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IN THE SUPREME COURT OF THE STATE OF DELAWARE

BLUE BEACH BUNGALOWS DE, LLC, *Appellant Below, Appellant/Cross-Appellee* v. THE DELAWARE DEPARTMENT OF JUSTICE CONSUMER PROTECTION UNIT, *Appellee Below, Appellee/Cross-Appellant.*	)	No. 14, 2025 Court Below: Superior Court of the State of Delaware C.A. No. S24A-04-001

BRIEF OF AMICI CURIAE COMMUNITY LEGAL AID SOCIETY, INC. AND THE DELAWARE MANUFACTURED HOME OWNERS ASSOCIATION IN SUPPORT OF APPELLEE DELAWARE DEPARTMENT OF JUSTICE CONSUMER PROTECTION UNIT

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STATEMENT OF *AMICI CURIAE'S* INTEREST

Pursuant to Supreme Court Rule 28, the Community Legal Aid Society, Inc. ("CLASI") and the Delaware Manufactured Home Owners Association ("DMHOA") have an interest in this dispute because they advocate for the rights of many people, including older residents living on fixed incomes who own manufactured homes but rent the lots on which their homes are placed from the community owners. These homeowners are thus subject to being evicted from the homes they own. Movants support the position of Appellee here to uphold the constitutionality of the CFA because the CFA provides an important administrative remedy to such homeowners.

CLASI is a statewide, nonprofit law firm whose mission is to combat injustice through civil legal advocacy on behalf of vulnerable and underserved Delawareans. CLASI's Elder Law Program provides legal assistance to Delawareans 60 years or older. CLASI also receives a grant administered by the state and funded by assessments from homeowners to provide representation to homeowners in manufactured housing communities in disputes with the community owners.

DMHOA is the only statewide organization in Delaware that exists exclusively to serve the interests of manufactured homeowners on rented or leased land. Its mission includes educating on issues affecting those homeowners. DMHOA additionally provides training and educational support so that homeowners

are aware of their rights and responsibilities. *See generally* Delaware Manufactured Home Owners Association, https://dmhoa.org/ (last accessed April 3. 2025).

CLASI and DMHOA frequently work together to advance the rights and interests of homeowners in manufactured housing communities. They seek leave to file the accompanying amicus brief because this appeal raises important constitutional issues regarding the enforcement of consumer protection rights which affect the homeowners in manufactured housing communities. The ability of the Division of Consumer Protection (DCP) of the Delaware Department of Justice (DDOJ) to be able to pursue violations of the Delaware Consumer Fraud Act (CFA), 6 *Del. C.* §§ 2511 *et seq.*, provides a critical administrative mechanism to prevent community owners from taking advantage of vulnerable homeowners served by CLASI and DMHOA.

More than 20,000 homes are situated in over 170 registered manufactured housing communities in Delaware. *See generally* Delaware Manufactured Home Relocation Authority, https://demhra.delaware.gov (last accessed April 3, 2025). CLASI and DMHOA cannot serve all families who suffer illegal conduct by community owners. As this case demonstrates, the ability of the DCP to step in and pursue an administrative enforcement action is an important tool in holding community owners responsible for violations of the CFA. The elimination of this crucial tool would force the DCP to file actions in court and would significantly

curtail the State's ability enforce its consumer protection laws. That restriction would severely harm the families that CLASI and DMHOA serve. Without effective administrative enforcement, low-income homeowners would largely be left to their own devices and with no means to have illegal conduct addressed and appropriately sanctioned.

The vulnerable homeowners for whom CLASI and DMHOA advocate, as well as more generally victims of deceptive practices that violate the CPA, have a real stake in the outcome of this appeal because they are largely dependent upon the ability of the DCP to enforce consumer protections administratively. Removing this important tool would permit rogue community owners to violate the law knowing that administrative enforcement is no longer available to deter conduct.

As the Superior Court ruled, and as set forth herein, the Delaware Constitution does not prohibit the DCP from pursuing violations of the CFA administratively. In accordance with Rule 28(a)(2), this Brief advances several points not specifically addressed in the previously-filed briefs, and Movants respectfully request that it be considered pursuant to Supreme Court Rule 28(a). It is important that the Court hear from advocates for the people who will be most affected by the Court's decision in this case.

