operative community rules, the size and location of the relevant home site, a list of usual charges/fees, and the correct notice required by G.L. c. 140 § 32P.

Parakeet sent a set of "Community Rules" (the "November Rules") with the owner-tenant lease offers misleadingly suggesting that those rules are enforceable against residents. They are not. The November Rules were materially different from the last set of community rules approved by the Commonwealth in or about 2016. To be enforceable, the November Rules must first have been sent to the Attorney General's Office for approval and furnished to all community residents with an opportunity to comment in advance of the effective date. Parakeet failed to take either step. Thus, distributing the November Rules as if they were operative was not only misleading to the renter-tenants, but illegal under the terms of G.L. c. 140 § 32L(5) and 940 C.M.R. 10.04.

Adding to its pattern of obfuscation, Parakeet provided the renter-tenants with an outdated version of the notice required by G.L. c. 140 § 32P. Section 32P outlines the text of a notice meant to inform each community "resident" of the required procedures related to changing community rules. It also mandates that the notice be distributed to residents "verbatim" prior to the start of a new tenancy. However, the version Parakeet distributed did not include important updates to the notice that took effect in May of 2023, such as replacing references to the now-defunct "Department of Housing and Community Development" with its successor agency.

Lastly, like the renter-tenant offers, the owner-tenant lease offers at American contravened G.L. c. 140 § 32L by imposing unequal rent increases on the owner-tenants. For example, Charles and Maria's rent increased by $115 while other owner-tenants' rent only went up by $105.

C. Second Round of Illegal Lease Offers

LCR's January Letter to Parakeet outlined many of the above-identified disclosure failures as well as Parakeet's violations of Section 32L. On February 28, 2024, you sent LCR a response letter on behalf of Parakeet "seek[ing] to address" those allegations. Although you ignored the Section 32L violations entirely, you wrote in that letter that Parakeet would be sending the Parks' owner-tenants, among other things, "revised Occupancy Agreements along with Initial Written Disclosures." You also stated that Parakeet would not be making any revisions or additional disclosures to the renter-tenants because, in Parakeet's view, "manufactured homes owned by us are not within the protections afforded by the manufactured home statute or regulations."

That last contention is incorrect as a matter of law. It disregards that many of the relevant regulations protect "resident[s]"—a term that includes "any person who normally resides in a manufactured in home in a manufactured housing community." 940 CMR 10.01. Moreover, the term "tenant" you refer to as somehow excluding renter-tenants is defined broadly to encompass anyone who has a tenancy agreement with the operator for "use and occupancy of the homesite

… and other appurtenant rights." *Id.* There is no question that the renter-tenants' agreements grant them "use and occupancy" of the home site and other appurtenant rights thereto.

During the first week of March 2024, Parakeet distributed a packet of documents to the Parks' owner-tenants, which included a cover letter, a legal notice, "Initial Written Disclosures," and new leases (together, the "March Lease Offers"). This packet did not cure Parakeet's earlier legal violations and was once again rife with both material misrepresentations and omissions.

i. The Cover Letters and Lease Offers

Bold face type at the top of the cover letters identified the packet as a: "Termination of Tenancy and Offer to Establish New Tenancy." Below that, in the same type, Parakeet noted that "[t]he attached documents supersede and replace those provided to you in November 2023. Should you wish to adopt the changes reflected in these documents, including the occupancy agreement, please return signed the enclosed occupancy agreement selectiong [sic] a 5-year tenancy or tenancy-at-will tenancy." The Whispering Pine cover letters continued (emphasis in original):

> If you signed an Occupancy Agreement that has come to term and it is time to enter into a new one, signed an occupancy agreement that you wish to replace with the one being offered hereby, or if you are a tenant-at-will, your current tenancy-at-will and/or rental rate is hereby terminated effective March 31, 2024. You are hereby being offered a new tenancy effective as April 1, 2024. Pursuant to the attached Occupancy Agreement your base rent is REMAINING THE SAME AT $500.00 (November 2023's rate) but the rate of annual increase has changed to reflect market conditions. **The new monthly rental rate is $615.00 including the $12 monthly license fee to the Town of Auburn.**[1]

The top of the first page of the new leases contained a similar block-letter, bold face message as that appearing on the cover letter. Specifically, the text stated that "[t]his occupancy agreement and all attached documents and disclosures supersedes and replaces any and all occupancy agreements that you have been provided. Your signature below will serve as evidence of your agreement to replace this occupancy agreement with the one received previously by you [sic] in November 2023 and which you may have executed and returned to the owner/operator."

