IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

WS SSIR OWNER, LLC,

Plaintiff,

v. Case No.: 25-CA-2734

CAPTIVA CIVIC ASSOCIATION, INC.,
and CCA FOUNDATION, INC.,

Defendants.
_____/

DEFENDANTS CAPTIVA CIVIC ASSOCIATION, INC.'S AND CCA FOUNDATION, INC.'S MOTION FOR FINAL SUMMARY JUDGMENT

Defendants, CAPTIVA CIVIC ASSOCIATION, INC. ("CCA") and CCA FOUNDATION, INC. ("Foundation") (collectively, "Defendants"), pursuant to Florida Rule of Civil Procedure 1.510, file this Motion for Final Summary Judgment, and state:

I. INTRODUCTION

1. This lawsuit represents another chapter in Plaintiff, WS SSIR Owner, LLC's ("SSIR") campaign of retaliation against the residents of Captiva Island who exercised their rights in the appropriate legal venues to oppose SSIR's rezoning application—an application to radically increase hotel densities on Captiva Island.[1] SSIR's Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") claim is meritless[2] and distorts ordinary and lawful acts of informing the community and soliciting its support by labeling them "unfair and deceptive" trade practices.

[1] SSIR has also sued the Captiva Community Panel in Lee County Circuit Court Case No. 25-CA-006907.
[2] Defendants have filed a Motion for Order Requiring Bond Pursuant to Section 501.211(3), Florida Statutes [Dkt. 14] based on this lawsuit being a frivolous filing. Defendants have also filed a Motion for Sanctions Pursuant to Section 57.105, Florida Statutes [Dkt. 13].

2. SSIR claims that one sentence of CCA's April 30, 2025 update to its constituency about SSIR's rezoning application, CCA's appeal in a case before the Division of Administrative Hearings ("DOAH"), the pending appeals by SSIR and Lee County in the Declaratory Litigation (defined below), and its request for contributions to the Protect Captiva Legal Fund, constituted a deceptive and unfair practice under FDUTPA.

3. Defendants seek summary judgment in their favor on SSIR's sole FDUTPA claim for one or more of the following reasons: SSIR lacks standing and fails to state a cause of action (Defendants' First, Second, and Sixth Affirmative Defenses); SSIR's claim is barred by the doctrine of collateral estoppel (Defendants' Third Affirmative Defense); SSIR's claim is barred by the doctrine of equitable estoppel (Defendants' Fourth Affirmative Defense); and SSIR's claim is barred by the doctrine of unclean hands (Defendants' Fifth Affirmative Defense).

II. STATEMENT OF UNDISPUTED FACTS

4. On November 20, 1973, a petition was filed with Lee County (the "County") by the then owner/developer of South Seas Resort ("South Seas") to "down-zone" the density permitted on the South Seas property from 3,900 units to 912 units in exchange for the construction of a resort with clustering of units and site flexibility.

5. The County then adopted Resolution Z-73-202 (the "1973 Zoning Resolution"), which rezoned South Seas to a 304-acre special zoning district, using a planned unit development ("PUD") concept plan, with the special limitation that South Seas' density was specifically limited to three units per acre. "**The 1973 Zoning Resolution limited the number of units at South Seas to 912, *inclusive of hotel room units***." *See* February 5, 2025 Order Granting Plaintiff's Motion for Summary Judgment in Lee County Circuit Court Case No. 24-CA-2674 ("2025

Summary Judgment Order") at 1, ¶ 1 (emphasis added). A true and correct copy of the 2025 Summary Judgment Order is attached hereto as **Exhibit 1**.

6. On July 30, 2002, the County issued Administrative Interpretation ADD2002-00098 (the "Administrative Interpretation" or "ADD") to document the "as built-as approved" status of development at South Seas and to clarify and serve as the zoning regulation controlling future development on South Seas. *Id.* at 1–2, ¶ 2. The Administrative Interpretation states that "current and future development" within South Seas will consist of a "very low density" and "carefully planned and tightly controlled development" that will be "limited to a development density of 912 units." *Id.* **"The Administrative Interpretation identified and included *'hotel units'* as part of the 912-unit density limitation."** *Id.* (emphasis added). A true and correct copy of the Administrative Interpretation is attached hereto as **Exhibit 2**.