RULE 28(c)(4) STATEMENT

Pursuant to Rule 28(c)(4), Movants state that (1) their counsel authored this brief in whole; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (3) no person, other than Movants, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

BACKGROUND

This Amicus Brief addresses one issue on appeal – whether the adjudication of claims brought by the DCP under the CFA, through the administrative enforcement proceeding detailed in 29 *Del. C.* § 2523, violates a party's right to a jury trial under the Delaware Constitution. The CFA, which was enacted in 1965, was modeled after the Federal Trade Commission Act (FTC Act) with the purpose of "protect[ing] consumers and legitimate business enterprises from unfair or deceptive merchandising practices in the conduct of any trade or commerce in [Delaware]." 6 *Del. C.* § 2512 (stating the purpose of the CFA); Olha N.M. Rybakoff, *An Overview of Consumer Protection and Fair Trade Regulation in Delaware*, 8 Del. L. Rev. 63, 68 (2005) (hereinafter *Fair Trade Regulation in Delaware*) (noting the origins of the CFA).

In 1994, Delaware added a new provision to the CFA that created a separate path (in addition to private litigation) for the DDOJ to enforce its terms. The amendment established a specific division within the DDOJ, the DCP, that was empowered to enforce the CFA on behalf of consumers and to collect civil penalties. *See* 69 Del. Laws 203 (1994); 29 *Del. C.* § 2517(a)-(b) (stating that the purpose of the DCP is to "protect the public against consumer fraud and deceptive trade practices . . .").

The DCP may bring an action under the CFA in either a "court of competent jurisdiction," or in an administrative proceeding before an "administrative hearing officer" appointed by the Attorney General. 29 *Del. C.* §§ 2520(a)(4), 2523(b). In the administrative proceeding, "[u]pon finding a violation [of the CFA], the hearing officer may order" the violator to pay "a civil penalty of not more than $5,000 for each [willful] violation," payable to the State.[1] *Id.* § 2523(c), 2524(b). Because the CFA creates a unique, statutory proceeding with no common law analogue, the Delaware Constitution does not guarantee the right to a jury trial with respect to claims brought under the statute. As such, the above-cited administrative process used to adjudicate CFA claims does not violate the Delaware Constitution.

[1] The statute further provides that "[a]ny party, including the [DCP], who is aggrieved by the hearing officer's final administrative order may appeal the order to Superior Court within 30 days after the date the final order is issued." 29 *Del. C.* § 2523(d).

ARGUMENT

I. A Historical Analysis is Used to Determine the Right to a Jury Trial

Article I, Section 4 of the Delaware Constitution of 1897 states that "[t]rial by jury shall be as heretofore." Del. Const. art. I, § 4. In interpreting this section, this Court has stated that "the proper focus of any analysis of the right to trial by jury, as it is guaranteed in the Delaware Constitution, requires an examination of the common law." *Claudio v. State*, 585 A.2d 1278, 1298 (Del. 1991). As such, "absent a newly created statutory right to trial by jury, if the right for a particular cause of action did not exist at common law, then it does not exist today." *Bon Ayre Land LLC v. Bon Ayre Cmty. Ass'n*, 2015 WL 893256, at *4 (Del. Super. Ct. Feb. 26, 2015), *rev'd on other grounds*, 133 A.3d 559 (Del. 2016); *see also City of Wilmington v. Janeve Co.*, 2014 WL 2895228, at *5 (Del. Super. Ct. June 13, 2014) (noting that "unique statutory remed[ies]" without "common law analogue[s]" do not carry a right to a jury trial).

