No. 21-CV-762

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

JEFFERSON-11TH STREET, LLC, *et al*.,
APPELLANTS,

V.

DISTRICT OF COLUMBIA,
APPELLEE.

ON APPEAL FROM AN ORDER OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

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INTRODUCTION

The Superior Court found prolonged, deplorable conditions at a rental housing accommodation owned by appellants Jefferson-11th Street, LLC and Ellis J. Parker, so it appointed a receiver to manage the property and held appellants (and others) liable for numerous violations of the Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq*. Following this Court's determination that appellants' challenges to the ongoing receivership were untimely, all that remains of this appeal is an interlocutory challenge to the Attorney General's statutory authority under the CPPA. While not disputing any of the injunctive relief entered against them for CPPA violations through November 2017, appellants contend that the entire award of $424,544 in restitution and civil penalties must be vacated because the Attorney General had no authority to pursue *monetary* relief in matters involving landlord-tenant relations until the enactment of permanent legislation in October 2018.

Appellants are mistaken. This Court has already dated the Attorney General's authority to pursue landlord-tenant matters under the CPPA to "emergency legislation in December 2016." *Sizer v. Lopez Velasquez*, 270 A.3d 299, 305 (D.C. 2022). And that authority plainly encompassed the power to seek both injunctive *and* monetary relief. Appellants' contrary argument rests entirely on the fact that the *long title* of the December 2016 (and other temporary) authorizing legislation

did not mention monetary relief. But "the wise rule" has long been settled "that the title of a statute . . . cannot limit the plain meaning of the text." *Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947).

Although appellants' position is incorrect, the District of Columbia concedes that the CPPA judgment cannot be affirmed in full. The Superior Court did not have the benefit of *Sizer* when, in 2019, it determined that the December 2016 amendment merely clarified the Attorney General's *existing* authority to bring suit. In light of *Sizer*, that conclusion was incorrect. The appropriate course is thus a remand to the Superior Court for a redetermination of restitution and civil penalties consistent with *Sizer*'s holding that CPPA liability (including monetary liability) arose for landlords in December 2016.

STATEMENT OF THE ISSUES

1. Whether, as of December 2016, the Attorney General, consistent with his authority to "apply the provisions and exercise the duties of [D.C. Code § 28-3909] to landlord-tenant relations," could pursue the "restitution" and "civil penalt[ies]" specified in that section.

2. Whether the Court should remand for a redetermination of monetary relief consistent with *Sizer*'s intervening holding that CPPA liability for matters involving landlord-tenant relations first arose in December 2016.

STATEMENT OF THE CASE

On April 24, 2017, the District sued property owner Jefferson-11th Street, LLC and its principal member Ellis J. Parker, as well as property manager SCF Management, LLC and its principal member Stanley Ford, Sr., in connection with their ownership and management of a rental housing accommodation at 2724 11th Street, NW ("the Property"). *See* Joint Appendix ("JA") 8-31. The District sought (1) the appointment of a receiver for the Property under the Tenant Receivership Act ("TRA"), D.C. Code § 42-3651.01 *et seq.*, to oversee repairs and to bring the Property into compliance with District law, and (2) monetary and injunctive relief for numerous violations of the CPPA. JA 9. (The District also brought a public nuisance claim but later dismissed it.)[1] On November 17, 2017, the Superior Court appointed a receiver for the Property. JA 81-85. Proceedings involving the receivership remain ongoing in the Superior Court. *See Jefferson-11th Street, LLC v. District of Columbia*, Super. Ct. No. 2017 CA 002837 2 (status hearing set for

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[1] On June 29, 2017, the Superior Court consolidated the District's action with one filed by the Property's tenants that alleged violations of the District's Mold Statute, D.C. Code § 8-241.04 *et seq*. *See Ascencio v. Jefferson-11th Street, LLC*, Super. Ct. No. 2016 CA 008084 B. On July 23, 2020, the Superior Court granted summary judgment to the tenants. JA 2807-33; *see* JA 2824 (finding that "[d]efendants acted in bad faith when they refused to acknowledge or to remediate the mold issues"), 2832 (awarding attorneys' fees and costs). Jefferson-11th Street, LLC and Mr. Parker appealed, challenging aspects of the damages, fees, and costs, but not the fact of the mold infestation nor the bad-faith failure to remediate that infestation. That appeal remains pending. *See Jefferson-11th Street, LLC v. Ascencio*, No. 20-CV-519 (case submitted May 31, 2022) (the "Mold Appeal").

Mar. 10, 2023). On September 19, 2019, the Superior Court granted summary judgment to the District on its CPPA claims. JA 2767-76 (Transcript Excerpts); *see* Supplemental Record ("S.R.") #1 ("MSJ Tr."). On September 28, 2021, the Superior Court ordered permanent injunctive relief as well as restitution, civil penalties, and attorneys' fees and costs on the District's CPPA claims. JA 3870-79.

On October 27, 2021, Jefferson-11th Street, LLC and Mr. Parker filed a notice of appeal. JA 3880-81. On August 16, 2022, appellants filed their amended opening brief. In light of the arguments made in that brief, the District moved to dismiss the appeal for lack of appellate jurisdiction. 8/24/22 Motion; *see infra* pp. 17-18. On October 19, 2022, the Court limited this appeal to interlocutory "review of the [CPPA] claims[] as to which the trial court ordered permanent injunctive relief." 10/19/22 Order (citing D.C. Code § 11-721(a)(2)(A)).[2]

STATEMENT OF FACTS

Because the issue of *when* the CPPA authorized monetary relief in landlord-tenant matters is a "legal question" (Br. 27) that leaves the Superior Court's findings

[2] The Court's order also recognized that, although Jefferson-11th Street, LLC has filed a Chapter 11 bankruptcy petition that remains pending in the U.S. Bankruptcy Court for the District of Columbia, the bankruptcy court has vacated the automatic stay with respect to this appeal. *See* 10/19/22 Order.

of fact undisturbed, the District cites those facts as the relevant background for this appeal and does not otherwise engage with appellants' version of events.[3]

1. The Misrepresentations And Housing Code Violations That Prompted The District's Suit.

The Property is a two-story, 26-unit apartment building at 2724 11th Street NW. JA 951 (District's Statement of Material Facts Not in Dispute ("SOF") ¶¶ 9-10). Many of the tenants have lived there for over ten years, and some for over twenty. JA 951 (SOF ¶ 11). The leases signed by the tenants include an express provision guaranteeing timely repairs as well as an implied warranty of habitability, *see* 14 DCMR § 301.1. JA 951-52 (SOF ¶ 12).