The conspicuous messages at the top of the cover letters and lease offers were clearly tailored to deceive owner-tenants unfamiliar with the law. As Parakeet knows, without agreement from the owner-tenants—especially those like Mark who signed five-year leases in November—the March Lease Offers "supersede and replace" nothing. But Parakeet clearly designed that language to be eye-catching, putting it in prominent locations in bold type to deceive owner-tenants into thinking they had no choice but to sign and return the March Lease Offers.

The cover letters were also designed to mislead owner-tenants about the initial monthly rent in the March Lease Offers. They falsely stated "your base rent is REMAINING THE SAME" at

[1] The cover letter language sent to American owner-tenants, like Charles and Maria, was nearly identical. The only differences were the rent amounts mentioned. Charles and Maria's said, for example, "your base rent is REMAINING THE SAME AT $460" followed by "[t]he new monthly rental rate is $575."

November 2023 rates (emphasis in original). Although the next sentence identifies the actual, increased starting rent, when that sentence is read together with the preceding all caps assertion—let alone prior correspondence—the owner-tenants were prone to incorrectly conclude that the initial base rent in the March Lease Offers was their November 2023 rate. At minimum, it is deceptive for Parakeet to sow confusion among owner-tenants in this way.

In another attempt to improperly induce the owner-tenants into signing the March Lease Offers, those Offers indicated that, on their effective date, the owner-tenants would receive rent credits. Such credits would apparently reimburse the owner-tenants for any amount of rent paid in 2024 above their 2023 rent levels. However, the March Lease Offers unfairly and misleadingly suggested that owner-tenants would only receive those credits if they signed the March Lease Offers, failing to disclose that the owner-tenants were *already* entitled to reimbursement of those amounts regardless of whether they signed the Offers. The November Leases were illegal as described above and, thus, the rent increases they imposed were invalid.

The March Lease Offers—like the November Lease Offers—also failed to provide the name of Parakeet's resident agent listed with the Massachusetts Secretary of State's Office, which is a clear violation of 940 C.M.R. 3.17(3)(b)(2).

ii. The Notices and Disclosures

Despite ample opportunity to fix any issues with legal notice and disclosure requirements following LCR's distribution of the January Letter, Parakeet still declined to satisfy those requirements in the March Lease Offers.

To start, Parakeet used the same outdated version of the notice required by G.L. c. 140 § 32P as it did in November, failing to comply with that Section. Consistent with its ongoing pattern of concealment, Parakeet also failed to make disclosures required by 940 C.M.R. 10.03(4). For example, none of the documents accompanying the March Lease Offers included the "size and location" of the relevant home site or the text of any operative "community rules." The latter omission is especially troubling given that there is a set of community rules posted in the common areas at American. To the extent those community rules, or any other rules, are presently enforceable, such rules must be disclosed to "residents" at least seventy-two hours before the start of a new lease or tenancy per 940 C.M.R. 10.03(4)(e).[2] This is true even if Parakeet is seeking approval of new rules from the Attorney General's Office.

Finally, the "Initial Written Disclosures" document misrepresented 940 C.M.R. 10.03(4)'s seventy-two-hour disclosure requirement for "community owners" (i.e., Parakeet) as somehow mandating action from residents. That document began with the message that "[s]igned acknowledgment of your receipt of this Disclosure is required at least 72 hours prior to either the signing of any Occupancy Agreement or the commencement of any new tenancy whichever

[2] Such rules must also be posted in a "conspicuous place" in the community alongside the relevant attorney general regulations per G.L. c. 140 § 32D. It is worth noting that no community rules are posted at Whispering Pine, and the attorney general regulations are not posted at either Park.

comes first." No such rule exists for residents. As a result, this language runs afoul of 940 C.M.R. 10.04(1)(c), which prohibits owners from making "any material false representation as to any material matter related to the giving of notices … related to community rules."