Nevertheless, Appellant Blue Beach attempts to frame the analysis as one that solely examines the type of relief sought, i.e., whether an action is at law or at equity. *See* Appellant Blue Beach's Opening Brief at 29 ("[T]here is a constitutional right to a jury trial in actions at law, but not in actions that are historically equitable."). That argument misstates Delaware law, because as stated *supra*, Delaware courts examine whether the right to a jury trial attached to a particular cause of action at

common law, not simply whether the cause of action involves monetary or equitable relief. Indeed, in each of the cases cited by Blue Beach, the court applied the historical analysis test to determine whether the right to a jury trial attached to a particular statutory action. *See Hopkins v. Just. of Peace Ct. No. 1*, 342 A.2d 243, 245 (Del. Super. Ct. 1975) (finding that "[i]t is clear *from the history* of the repossession statute that *its origin lies in the common law* action of ejectment") (emphasis added); *Allstate Ins. Co. v. Rossi Auto Body, Inc.*, 787 A.2d 742, 743-50 (Del. Super. Ct. 2001) (holding that a statute allowing replevin actions without the right to a jury trial was unconstitutional because the right to a jury trial attached to such actions at common law).

In applying the historical analysis standard with respect to the administrative action under the CFA, the Superior Court correctly held that a cause of action under that statute is "much different than common law fraud as it existed in 1897"; and therefore, the Delaware Constitution does not guarantee the right to a jury trial with respect to such actions. *Blue Beach Bungalows De, LLC v. Delaware Dep't of Just. Consumer Prot. Unit*, No. S24A-04-001-CAK, 2024 WL 4977006, at *14 (Del. Super. Ct. Dec. 4, 2024), *amended*, 2024 WL 5088688 (Del. Super. Ct. Dec. 12, 2024). The Superior Court's decision with respect to the constitutionality of the CFA (and in particular the administrative remedy thereunder) should be affirmed

because (1) the CFA is not a codification of common law fraud; and (2) the elements of a CFA claim are significantly different from those of common law fraud.

Finally, whether a right to a jury trial right attaches to a particular action under federal law has no application here, under Delaware law. Thus, states with similar constitutional provisions to Delaware and that employ a similar analytical framework with respect to their consumer fraud statutes have reached the same conclusion as the Superior Court reached here.

A. The CFA is Not a Codification of Common Law Fraud

A historical review demonstrates that the CFA and DCP are not merely codifications of common law fraud, but rather, are creatures of statute specifically grounded in consumer protection against unfair trade practices, a protection which simply did not exist at common law. This historical review begins with the inception of federal antitrust law.

In 1914, "concerned about the growth and spread of monopolies," Congress passed the FTC Act and established the Federal Trade Commission (FTC), which was charged with regulating "unfair methods of competition." Victor E. Schwartz & Cary Silverman, *Common-Sense Construction of Consumer Protection Acts*, 54 U. Kan. L. Rev. 1, 7 (2005) (hereinafter *Common-Sense Construction*); *see also* Federal Trade Commission Act, Pub. L. No. 63-203, 38 Stat. 717 (1914) (codified as amended at 15 U.S.C. §§ 41-58 (2000)) (establishing the FTC). Although initially focused on antitrust law and the regulation of monopolies, the FTC also "recognized early on [] that the deception of consumers was indeed an unfair method of competition." Dee Pridgen, *Consumer Protection and the Law*, § 8:2 (2024) (hereinafter *Consumer Protection and the Law*). In 1931, however, the Supreme Court greatly reduced the FTC's consumer protection function by holding that it "lacked power to regulate activities that had no effect on competition between businesses, such as false advertising." *See Common-Sense Construction*, at 8 (citing

Fed. Trade Comm'n v. Raladam Co., 283 U.S. 643 (1931)). In response, in 1938, Congress amended the FTC Act to explicitly prohibit "unfair or deceptive acts or practices." *See Consumer Protection and the Law*; § 8:2; *see also* 15 U.S.C. § 45(a)(1).

Throughout the 1940s and 1950s, "[t]he FTC's status as the protector of the ordinary consumer grew even stronger." *Consumer Protection and the Law*; § 8:2. Its ability to regulate unfair trade was not unlimited, however. It had jurisdictional limits (i.e., authority over actions implicating interstate commerce only) and suffered from a "lack of sufficient resources." Dee Pridgen, *The Dynamic Duo of Consumer Protection: State and Private Enforcement of Unfair and Deceptive Trade Practices Laws*, 81 Antitrust L.J. 911, 912-915 (2017) (hereinafter *Dynamic Duo*). The FTC therefore sought "to extend the reach of [its] consumer protection mission into the states." *Id.* Accordingly, in the early 1960s, "'the heyday of consumerism,' the FTC urged states to adopt their own ['L]ittle-FTC Acts[']' as a way of combining resources to target unfair and deceptive practices at both the local and national levels." *Common-Sense Construction*, at 16; *see also Consumer Protection and the Law*; § 2:11.