Starting as early as 2013, however, and for years thereafter, tenants at the Property complained to no avail about deteriorating conditions both within their units and in the building's common areas—conditions that included mold, water leakages resulting in ceiling collapses, and infestations of rodents, roaches, and bedbugs. JA 956 (SOF ¶¶ 32-34); *see generally* JA 1748-2270. Rather than alleviate those conditions, Jefferson-11th Street, LLC and SCF Management, LLC

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[3] In any event, no defendant challenged the District's Statement of Material Facts Not in Dispute ("SOF") in the Superior Court, and the Superior Court determined that the material facts were undisputed. MSJ Tr. 51:19-59:10; *see* JA 2645 (District pointing out defendants' failure to comply with Superior Court Rule 56); *see Pourbabai v. Bednarek*, 250 A.3d 1090, 1095 (D.C. 2021) ("[W]here the party opposing summary judgment fails to counter the motion with specificity in a timely fashion, the trial court is at liberty to accept the moving party's verified version of the facts." (internal quotation marks omitted)).

(collectively, the "Housing Providers") repeatedly attempted to raise tenants' rents through a series of hardship petitions—ostensibly to pay for the needed repairs. *See* JA 954-55 (SOF ¶¶ 24-29), 1774 (citing Mr. Ford's testimony that the intent was "to pay for the roof replacement from rent increases through a hardship petition"); *cf.* Br. 10 ("increased rents" were needed to "justify the costs of the improvements").[4]

In July 2015, the tenants filed a petition with the Office of Administrative Hearings ("OAH"), alleging that the Housing Providers "violated the Rental Housing Act of 1985 . . . by substantially reducing and permanently eliminating services and/or facilities." JA 955 (SOF ¶ 30 (quoting JA 1748)). Following a 16-day evidentiary hearing, Administrative Law Judge Erika Pierson issued a 464-page Final Order, finding "excessive and prolonged violations of the housing regulations that have affected Tenants' health, safety, and security, and the habitability of the [Property]." JA 955-56 (SOF ¶¶ 31-32 (quoting JA 2210)); *cf.* MSJ Tr. 57:18-21 (noting that the entire OAH proceeding was "in the [Superior Court] record, apparently without objection"). Specifically, she found, based on

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[4] The Rental Housing Act permits a housing provider who is not receiving a 12% rate of return to file a hardship petition to increase rents in an amount sufficient to receive that rate of return. *See* D.C. Code § 42-3502.12. But the petition "shall not" be approved unless, at the time of the evidentiary hearing on the petition, the housing accommodation is "in substantial compliance with the housing regulations." *Id*. § 42-3502.08(a)(1)(A); *see* 14 DCMR §§ 4216.4, 4209.35(f) (grounds for denial of a hardship petition).

nearly 100 separate housing violations, that, between 2013 and 2016, all tenants at the Property had suffered from egregious and unabated housing conditions. *See* JA 956-79 (SOF ¶¶ 33-165). Judge Pierson also concluded that the Housing Providers had acted in bad faith and willfully failed to make repairs. JA 979-81 (SOF ¶¶ 166-73).

For all these violations, Judge Pierson awarded tenants, among other relief, $212,778.16 in rent refunds and $10,000 in civil fines for willful violations of the Rental Housing Act. JA 2213-16. That order was affirmed in all material respects by the Rental Housing Commission ("RHC"), and the RHC's decision was affirmed by this Court. *See* Memorandum Opinion and Judgment, *SCF Mgmt., LLC v. D.C. Rental Hous. Comm'n*, No. 20-AA-272 (May 13, 2022) (the "OAH Appeal").

Despite the fact that the OAH proceeding gave the Housing Providers (and their principals, Mr. Parker and Mr. Ford) clear notice of the deplorable conditions at the Property, they again failed to make repairs or otherwise address these conditions. JA 981 (SOF ¶ 174). Indeed, various inspections conducted at the Property up through the appointment of the Receiver in November 2017 documented the unabated mold, water leakages, and infestations of rodents, roaches, and bedbugs. JA 981-89 (SOF ¶¶ 174-207). Housing inspectors from the Department of Consumer and Regulatory Affairs ("DCRA") conducted multiple rounds of inspections at the Property beginning in June 2016 and concluding in July 2017.

JA 985, 988 (SOF ¶¶ 185, 201). The resulting notices of violation ("NOVs")—numbering well over 100—identified many of the same appalling conditions that had been identified during the OAH proceeding, including pest and rodent infestations and water damage to walls and ceilings. JA 985-89 (SOF ¶¶ 185-207); *see* JA 2355-2431 (all NOVs). The July NOVs in particular underscored the lack of abatement, reidentifying rodent and pest infestations in multiple units, as well as water damage to ceilings and walls, among other problems like broken appliances and the need for bathroom repairs. JA 988-89 (SOF ¶¶ 201-07).

Between March 2016 and June 2017, William Spearman of Arrowhead Consulting also conducted three rounds of inspections for the presence of mold and concluded that all of the inspected units were infested. *See* JA 982-84 (SOF ¶¶ 179-84). As late as June 2017—more than six months after tenants filed suit under the District's Mold Statute, *see supra* note 1—he reported that "[t]he condition within each unit inspected has . . . deteriorated" and "[i]neffective repair attempts have . . . just covered up mold growth and water damage." JA 984 (SOF ¶ 183); *see* JA 984 (SOF ¶ 184 (similar)).