II. Chapter 93A Violations & Injuries

M.G.L. c. 93A § 2(a) makes it unlawful to employ "[u]nfair or deceptive acts or practices in the conduct of any trade or commerce." Section 9 of that statute allows anyone injured by any act or practice made unlawful under Section 2—or any rule or regulation issued pursuant to Section 2—to bring an action in Superior Court for damages and equitable relief. G.L. c. 93A § 9(1). A plaintiff is entitled to double or treble damages "if the court finds that the use or employment of the [unlawful] act was a willful or knowing violation" of Chapter 93A. *Id.* at § 9(3).

The Attorney General's Office has issued extensive regulations pursuant to Chapter 93A defining unfair and deceptive conduct in both the general landlord-tenant space, *see* 940 C.M.R. 3.17, and the manufactured housing context, *see* 940 C.M.R. 10.00-10.14. Parakeet's violations of Chapter 93A and the Attorney General regulations are astounding in scope and scale.

A. Violations

Parakeet's unfair and deceptive conduct toward the Park Residents includes, among other things:

- Withholding information and documents that residents were legally entitled to have as they considered new lease or tenancy offers;
- Levying extreme rent increases without meeting legal disclosure requirements;
- Imposing non-uniform rent increases on residents within the same tenant class;
- Subjecting residents to illegal lease provisions;
- Promulgating unenforceable community rules as if they were binding;
- Making false and misleading assertions as to the nature and terms of lease offers; and
- Misrepresenting the applicability of rules governing community owner conduct.

Parakeet used these illegal tactics knowingly, and repeatedly, to diminish the bargaining power of the vulnerable Park Residents and induce them into taking actions they might not otherwise have taken. The consistency and volume of the violations establish that this was all part of a broader strategy to deceive the Park Residents for Parakeet's illicit gain.

B. Impacts on the Park Residents

i. General Harm to Park Residents

Parakeet's unfair and deceptive practices have harmed the Class Representatives, and the Park Residents as a whole, in numerous ways. *See Layes*, 95 Mass. App. Ct. at 825-26 (noting that

class actions by manufactured home residents under Chapter 93A may contain "differences in damages among class members").

First, Parakeet's omissions and misrepresentations have deprived the Park Residents of the ability to make fully informed renewal decisions. Parakeet has withheld from Park Residents information to which they are entitled before a lease or tenancy begins, such as the operative community rules, the notice dictated by G.L. c. 140 § 32P, and a list of the usual charges and fees. Parakeet's conduct places Park Residents in a worse decision-making position than they would have been in had Parakeet complied with the law. Parakeet's material misrepresentations, such as those identified in the March Lease Offers above, cause similar harm to Park Residents. *See Aspinall v. Philip Morris Cos., Inc.*, 442 Mass. 381, 397 (2004) (finding that defendant's deceptive advertising caused plaintiffs to buy a product whose features were misrepresented by the defendant); *Barrett v. Savarese*, 64 Mass. App. Ct. 1106, at *4 & n.10 (Mass. App. Ct. 2005) (1:28 Decision) (affirming ruling for tenant under c. 93A because the landlord's "deceptive statement" was the "direct cause of the tenants' injury").

Second, Parakeet's use of illegal lease terms has diminished the Park Residents' bargaining power and made it more difficult for them to exercise and safeguard their tenancy rights. For example, by omitting Parakeet's name and address—and those of any resident agent—from the leases as legally required, Parakeet has made it more difficult for residents to pursue legal action against the company. Even if residents could somehow find the information needed to sue Parakeet to enforce their rights, the non-mutual prevailing party clause in the renter-tenants' November Lease Offers serves as a significant deterrent to doing so. Similarly, by declining to provide renter-tenants with the legally required five-year lease option, Parakeet not only reduces renter-tenants' leverage in negotiations by limiting their choices, but also robs them of the benefits of a long-term lease. Multi-year tenancies provide substantially more protections than tenancies at will. *See Leardi v. Brown*, 394 Mass. 151, 159 (1985) (affirming judgment under c. 93A for class action of tenants against landlord for unfair and deceptive lease terms); *see also Hershenow v. Enterprise Rent-A-Car Co. of Boston, Inc.*, 445 Mass. 790, 800 (2006) ("In *Leardi*, the requisite causal connection was established: confronted by unhabitable conditions, the illegal lease terms would deter tenants from exercising their legal rights on pain of loss of their tenancy"); *Layes*, 95 Mass. App. Ct. at 824 (commenting that enforcement of an illegal lease provision would, by itself, be sufficient to state a claim against a landlord under c. 93A).