Although the FTC and the Council of State Governments collaborated on a model act, no one model predominated, and the "50-some statutes that now exist consist of a hodgepodge of the original prototypes." *See Consumer Protection and*

the Law; § 2:12; *Dynamic Duo*, at 912. As states began to enact "Little FTC Acts" throughout the 1960s and 1970s, many were passed as single statutes; however, Delaware, along with six other states, "divide[d] its . . . 'Little FTC Act' into two statutes–the first geared to consumer protection, i.e., the 'CFA,' and the other towards business protection, i.e., the [Deceptive Trade Practices Act (DTPA)]." *Fair Trade Regulation in Delaware*, at 68.

Similar to the consumer fraud provisions found in other "Little FTC Acts," Delaware's 1965 CFA was "patterned after the FTC Act." *Fair Trade Regulation in Delaware*, at 68; *see also Consumer Protection and the Law*; § 2:11 ("Most state consumer protection laws broadly prohibit 'unfair and deceptive' trade practices, language taken directly from the [FTC] Act."); *compare* 6 *Del. C.* § 2512 (stating that the purpose of the CFA "shall be to protect consumers and legitimate business enterprises from *unfair or deceptive merchandising practices* in the conduct of any trade or commerce . . .") (emphasis added) *with* 15 U.S.C. § 45(a)(1) (declaring unlawful "*unfair or deceptive acts or practices* in or affecting commerce") (emphasis added).

Thus, the federal and state consumer protection laws were "meant to complement each other." *Common-Sense Construction*, at 16. The FTC viewed "[s]tate government enforcers . . . as allies, perhaps even foot soldiers, in the fight against unfair and deceptive trade practices." *Dynamic Duo*, at 919. A state's ability

to levy civil penalties against those found liable was viewed as a "major form of deterrent for unfair and deceptive practices." *Id.* at 921. As explained *supra*, the DCP administrative remedy was added in 1994 and authorizes the DCP to "[s]eek administrative remedies for violations of" the CFA and "[i]nitiate and prosecute civil or criminal actions related to the purposes of [the CFA] in any court of competent jurisdiction." 29 *Del. C.* § 2520(a)(3)-(4). This administrative remedy, initiated by the State on behalf of consumers, has no analog in the common law.

When this historical context is considered, it is evident that the CFA is a "unique statutory remedy" derived from federal fair trade law, not from common law fraud. *See Janeve Co.*, 2014 WL 2895228, at *5; *see also Fair Trade Regulation in Delaware*, at 68 ("One of the biggest areas of confusion for litigants involves the incorrect assumption that the CFA and []DTPA address 'fraud' . . . . Both laws originated from *unfair competition law vis-a-vis* the FTC . . . .") (emphasis in original). Delaware's CFA, much like the consumer protection laws enacted in other states, is meant to complement federal fair trade law, not to codify common law fraud. As explained *infra*, an element-by-element comparison of CFA and common law fraud claims demonstrates the significant differences.

B. The Elements of a CFA Claim are Significantly Different from those of Common Law Fraud

When the elements of a CFA claim are compared to those of common law fraud, it is apparent that a cause of action under the CFA is not "in substance so similar to" common law fraud such "that the constitutional right to a jury trial attaches." *State v. Cahill*, 443 A.2d 497, 500 (Del. 1982). Common law fraud consists of: (1) a false representation, usually one of fact, made by the defendant; (2) the defendant's knowledge or belief that the representation was false, or was made with reckless indifference to the truth; (3) an intent to induce the plaintiff to act or to refrain from acting; (4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and (5) damage to the plaintiff as a result of such reliance. *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069 (Del. 1983).