2. The District Seeks The Appointment Of A Receiver And Relief Under The Consumer Protection Procedures Act.

In April 2017, the District sued Jefferson-11th Street, LLC and Mr. Parker, as well as property manager SCF Management, LLC and its principal member Mr. Ford (collectively, "defendants"), alleging that they had failed to abate the unlawful

conditions at the Property. JA 8-31. As relevant here, the District sought (1) the appointment of a receiver under the TRA, and (2) monetary and injunctive relief for numerous violations of the CPPA. JA 950 (SOF ¶ 2); *see* JA 24-29.

The Superior Court first addressed whether to appoint a receiver. Over three days of evidentiary hearings in September and October 2017, the tenants, DCRA housing inspectors, and Mr. Spearman all testified about ongoing housing violations at the Property, including water infiltration, mold, vermin infestation, and inadequate heating facilities. JA 950 (SOF ¶ 4); *see generally* S.R. #6 (9/20/17 Hr'g Tr.); S.R. #7 (9/29/17 Hr'g Tr.); S.R. #8 (10/27/17 Hr'g Tr.).

At the end of the evidentiary hearings, the Superior Court appointed a receiver for the Property. *See* JA 993-94 (SOF ¶¶ 230-34). Among other findings, the Superior Court determined that the conditions at the Property included unremediated mold, a severe recurring ceiling leak, and chronic infestations of rodents and roaches. JA 993-94 (SOF ¶¶ 231-33). The Superior Court therefore concluded that the Property "has been operated in a manner that demonstrates a pattern of neglect for a period of 30 consecutive days and such neglect poses a serious threat to the health, safety, or security of the tenants." JA 81 (quoting D.C. Code § 42-3651.02(b)).

The Superior Court appointed Benjamin Gilmore as the Receiver on November 17, 2017. JA 950, 994 (SOF ¶¶ 5, 235). Mr. Gilmore filed his initial

report on January 2, 2018. JA 994 (SOF ¶ 236); *see* JA 2433-58 ("the Report"). That Report details that even the most serious conditions at the Property persisted as of 2018. JA 994 (SOF ¶ 237). "[N]o unit within the Property had heat," Mr. Gilmore reported, JA 995 (SOF ¶ 239 (quoting JA 2434)), there is a "pervasive pest infestation throughout the Property," JA 994-95 (SOF ¶ 238 (quoting JA 2434)), and unchecked "[w]ater infiltration and interior leaks . . . are the root cause of crumbling stucco and plaster, peeling paint, and mold contamination," JA 995 (SOF ¶¶ 240-41 (quoting JA 2435)). Mr. Gilmore attached an exhibit to the Report that listed over 150 housing code violations he observed during his inspection. JA 995 (SOF ¶ 238 n.4); *see* JA 2449-58 (Unit Inspection Summary Report).

Several months later, the Superior Court adopted a plan for rehabilitation of the Property, *see* JA 803-04 (Consent Order), which the Receiver continues to implement. *See Jefferson-11th Street, LLC v. District of Columbia*, Super. Ct. No. 2017 CA 002837 2 (status hearing set for Mar. 10, 2023).

3. The Superior Court Finds Appellants Liable Under The Consumer Protection Procedures Act.

In September 2018, the District moved for summary judgment on its CPPA claims, *see* JA 918-2478, 2641-93, 2697-2731, 2744-59, which defendants opposed on "limited" grounds, *see* JA 2578-2640, 2732-43. MSJ Tr. 59:11-12; *see* MSJ Tr. 59:13-64:25. In September 2019, the Superior Court, incorporating the undisputed facts discussed above, *see supra* note 3, found all defendants liable on both "theories

of liability" presented by the District for violations up to the Receiver's appointment in November 2017: (1) misrepresentations and material omissions related to defendants' failure to maintain the rental housing accommodation in habitable condition and to make repairs after tenants notified them of housing code violations, *see* D.C. Code § 28-3904(a), (d), and (e); and (2) infractions of Title 16 of the DCMR, *id.* § 28-3904(dd), which include "any flagrant, fraudulent, or willful violation" of the housing regulations that poses "an imminent danger to the health or safety of any tenant," 16 DCMR § 3305.1(a). *See* MSJ Tr. 51:19-66:22.

With respect to the first theory of liability, the Superior Court found defendants liable for misrepresentations related to the express and implied warranties included in the tenants' leases, MSJ Tr. 53:18-54:8, and for misrepresentations related to tenants' requests for repairs that were not made, MSJ Tr. 55:12-56:5.[5] As to the second theory of liability, the Superior Court found defendants liable for the serious housing violations that had occurred at the Property, citing the "well-developed administrative law record on the vermin, the pests, including roaches, mice, and other rodents in the units, bedbugs also," as well as the "robust record on mold that we've developed" and "evidence of water leakage and

[5] Because the leases were signed with a different property manager, the Court did not find Defendants SCF Management, LLC or Mr. Ford liable for the lease-related misrepresentations. MSJ Tr. 54:9-18.

also broken windows and doors." MSJ Tr. 56:6-59:6. The Court also found that there was "no genuine issue of material fact as to [the] liability of the defendants," MSJ Tr. 59:7-10, including as to Mr. Parker and Mr. Ford, who were liable as "officers who participate[d] directly in the deceptive practices or had authority to control those practices, and had or should have had knowledge of those practices," MSJ Tr. 65:19-23; *see* MSJ Tr. 65:1-66:14; *cf.* JA 952-54, 996-1002 (SOF ¶¶ 15-23, 243-276).[6]

The Superior Court also addressed the "limited arguments" defendants made in opposing the District's motion for summary judgment. MSJ Tr. 59:11-64:24. As to the sole point appellants raise here, defendants asserted that the Attorney General had no authority to pursue monetary relief in a landlord-tenant proceeding until October 2018, "*well after*" the District initiated suit in April 2017. JA 2735-36 (emphasis in original). Defendants acknowledged that December 2016 emergency legislation amending the CPPA (and reenacted through a two-year series of