Lastly, Parakeet has injured the Park Residents by charging them increased rent without first satisfying its legal obligations to them. Seeking invalid rent amounts on threat of tenancy termination, and refusing to accept any lower amount, puts residents in a remarkably stressful and untenable position. People like Amy, who either refuse to pay the increased rent amount or cannot afford it, have still been forced to save as much of the increased amount as possible to guard against a possible eviction. Moreover, those like Charles, Maria, Walter, and Mark who have paid the full increased rent amount each month in 2024, have been unable to use that additional rent money on other necessities. This financial burden is particularly acute in a community of people living on small and fixed incomes. *See Mac's Homeowners Ass'n v. Gebo*, 92 Mass. App. Ct. 453, 460 (Mass. App. Ct. 2017) (denying landlord's motion to dismiss tenants' 93A claim as "the complaint alleges that as a result of the developers' misrepresentation

that the homeowners would be required to move or vacate, they were forced to put their lives on hold, were unable to sell or lease their units, and suffered extreme emotional distress").

Although Parakeet appears to have provided the owner-tenants with rent credits on April 1, 2024, these rent credits have not cured the owner-tenants' injuries. Upon preliminary review, it is our understanding that the credits cover the difference between each owner-tenant's November 2023 rent and the increased amount they were forced to pay in the first three months of 2024. However, because of the unfair and deceptive aspects of the March Lease Offers, the 2024 rent increases remain illegal. Thus, as Parakeet has charged the owner-tenants the increased amounts again in April, the owner-tenants continue to be harmed by these illegal increases.

ii. Emotional Distress Among Class Representatives

Parakeet's unfair and deceptive practices have also caused each of the Class Representatives emotional distress. The stress created by Parakeet's actions has exacerbated Amy's headaches and caused her to develop chronic insomnia. Following the November lease offers, Mark began to suffer from severe and persistent leg pain, difficulty sleeping, depression, and fatigue. These issues are due to the fear and anxiety generated by Parakeet's actions. Parakeet's actions have likewise induced immense apprehension and angst in Charles and Maria—anxiety that has aggravated Charles' insomnia and back pain and caused Maria to experience frequent headaches and bouts of depression. Walter has similarly experienced heightened stress and anxiety due to Parakeet's actions. Many other Park Residents are enduring similar harm.

III. Settlement Demand

As a result of Parakeet's unfair and deceptive conduct, the Park Residents have been and continue to be injured as described above. Considering the foregoing, and without waiving any rights under statutory and common law, the Class Representatives demand that Parakeet immediately does the following to remediate the harm to them and their fellow Park Residents:

- Withdraw all outstanding lease offers;
- Reimburse all Park Residents for any rent paid in 2024 above their 2023 rent levels;
- Promulgate new tenancy offers to all Park Residents including a five-year lease option that freezes rent at November 2023 levels for its duration;
- Ensure such offers are accompanied by all legally required notices and disclosures; and
- Circulate to all Park Residents, and post conspicuously in the common areas at both Parks, all enforceable community rules and the relevant Attorney General regulations.

Under Chapter 93A, Parakeet has thirty (30) days from receipt of this letter to respond with a reasonable offer of settlement. Otherwise, the Class Representatives will pursue a class action lawsuit on behalf of themselves and a class of similarly situated Park Residents seeking direct damages, multiple damages, attorney's fees and costs, pre-and-post-judgment interest, as well as all injunctive relief necessary to redress their harm and prevent future harm.

The vulnerable Park Residents deserve not only to have their legal protections and tenancy rights honored, but also to be treated with dignity and respect. We hope that Parakeet will begin doing so by meeting the above-listed demands. In the interest of reaching an amicable and expedited resolution, we would be happy to meet with you to discuss these issues.

Sincerely,

/s/ Jacob Love, Lawyers for Civil Rights
/s/ Melissa Allison, Anderson & Kreiger LLP
/s/ Mina Makarious, Anderson & Kreiger LLP
/s/ Sean Grammel, Anderson & Kreiger LLP