A claim under the CFA, however, must consist of at least one of the following categories of unfair or deceptive acts: (1) a deception, fraud, false pretense, false promise or misrepresentation (Category 1); ***or*** (2) a concealment, suppression or omission of material fact with the intent others rely on such concealment, suppression or omission (Category 2). 6 *Del. C*. § 2513(a) (emphasis added). Such a claim applies "whether or not any person has in fact been misled, deceived or damaged thereby." *Id.*

Therefore, claims under the CFA may consist of "unfair or deceptive acts of *commission*" (Category 1), or "unfair or deceptive acts of *omission*" (Category 2).

See Fair Trade Regulation in Delaware, at 69 (emphasis in original). Although each category must relate to the sale, lease or advertisement of any merchandise, only Category 2, acts of omission, "contains the requirement there be an 'intent others rely' on the unlawful conduct." *Id.* As such, under the CFA, for Category 1 claims, proving "[a]n intent to deceive or mislead is not required," but rather, a "negligent or innocent misrepresentation is sufficient." *Id.* Additionally, unlike common law fraud, the CFA allows a public path for enforcement by the DCP on behalf of the Attorney General, and the DCP may seek a variety of remedies, including the imposition of either a $10,000 fine (through proceedings initiated in court) or a $5,000 fine (through the administrative proceedings) for each violation of the statute, which is payable to the State, not to the injured individuals. 29 *Del. C.*§§ 2522(b), 2524(b).[2] As stated *supra*, such civil penalties act as a "major form of deterrent for unfair and deceptive practices." *Dynamic Duo*, at 921.

Thus, as the Court of Chancery has recognized, an element-by-element comparison of the two actions demonstrates that "[c]ommon law fraud differs remarkably" from the CFA. *State ex rel. Brady v. Publishers Clearing House*, 787 A.2d 111, 116 (Del. Ch. 2001). The *Brady* Court examined whether a heightened pleading standard, requiring claimants to plead common law fraud claims "with

[2] The CFA states that "[a]ll money received by the State as a result of actions brought by the Attorney General . . . shall be credited by the State Treasurer to a fund to be known as the 'Consumer Protection Fund.'" 6 *Del. C.* § 2527(a).

particularity," also applied to claims by the State under the CFA. *See id.* at 114. After noting the elements required to establish a claim under each action, the court found that "the two actions are quite distinct" as "[s]cienter, intent to induce action, reliance, and damages are conspicuously missing from the elements of the CFA." *Id.* at 116. Accordingly, the court held that the heightened pleading standard for common law fraud claims does not apply to the CFA. *Id.* at 118.

Therefore, "when common law fraud elements are compared with consumer fraud, the *only* element in common is that the defendant engaged in some sort of falsehood." *Fair Trade Regulation in Delaware*, at 71 (emphasis added). These stark differences are unsurprising given that "[t]he practical effect of state consumer protection laws is to 'trump' traditional theories and defenses typically available under contract and tort law . . . in commercial transactions between . . . a business and a consumer." *Id.*; *see also Consumer Protection and the Law*, § 3.1 (stating that consumer protection laws "*are viewed as creating new substantive rights*, not bound by the common-law definitions of deceit, fraud or misrepresentation") (emphasis added). As such, CFA claims provide "unique statutory remed[ies]" without a "common law analogue." *Janeve Co.*, 2014 WL 2895228, at *5.

C. Courts in Other States Have Found that the Right to a Jury Trial Does Not Attach to Their Consumer Fraud Statutes

As explained *supra*, in the 1960s and 1970s, each state enacted its own "Little FTC Act." In deciding whether the right to a jury trial attached to actions brought under these laws, courts in states that employ a historical analysis have found such laws to be unique statutory remedies, not simply analogues of common law fraud. For example, in *Martin v. Heinold Commodities, Inc.*, the Illinois Supreme Court held that the right to a jury trial did not attach to actions under the Illinois Consumer Fraud and Deceptive Business Practices Act (Illinois Consumer Fraud Act). 643 N.E.2d 734, 752 (Ill. 1994). The Illinois Constitution – similar to Delaware's – provides that "[t]he right of trial by jury as heretofore enjoyed shall remain inviolate." *See id.* at 753 (citing Ill. Const.1970, art. I, § 13.). The appellant argued because the appellee sought monetary damages (legal relief), the right to a jury trial necessarily attached to such claims. *Id.* at 752. The court rejected this argument and held that, unlike the U.S. Constitution, the "Illinois [C]onstitution does not guarantee the right to a jury trial in any action nonexistent at common law, even if such action is legal in nature." *Id.* at 753. Similar to the analysis under Delaware law, the court stated that "such [a] right [to a jury trial] only attaches in those actions where such right existed under the English common law at the time the constitution was adopted." *Id.*; *Claudio*, 585 A.2d at 1298 ("[T]he proper focus of any analysis of