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[6] "Corporate officers 'are personally liable for torts which they commit, participate in, or inspire,'" even if no grounds exist to pierce the corporate veil. *Lawlor v. District of Columbia*, 758 A.2d 964, 974-75 (D.C. 2000) (quoting *Vuitch v. Furr*, 482 A.2d 811, 821 (D.C. 1984)); *see also Perry v. Frederick Inv. Corp.*, 509 F. Supp. 2d 11, 18 (D.D.C. 2007) (setting forth "well-established" law governing corporate officers' personal liability). Individual liability arises where "there is an act or omission by the officer which logically leads to the inference that he had a share in the wrongful acts of the corporation which constitute the offense." *Lawlor*, 758 A.2d at 975; *see Childs v. Purll*, 882 A.2d 227, 239-40 (D.C. 2005).

overlapping emergency and temporary acts) authorized the Attorney General to "'apply the provisions and exercise the duties of section 28-3909 to landlord-tenant relations.'" JA 2735-36 (quoting the language later codified at D.C. Code § 28-3909(d)). But they argued that this emergency legislation contained "language limiting the [Attorney General] to just seeking injunctions"—namely, the language of the *long title* of the act, which mentioned injunctive (but not monetary) relief. JA 2735; *see* JA 2653. According to defendants, only the passage of permanent legislation in October 2018 extended the Attorney General's authority to suits for *monetary* relief, and that permanent legislation was not retroactive. JA 2736.

In response, the District explained that these arguments failed in two central respects. *First*, defendants' attempt to distinguish their liability for *monetary* relief was specious. From December 2016 to October 2018, the "substance of each iteration of" the CPPA amendment, including the permanent legislation, was "*exactly the same*." JA 2747-48. Defendants' reliance on language in the long title to give the same amendment two meanings was unwarranted, particularly where the Council in December 2016 had justified the emergency legislation in part by highlighting the importance of the Attorney General's ability to "'recover *restitution* [for] tenant-consumers forced to live in substandard conditions, and *penalties* to deter future violations.'" JA 2748 (quoting JA 2677 ("At-Risk Tenant Protection Clarifying Emergency Declaration Resolution of 2016")) (emphasis added).

Second, and in any event, the December 2016 amendment only clarified that the CPPA *already* authorized the Attorney General to bring suit against landlords. JA 2642-43. The District pointed to the Council's explanation, based on the language and structure of the CPPA, that the Attorney General's right of action, located in D.C. Code § 28-3909, had never been constrained by the landlord-related prohibition placed on the right of action *for DCRA*, located in D.C. Code § 28-3903. JA 2643; *see* JA 2677-78; D.C. Code § 28-3903(c)(2)(A) ("*The Department* [i.e., DCRA] may not . . . apply the provisions of section 28-3905 to . . . landlord-tenant relations" (emphasis added)). Indeed, that "current District tenants . . . might be . . . robbed of the full protections due them under District law" because a court might "wrongly interpret" the CPPA was the reason "to clarify existing law on an emergency basis." JA 2677, 2678.

Relying on the language and structure of the CPPA, as well as the Council's expressed intent in enacting the December 2016 amendment, the Superior Court agreed with the District that "the Attorney General has *all along* had the authority" to pursue landlords for all of the relevant forms of relief. MSJ Tr. 59:16-19 (emphasis added). The December 2016 amendment, the Superior Court held, was only "meant to clarify" that the Attorney General's right of action was distinct from DCRA's. MSJ Tr. 60:3-10. In addition, nothing about the amendment "change[d] . . . the types of remedies and damages that the [Attorney General] could seek": That

authority "*always* included monetary damages as well as injunctive relief and attorney's fees and costs." MSJ Tr. 60:11-18 (emphasis added); *see* MSJ Tr. 64:19-25.

4. The Superior Court Awards Injunctive And Monetary Relief For Numerous Violations Of The Consumer Protection Procedures Act.

On September 28, 2021, the Superior Court ordered permanent injunctive relief as well as restitution, civil penalties, and attorneys' fees and costs for the CPPA violations it had identified. JA 3870-79 ("Judgment and Injunctive Order"); *see* S.R. #4 ("Damages Tr."). Prior to the ruling, the parties stipulated that the Superior Court could, along with the record already before it, consider declarations submitted by the Property's tenants about the number of times they requested repairs that were not made. JA 3243-44. The parties also agreed that the court could "resolve all factual disputes relating to any issues concerning remedies based on evidence in the record." JA 3243; *see* JA 3871 (¶¶ 2-3); Damages Tr. 8:15-9:9.

The Superior Court first ordered permanent injunctive relief because "[b]ased on the record and Defendants' past conduct, . . . there is some cognizable danger that Defendants will violate the CPPA in the future." JA 3871; *see* Damages Tr. 26:11-29:7. The court accordingly required, among other things, that all defendants "cease and desist" from further CPPA violations at the Property and that Jefferson-11th Street implement written policies "to ensure timely responses to tenant complaints" as well as a "training program" for a "new property management

company" (to replace SCF Management, LLC and Mr. Ford). JA 3873-76. The court also ordered Jefferson-11th Street to comply with annual audits related to conditions at the Property for five years. JA 3876.

Next, because the defendants "continued to charge full rent to tenants while failing to abate serious housing conditions at the Property for several years," the Superior Court ordered that the defendants provide restitution. JA 3871. Specifically, the court ordered $209,544 in rent refunds "reflecting full . . . refunds for each tenant" from June 2016 (the close of the evidentiary record in the OAH proceedings) to November 2017 (the appointment of the Receiver). JA 3877; *see* Damages Tr. 46:9-12; Br. 8 (citing the $209,544 in rent refunds as the restitution "that is the subject of this appeal").[7]

Finally, the Superior Court ordered civil penalties of $1,000 per violation for three categories of CPPA violations: "violations of the CPPA made when entering into leases with [the] tenants" ($30,000); "violations of the CPPA made when making express representations to tenants that repairs would be made when in fact

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[7] The Superior Court also ordered rent refunds covering January 2013 to May 2016 in the same amount as ordered in the OAH proceeding ($212,778.16). JA 3877-78. Appellants have not challenged that part of the restitution award, *see* Br. 8, nor have they yet paid the amount due under the OAH ruling. *See* JA 3877 ("Defendants' restitution obligation . . . will be satisfied if and when Defendants pay the $212,778.16 amount ordered in the OAH matter, which is currently held in escrow" for resolution of the OAH appeal). *Cf. SCF Mgmt., LLC v. D.C. Rental Hous. Comm'n*, No. 20-AA-272 (mandate issued Sept. 9, 2022).

[no] such repairs were [made]" ($72,000); and violations of the CPPA made when violating the housing code ($113,000), for a total of $215,000 in civil penalties. JA 3878; *see* Br. 8. The Superior Court determined the $30,000 penalty by multiplying the 15 tenant leases by the two misrepresentations in each lease—the express provision that repairs would be made and the implied warranty of habitability. Damages Tr. 49:19-50:9; *cf.* MSJ Tr. 53:18-54:2 (acknowledging these provisions as part of the liability finding).[8] The Superior Court determined the $72,000 penalty for express misrepresentations by referring to tenant declarations that set out how many times each tenant had asked for repairs that were not made. Damages Tr. 52:12-54:5. Finally, the Superior Court determined the $113,000 penalty associated with the housing code violations by "summariz[ing]" the relevant violations from the NOVs, the Receiver's Report, and other documents. Damages Tr. 50:11-51:12; *see* Damages Tr. 51:12-52:10 (method of calculation "reasonable" and award of penalties "appropriate").

5. This Court Restricts Appellants' Appeal To Interlocutory Review Of Their Consumer Protection Procedures Act Claims.

After the Superior Court entered judgment on the District's CPPA claims, Jefferson-11th Street, LLC and Mr. Parker timely filed a notice of appeal.

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[8] Consistent with the Superior Court's liability ruling, *supra* page 11, damages for the lease-related violations were not assessed against SCF Management, LLC or Mr. Ford. JA 3878.

JA 3880-81. On reviewing appellants' opening brief, which challenged only the award of "rent refunds and civil penalties" under the CPPA (but not the injunctive relief), Br. 28-31, plus several orders entered in the ongoing receivership proceeding, Br. 31-50, the District moved to dismiss the appeal for lack of appellate jurisdiction. The Court denied the motion but restricted the appeal to interlocutory "review of the [CPPA] claims[] as to which the trial court ordered permanent injunctive relief." 10/19/22 Order (citing D.C. Code § 11-721(a)(2)(A)); *see id.* ("Any challenge to the receivership is untimely.").

The District thus limits its presentation of the issues to the Superior Court's alleged "retroactive[] appl[ication] . . . of the [CPPA] in a landlord-tenant matter." Br. 1; *see* Br. 28-31 ("The Amended Version Of The CPPA Does Not Apply To This Case").

STANDARD OF REVIEW

Where, as here, "there is no dispute as to the relevant facts" in the case, the Court "need only determine whether the trial court properly applied the substantive law." *Fisher v. Gov't Emps. Ins. Co.*, 762 A.2d 35, 39 (D.C. 2000). Review of that question is de novo. *See Lumen Eight Media Grp., LLC v. District of Columbia*, 279 A.3d 866, 874 (D.C. 2022).

SUMMARY OF ARGUMENT

1. This interlocutory CPPA appeal raises a narrow question that this Court has already answered in *Sizer v. Lopez Velasquez*, 270 A.3d 299 (D.C. 2022). Contrary to the Superior Court's 2019 ruling that the Attorney General had "all along" had the authority to pursue enforcement actions in the arena of landlord-tenant relations, *Sizer* holds that the Attorney General's authority arose in December 2016. Such a clear-cut intervening authority would ordinarily make quick work of the issue presented. But appellants contend that, while the December 2016 amendment may have granted the Attorney General the authority to pursue *injunctive* relief, that authority did not extend to *monetary* relief until the law was permanently enacted in October 2018. That claim, derived from a strained reading of the language in the long title of the December 2016 (and other temporary) legislation, lacks merit.

It is well settled that headings and titles cannot be used to limit the plain language of a statute. And here that language, first enacted in December 2016, is plain: The Attorney General "may apply the provisions and exercise the duties of *this section* to landlord-tenant relations." D.C. Code § 28-3909(d) (emphasis added). This section—Section 28-3909—authorizes the Attorney General to pursue both "restitution" and "civil penalt[ies]." *Id*. § 28-3909(a), (b). Every other indicator of legislative intent, including express statements by the Council recognizing the Attorney General's authority to recover these forms of relief from

landlords, is in accord. Moreover, *Sizer* itself involved a tenants' suit for damages, putting a fine point on this Court's conclusion that the Attorney General could bring such a suit in December 2016.

2. Of course, even after dispensing with appellants' argument, this Court's intervening decision in *Sizer* must still be addressed. Below, neither the parties nor the Superior Court thought that December 2016 marked the start of the Attorney General's authority to recover monetary relief in landlord-tenant cases, so neither considered that date when addressing or awarding monetary relief. The appropriate course is thus to remand to the Superior Court for a redetermination of restitution and civil penalties consistent with *Sizer*'s holding that CPPA liability (including monetary liability) arose in December 2016.

ARGUMENT

I. The Consumer Protection Procedures Act Has Authorized The Attorney General To Seek Monetary Relief Against Appellants Since December 2016.

Although the Superior Court held otherwise, this Court's decision in *Sizer* dates the Attorney General's authority to bring CPPA suits in the arena of landlord-tenant relations to December 2016. Appellants' contention that this authority did not arise with respect to monetary relief until October 2018 finds no support in the CPPA or this Court's cases.