the right to trial by jury, as it is guaranteed in the Delaware Constitution, requires an examination of the common law.").

The court rejected the assertion that a claim under the "[Illinois] Consumer Fraud Act [was] analogous to the common law action of fraud." *Martin*, 643 N.E.2d at 754. It found that unlike common law fraud, a claim under the Illinois Consumer Fraud Act (like the CFA) did "not require actual reliance, an untrue statement regarding a material fact, or knowledge or belief by the party making the statement that the statement was untrue."[3] *Id.* The court noted that under the Illinois Consumer Fraud Act (again like the CFA), "the intention of the seller—his good or bad faith—is not important[,] [r]ather [the] focus [is] upon the effect that that conduct might have on the consumer." *Id.* (internation quotations and citation omitted). The court therefore concluded that the "that the [Illinois] Consumer Fraud Act is a statutory proceeding unknown to the common law . . . [and] [b]ecause of this, [the Illinois Constitution] does not confer the right to a jury trial for a claim under the [act]." *Id.* at 755.

[3] As the Illinois Supreme Court noted, the elements of a claim under the Illinois Consumer Fraud Act consist of: "(1) a deceptive act or practice, (2) intent on the defendant's part that plaintiff rely on the deception, and (3) that the deception occurred in the course of conduct involving trade or commerce." *Martin*, 643 N.E.2d at 754 (internal quotations and citation omitted).

The Pennsylvania Superior Court has also held that the right to a jury trial does not attach to private claims under the Pennsylvania Unfair Trade Practice and Consumer Protection Law (PUTPCPL).[4] *See generally Fazio v. Guardian Life Ins. Co. of Am.*, 62 A.3d 396 (Pa. Super. Ct. 2012). In *Fazio,* an issue on appeal was whether the trial court had properly denied the private plaintiff's request for a jury trial on the PUTPCPL claims. *Id.* at 400. The court first noted that the Pennsylvania Constitution, which states that "[t]rial by jury shall be *as heretofore*, and the right thereof remain inviolate," only "preserves the right to trial by jury in those cases where it existed at the time the [Pennsylvania] Constitution was adopted." *Id.* at 402 (citing Pa. Const. art. I, § 6) (emphasis added). The court rejected the appellants' argument that the PUTPCPL claims were "grounded in common law fraud," stating that the PUTPCPL was "a unique, statutory remedy [that] was not available under the common law." *Id.* at 402, 410. The court noted that the PUTPCPL "was designed to protect consumers from unscrupulous business practices" and included elements distinct from common law fraud, such as the need to prove the occurrence

[4] Pennsylvania is one of twenty-six states that opted for a "laundry list" approach for its "Little FTC Act." *Consumer Protection and the Law*, § 2.12. The PUTPCPL prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by [twenty-one separate acts enumerated in the statute]." 73 Pa. Cons. Stat. § 201-3 (West 2020). The enumerated acts include a broad catch-all provision that prohibits "[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." *Id.* § 201-2(4)(xxi).

of a "consumer-based transaction or relationship." *Id.* at 410-11. The court further recognized that "fraud and [P]UTPCPL claims have different statutes of limitations." *Id.* at 412. Therefore, the court concluded that the PUTPCPL "did not merely codify common law claims of fraud," and as such, the right to a jury trial did not attach to claims brought under the act. *Id.* at 411.