A. The Attorney General's statutory right of action.

When the CPPA was enacted in the mid-1970s, it prohibited the governmental agency primarily tasked with enforcing the statute—at first the Office of Consumer Protection, and later DCRA—from enforcing it in "landlord-tenant relations." District of Columbia Consumer Protection Procedures Act, D.C. Law 1-76, § 4(c), 23 D.C. Reg. 1185, 1194 (Aug. 10, 1976) (effective July 22, 1976) ("The Office may not . . . apply the provisions of section 6 ["Complaint procedures"] to . . . landlord-tenant relations."), *codified as amended at* D.C. Code § 28-3903(c)(2)(A) ("The Department may not . . . apply the provisions of section 28-3905 ["Complaint procedures"] to . . . landlord-tenant relations."). The CPPA's private right of action also included this prohibition because it was expressly derived from the agency's enforcement authority. *See id.* § 6(k)(1), 23 D.C. Reg. at 1209 (limiting private actions to those alleging violations "within the jurisdiction of the Office"); *see generally Gomez v. Indep. Mgmt. of Del., Inc.*, 967 A.2d 1276, 1286 (D.C. 2009) (discussing how the two rights of action are "link[ed]").

When the Attorney General's right of action was added in 1990, however, that right was set out in a new statutory provision that did not reference the enforcement agency's jurisdiction. *See* District of Columbia Consumer Protection Procedures Act Amendment Act of 1990, D.C. Law 8-234, § 2(h), 38 D.C. Reg. 296, 300 (Jan. 11, 1991) (effective Mar. 8, 1991). It provided that "[n]otwithstanding any provision

of law to the contrary, if the Corporation Counsel has reason to believe that any person is [engaging in the unfair or deceptive trade practices identified in Section 28-3904], and if it is in the public interest, the Corporation Counsel . . . may petition the Superior Court . . . to issue a temporary or permanent injunction" and "may recover restitution." *Id*., *codified as amended at* D.C. Code § 28-3909(a). A decade later, the Council expanded that authority to include the ability to "recover a civil penalty of not more than $1,000 for each violation, the costs of the action, and reasonable attorneys' fees." Fiscal Year 2001 Budget Support Act of 2000, D.C. Law 13-172, § 1402(e), 47 D.C. Reg. 6308, 6350 (Aug. 11, 2000) (effective Oct. 19, 2000), *codified as amended at* D.C. Code § 28-3909(b); *see Grayson v. AT&T Corp.*, 15 A.3d 219, 242-44 (D.C. 2011) (en banc) (noting that the Council "intended" to expand the Attorney General's enforcement authority to include these remedies).

But as the Attorney General brought enforcement actions involving landlord-tenant relations, a question arose about whether the CPPA authorized such actions. In December 2016, the Council sought to "clarify" that it did. *See* JA 2677-78 (At-Risk Tenant Protection Clarifying Emergency Declaration Resolution of 2016, No. R21-0687 (Dec. 6, 2016)) (the "2016 Resolution"). "The CPPA," the Council explained, "provides the Attorney General with . . . the ability to enjoin bad conduct, recover restitution for tenant-consumers forced to live in substandard conditions, and impose penalties to deter future violations." JA 2677. And because "active CPPA

enforcement cases and non-public investigations [by the Attorney General] in the landlord-tenant arena . . . could be jeopardized by a wrong interpretation of the CPPA's landlord-tenant exclusion," there was "an immediate need to clarify existing law on an emergency basis." JA 2677-78. The Council accordingly appended a subsection to the Attorney General's right of action to make express that he "may apply the provisions and exercise the duties of this section [§ 28-3909] to landlord-tenant relations." JA 2653 (At-Risk Tenant Protection Clarifying Emergency Amendment Act of 2016, § 2(a)(3) (effective Dec. 19, 2016), *codified at* D.C. Code § 28-3909(d).

Thereafter, and throughout 2017 and 2018, the Council enacted substantially identical versions of this amendment as temporary and emergency legislation until the passage of permanent legislation in October 2018. JA 2649-51 (At-Risk Tenant Protection Clarifying Amendment Act of 2018, D.C. Law 22-206, § 2(b) (effective Feb. 22, 2019) ("2018 Act")); *see* JA 2657-75 (various temporary and emergency legislation). A report from the Council's Committee on the Judiciary and Public Safety accompanying the 2018 Act reiterated what the Council had explained in the 2016 Resolution: The "purpose" of this amendment was to "clarify" that the Attorney General *is* "authorized to enforce the [CPPA] in landlord-tenant matters" and that authorization is not limited by other "language in the CPPA that prevents *DCRA* from bringing [such] actions." D.C. Council, Report on Bill 22-0170, at 2-3

(Sept. 20, 2018) (emphasis in original) ("Committee Report"). In September 2019, the Superior Court cited this legislative history in determining that the Attorney General has "all along" had the authority to bring CPPA enforcement actions in the landlord-tenant arena. MSJ Tr. 59:16-19.

In addition, the 2018 Act amended the CPPA's private right of action to provide that it, too, "shall apply to trade practices arising from landlord-tenant relations." JA 2649 (2018 Act, § 2(a)(2), *codified at* D.C. Code 28-3905(k)(6)); *see* Committee Report at 4 ("[T]he same types of unlawful trade practices by housing providers that are the target of [the Attorney General's] enforcement actions also directly impact individual tenants who should have this mechanism by which to seek redress.").

B. The Court's decision in *Sizer* dates the Attorney General's authority to December 2016.

In March 2022, more than two years after the Superior Court's liability ruling, this Court decided *Sizer*. In that case, tenants brought a "suit for damages" under the CPPA alleging that their landlords had made deceptive statements in an October 2016 lease and a June 2017 agreement. *Sizer*, 270 A.3d at 302, 305. Although the tenants acknowledged that the CPPA did not establish a private right of action for their claims until the 2018 Act became effective in February 2019, they claimed that the amendment could be applied retroactively because, at all relevant times, the CPPA "already authorized the Attorney General to sue and obtain for tenants the

same remedies authorized under the private right of action Tenants invoke here." *Id*. at 305 (cleaned up).