Thus, courts in other states have rejected arguments that claims brought under their respective "Little FTC Acts" were analogous to common law fraud and instead, recognized the unique, statutory nature of such actions. This reasoning is also applicable under Delaware law. Just as the courts found in *Martin* and *Fazio*, because Delaware's CFA is also a unique, statutory remedy that significantly differs from common law fraud, the Delaware Constitution does not guarantee the right to a jury trial for such actions. *See Janeve*, 2014 WL 2895228, at *5.

II. The Supreme Court's Recent Decision in *SEC v. Jarkesy* is Not Applicable to Delaware Law

Blue Beach acknowledges that federal Seventh Amendment jurisprudence is not binding on this Court, but nonetheless argues that the Supreme Court's recent decision in *Securities and Exchange Commission v. Jarkesy* is persuasive authority. Appellant Blue Beach's Opening Brief at 39-42; 603 U.S. 109 (2024). This assertion is misplaced, however, because the standard articulated by the Supreme Court in *Jarkesy* is not applicable to Delaware law. In *Jarkesy*, the Court acknowledged that "[i]n construing th[e] language [of the Seventh Amendment], [it] ha[s] noted that the right [to a jury trial] is not limited to the 'common-law forms of action recognized' when the Seventh Amendment was ratified." *Id.* at 122. Rather, the Court stated, the remedy of a particular cause of action, *i.e.*, whether the relief sought is legal or equitable in nature, "is all but dispositive." *Id.* at 123. Thus, because the particular action at issue in *Jarkesy* sought "civil penalties, a form of monetary relief[,]" the Court found that the right to a jury trial attached to such claims as monetary relief was the "prototypical common law remedy." *Id.*

The Supreme Court's reasoning in *Jarkesy* is simply inapplicable to this case because, as explained *supra*, to determine whether the right to a jury trial attaches to a particular cause of action under the Delaware Constitution, Delaware courts examine whether that cause of action existed at common law, not whether that action seeks legal or equitable relief. *Compare Claudio*, 585 A.2d at 1298 (recognizing

that "[t]he history of the right to trial by jury 'as heretofore,' which has remained unchanged in the Delaware Constitution since 1792, demonstrates an *unambiguous intention* to equate Delaware's constitutional right to trial by jury with the common law characteristics of that right") (emphasis added) *with Jarkesy*, 603 U.S. at 122 (stating that, under the Seventh Amendment, "the right [to a jury trial] *is not limited to* the 'common-law forms of action recognized' when the Seventh Amendment was ratified") (emphasis added). As this Court emphasized in *Claudio*, "it is untenable to conclude that the right to trial by jury in the Delaware Constitution means exactly the same thing as that right in the United States Constitution." *Claudio*, 585 A.2d at 1298.

Indeed, the Illinois Supreme Court, utilizing a similar analytical framework in determining whether the right to a jury trial attaches to a particular action, expressly rejected the appellant's analogy to federal case law. *Martin*, 643 N.E.2d at 753. The court stated:

> As can be seen, Illinois' constitutional right to a jury trial is not the same as that found in the Federal Constitution. In Illinois, the right to a jury trial does not attach to every action at law. Instead, such right only attaches in those actions where such right existed under the English common law at the time the Constitution was adopted. Under the United States Constitution, however, any action at law, or one not of equity or admiralty jurisdiction, confers the right to a jury trial.

Id.

Federal Seventh Amendment jurisprudence focuses on the type of relief sought (legal or equitable), rather than whether a particular cause of action existed at common law. Thus, the Supreme Court's recent decision in *Jarkesy* has no application and is not persuasive authority here where the crucial issue to be determined is whether the cause of action at issue existed at common law. Because it did not, no constitutional right to a jury trial exists.

CONCLUSION

For the foregoing reasons, the decision of the Superior Court regarding the constitutionality of the CFA – and in particular the administrative remedy under the CPA – should be affirmed.

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Delaware Supreme Court Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word for Microsoft 365.

2. This brief complies with the type-volume limitation of Delaware Supreme Court Rule 14(d)(i) because it contains 4,946 words, which were counted by Microsoft Word for Microsoft 365.

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April 10, 2025

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2025, copies of the foregoing document were caused to be served via *File & ServeXpress* upon the following counsel of record:

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