The Court rejected that argument in two respects. *First*, the Court concluded that "the Attorney General could [not] have sued the landlords under the CPPA for deceptive statements . . . [made] in the October 2016 lease" because that liability "did not arise for landlords until the CPPA was amended by emergency legislation in December 2016." *Id.*; *see id.* at 305 n.5 (citing the "series of overlapping emergency and temporary legislation starting in December 2016 and continuing until the passage of the [2018 Act]"). *Second*, while the "landlords could have been sued by the Attorney General for [the June 2017] deceptive statement," that fact did not help *tenants*, whose right to bring suit arose only in February 2019, when the 2018 Act became effective. *Id*. at 305. The tenants were not interchangeable with the Attorney General, the Court explained, because the new private right of action "changed the financial consequences for landlords." *Id*. at 306. "Whereas landlords faced with a lawsuit by the Attorney General may be required to pay 'economic damages' and limited financial penalties . . . , a landlord sued by private action may be required to pay each tenant $1,500 per violation or treble damages, whichever is greater; punitive damages; and '[a]ny other relief which the court determines proper.'" *Id*. (quoting and comparing D.C. Code § 28-3909(b)(1), (2), *with id.* § 28-3905(k)(2)(A)(i), (ii)). Thus, because the creation of a tenants' right of action

"increased liabilities" for landlords, the Court determined that "application of the [CPPA] as amended to the landlords' 2017 conduct would be impermissibly retroactive." *Id*. (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994)).

The Court's decision in *Sizer* is, of course, contrary to the Superior Court's determination in this case that the December 2016 amendment merely clarified the Attorney General's *existing* authority to bring suit in landlord tenant matters. MSJ Tr. 59:16-60:18; *see supra* pp. 14-15. The Court has now determined that such authority arose only in December 2016. *Sizer*, 270 A.3d at 305. *Sizer* therefore requires that the award of "monetary relief that is the subject of this appeal" (Br. 8)—$209,544 in restitution and $215,000 in penalties—be redetermined: Although neither the Superior Court nor the parties considered precisely *when* the CPPA violations occurred, that consideration is now required under this Court's precedent. Thus, a remand for that purpose is appropriate. *See infra* Part II.[9]

C. Appellants' argument that the Attorney General lacked authority to seek monetary relief until October 2018 is unavailing.

Appellants bring *Sizer* to the Court's attention (at 28-29), but then contend that "it was not until October 31, 2018, that the Council passed legislation that *clearly allowed* [the Attorney General] to apply the provisions and exercise the

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[9] While recognizing that the Division is bound by *Sizer*, the District respectfully reserves its right to move for en banc consideration of when the CPPA authorized the Attorney General to bring suit in matters involving landlord-tenant relations. *See M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971).

duties of section 28-3909 to landlord-tenant relations" such that the Attorney General could pursue monetary relief. Br. 30 (emphasis added and internal quotation marks omitted). The December 2016 amendment (and the subsequent temporary acts), they say, did not grant the Attorney General authority to "pursue monetary relief (as opposed to injunctive relief)." Br. 29. This contention lacks merit.

When interpreting legislation, this Court "always . . . begin[s] with the statute's plain language. If the statutory language is unambiguous, [the Court] may end there as well." *1836 S St. Tenants Ass'n, Inc. v. Est. of B. Battle*, 965 A.2d 832, 838 (D.C. 2009) (footnote and internal quotation marks omitted). The relevant text of the December 2016 amendment, the subsequent temporary acts, and the permanent 2018 Act—the last of which appellants concede authorized the Attorney General to obtain monetary relief—is identical. All introduce a new subsection (d) to D.C. Code § 28-3909, which provides that the Attorney General "may apply the provisions and exercise the duties of this section to landlord-tenant relations." JA 2649, 2653, 2657, 2661, 2665, 2669, 2673. And, since 2000, Section 28-3909 has authorized the Attorney General to recover restitution, civil penalties, and fees and costs in CPPA actions. D.C. Code § 28-3909(b); *see supra* p. 20. Thus, from the moment the December 2016 amendment authorized the Attorney General to "apply the provisions" of Section 28-3909 "to landlord-tenant relations," he could

obtain monetary relief in such suits. Because the ordinary meaning of the operative text is plain and does not produce an absurd result, the analysis ends there.

Appellants' contrary argument rests entirely on the fact that the initial iterations of emergency and temporary legislation included a long title that mentioned only injunctive relief:

> To amend, on an emergency basis, Chapter 39 of Title 28 of the District of Columbia Official Code to clarify that the Office of the Attorney General is authorized to petition the Superior Court to issue temporary or permanent injunctions against housing providers that violate certain consumer protection laws that protect tenants.

JA 2653 (Dec. 19, 2016); *see* JA 2657 (Jan. 25, 2017) (same, but "on a temporary basis"). *But see* JA 2661 (Oct. 23, 2017) (long title instead providing that "the Office of the Attorney General is authorized to enforce the [CPPA] against housing providers that violate certain consumer protection laws that protect tenants"). In appellants' view, this long title "limit[ed]" the scope of the amendment's language to suits for injunctions until the permanent 2018 Act became effective. Br. 30.

Appellants' argument fails on multiple fronts. To begin, nowhere does the long title include the "limit" appellants suppose. It does not say the Attorney General may seek *only* temporary or permanent injunctions. Nor can such a limit be implied. That titles and headings might mention one matter but "fail[] to refer to *all* the matters which the framers . . . wrote into the text is not an unusual fact." *Trainmen*, 331 U.S. at 528 (emphasis added). A title is necessarily an abridgment—"a short-

hand reference to the general subject matter involved." *Id*. Section 28-3909 itself illustrates the point: though entitled "Restraining prohibited acts," it indisputably authorizes relief beyond restraining orders and injunctions. *See* D.C. Code § 28-3909(b).

Even if appellants' "limit[]" could be discerned from the language in the long title, their argument gets the relevant principle of statutory interpretation precisely backward. Both this Court and the Supreme Court have repeatedly held that "the title [of a statute] . . . cannot limit the plain meaning of the text." *Cherry v. District of Columbia*, 164 A.3d 922, 928 (D.C. 2017) (quoting *Freundel v. United States*, 146 A.3d 375, 381 (D.C. 2016)); *see, e.g.*, *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) ("disregard[ing] petitioners' invocation of the statute's title" because the text was unambiguous); *Trainmen*, 331 U.S. at 528-29 (noting "the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text"). As explained, the plain meaning of the December 2016 amendment's text, unaltered between December 2016 and October 2018, authorized monetary relief in landlord-tenant cases. There is thus no reason to consult the long title for meaning. *See Doe v. Burke*, 133 A.3d 569, 575 (D.C. 2016) (considering the law's long title only as part of the court's examination of "legislative history . . . for what guidance it may furnish in resolving [a statutory] ambiguity"). A long title cannot create ambiguity where none otherwise would exist.

In any event, even if there were some ambiguity to resolve, the legislative history amply supports that the Council meant what it said in the text of the statute. The 2016 Resolution spelled out that the CPPA "provides the Attorney General with flexible enforcement tools to address problem housing providers, including the ability to . . . recover restitution for tenant-consumers forced to live in substandard conditions[] and impose penalties to deter future violations." JA 2677. In fact, the need to clarify that these tools applied in the landlord-tenant context rose to the level of an emergency in part because "other available enforcement tools do not . . . [offer] the potential to recover past rent for a large group of consumers or penalties to deter future bad acts." JA 2677. The Council also reiterated these determinations when considering the permanent legislation. *See* Committee Report at 2-3 (same). Indeed, at no point did the Council reveal an intent to "limit" the Attorney General to seeking injunctive relief.[10]

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[10] Thus, even if the CPPA were a "penal statute"—and it is not, *see Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1129 (D.C. 2015) ("[W]e have long considered the CPPA to be a remedial statute.")—appellants would have no recourse to the rule of lenity. *See* Br. 30 n.2 (citing *Washington v. D.C. Dep't of Pub. Works*, 954 A.2d 945, 949 (D.C. 2008)). "[T]he rule of lenity is a secondary canon of construction, and is to be invoked only where the statutory language, structure, purpose and history leave the intent of the legislation in genuine doubt." *Washington*, 954 A.2d at 948-49 (internal quotation marks omitted). There is no such doubt here.

Finally, this Court's decision in *Sizer*, which dated the Attorney General's authority to December 2016 in the context of a "suit for damages," 270 A.3d at 305, all but forecloses appellants' argument. The Court in *Sizer* determined that, although tenants were "correct" that the Attorney General could have sued their landlords for their June 2017 deceptive statement, *id*., their retroactivity argument still failed because the "financial consequences" attached to the Attorney General's right of action were different from those attached to the private right of action. *Id.* at 306 (citing "increased [financial] liabilities" as a reason to "conclude that application of the [CPPA] as amended to the landlords' 2017 conduct would be impermissibly retroactive"). This discussion of the disparate forms of monetary relief would be remarkable if, as appellants contend, the Attorney General in June 2017 were "limit[ed] . . . to seeking injunctive relief." Br. 30.

II. The Court Should Remand For A Determination Of Monetary Relief Consistent With *Sizer*.

When the Superior Court awarded monetary relief for appellants' CPPA violations up through November 2017, it did not have the benefit of *Sizer*. Indeed, having held that the Attorney General all along had the authority to pursue this form of relief in the arena of landlord-tenant relations, the Superior Court had no reason to consider the December 2016 amendment when it awarded rent refunds and civil penalties. Nor did either party make arguments or develop the record with the understanding that December 2016 was a key date. For example, in the declarations

the District submitted in support of civil penalties, each tenant stated the number of times they had (without success) contacted defendants to request repairs, but the tenants did not specify which requests occurred after December 2016; nor did the Superior Court consider the effect of that omission. JA 3260; *see* Damages Tr. 52:12-54:5. Similarly, the District and the Superior Court awarded rent refunds and summarized the number of housing code violations for which penalties applied without considering whether to exclude any violations based on when they occurred. JA 3251-53, 3259; *see* Damages Tr. 39:1-40:10, 44:8-47:10, 50:11-52:10. For their part, defendants never wavered from their (erroneous) argument that the Attorney General had *no* authority to pursue monetary relief. JA 3199 ("The CPPA *did not apply* to landlord tenant matters . . . until February 2019" when the 2018 Act became effective); *see* JA 3278-79 (same). Nor do appellants here. *See* Br. 28-31 (requesting only that the "the rent refunds and civil penalties totaling $424,544 . . . be vacated").

In light of *Sizer*'s conclusion that the Attorney General's authority dates to December 2016, the proper course is to remand to the Superior Court for further proceedings, including evidentiary proceedings if the Superior Court finds them appropriate. This is "a court of review, not of first view." *Newell-Brinkley v. Walton*, 84 A.3d 53, 61 (D.C. 2014) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). And "[t]he weighing of evidence against the proper standard is a

function reserved to the trial court as finder of fact." *Cerovic v. Stojkov*, 134 A.3d 766, 777 (D.C. 2016); *see District of Columbia v. Am. Fed'n of State, Cnty., & Mun. Emps., Dist. Council 20*, 81 A.3d 299, 301-02 (D.C. 2013) (stating the ordinary remand rule and remanding given intervening authority); D.C. Code § 17-306 ("The District of Columbia Court of Appeals . . . may remand the cause and . . . require such further proceedings to be had, as is just in the circumstances."). A remand is particularly sensible here, where this appeal is interlocutory and the Superior Court is familiar with the facts and continues to oversee the receivership. If either party is dissatisfied with how the Superior Court implements *Sizer*, this Court can review the matter on an appeal from the final judgment.

CONCLUSION

The Superior Court's award of $209,544 in restitution and $215,000 in civil penalties should be vacated and remanded for a redetermination of monetary relief consistent with *Sizer*'s determination that CPPA liability (including monetary liability) arose for landlords in December 2016.

Respectfully submitted,

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March 2023

REDACTION CERTIFICATE DISCLOSURE FORM

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:
     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); see also 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the

purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Sonya L. Lebsack
Signature

21-CV-762
Case Number

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March 2, 2023
Date

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CERTIFICATE OF SERVICE

I certify that on March 2, 2023, this brief was served through this Court's electronic filing system to:

Jeffrey W. Styles

William J. Cornwell

/s/ Sonya L. Lebsack
SONYA L. LEBSACK