7. The Administrative Interpretation's tabulation of the 912 "TOTAL APPROVED DWELLING UNITS" as well as the "allocation of these dwelling units" within South Seas includes the 107 hotel units at Harbourside Villas and the 18 hotel units at Harbour Pointe. *See* Administrative Interpretation at 11, ¶ 1. The Administrative Interpretation also states that "***Hotel/Motel units*** and employee rental apartments shall have a minimum of 1 parking space for every 2 ***dwelling units*** plus 1 guest/service parking space for every 10 ***dwelling units***." *Id.* at 14, ¶ 4(g) (emphasis added). The Administrative Interpretation indisputably identifies Hotel/Motel units as "dwelling units."

8. On August 28, 2002, CCA filed suit against the County and the owner/developer of South Seas in Lee County Circuit Court Case No. 02-CA-009598, seeking a declaration of rights with respect to the Administrative Interpretation. 2025 Summary Judgment Order at 2, ¶ 3.

9. On February 28, 2003, CCA, the County, and the developer of South Seas entered into a Mediated Settlement Agreement (the "Settlement Agreement"). **"The Settlement Agreement memorialized the density limitations of the 1973 Zoning Resolution."** *Id.* at 2, ¶ 4 (emphasis added). Paragraph 3 of the Settlement Agreement provides, in relevant part, the following:

> The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time.

Id. at 2, ¶ 6. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 3**.

10. In July 2021, in connection with the sale of South Seas to SSIR, Lee County staff provided SSIR with "due diligence" information regarding the status of development on South Seas (the "County's Due Diligence Response"). County staff "confirmed" to SSIR that South Seas "is vested for a maximum of 912 dwelling units" inclusive of "***107 hotel units (identified in ADD2002-00098 as 'Harbourside Villas."***" *See* County's Due Diligence Response at 1 (emphasis added). A true and correct copy of the County's Due Diligence Response is attached as **Exhibit 4**.

11. Despite the 50-year density restriction of 912 units in effect since 1973 on South Seas and the restriction on the County's authority to issue building permits under Paragraph 3 of the Settlement Agreement in excess of the 912-unit cap, on September 5, 2023, the County adopted Land Development Code (the "LDC") amendments by Ordinance No. 23-22 (the "LDC Amendments") which exempt South Seas from hotel density limits, thereby allowing the total number of units on South Seas to exceed the 912-unit cap. 2025 Summary Judgment Order at 2–3, ¶¶ 8–9.

12. Prior to adoption of the LDC Amendments, South Seas was exempt from Chapter 33 of the LDC under section 33-1611(e) so long as development on South Seas complied with the

Administrative Interpretation. Chapter 33 of the LDC and the Administrative Interpretation set the cap for both residential dwelling and hotel units at three units per acre. *Id.* at 3, ¶ 10.

13. The deletion of the Administrative Interpretation compliance requirement by the LDC Amendments, which amended section 33-1611(e), coupled with section 34-1805, as amended, which eliminated the three hotel units per acre cap on South Seas, means South Seas would have ***no*** numerical density limitation on hotel units and therefore no cap of 912 units. *Id.* at 3, ¶ 11.

14. On December 18, 2023, taking advantage of the LDC Amendments, SSIR submitted a Rezoning Application (DCI2023-00051) to the County, seeking to increase the number of residential and hotel units within South Seas. A true and correct copy of SSIR's Environmental Report, which was incorporated in its Initial December 18, 2023 Rezoning Application ("Initial Rezoning Application Report") is attached hereto as **Exhibit 5**.

15. SSIR's Initial Rezoning Application recognized that the 912-unit density cap on South Seas combines and includes both hotel units and residential dwelling units:

> The South Seas Resort District (SSRD) encompasses 304+/- acres and ***is permitted for the development of 912 units/hotel rooms per Administrative Interpretation ADD2002-00098***, along [with] 5 acres of commercial uses, a golf course and other private amenities ***for hotel guests and residents***, including recreational facilities, a marina, restaurants, bars and a conference center. . . . ***Of the 912 units permitted within the SSRD, the subject property is allocated 272 units/hotel rooms per Condition 1 of ADD2002-00098***, the majority of which were constructed and substantially damaged in the hurricane."

Initial Rezoning Application Report at 3 (emphasis added).

16. On May 28, 2024, SSIR submitted a Revised Rezoning Application to the County (the "Revised Rezoning Application"), which likewise identified hotel units as part of the 912-unit density cap. A true and correct copy of the Revised Rezoning Application is attached hereto as **Exhibit 6**. The Revised Rezoning Application states in pertinent part:

II. EXISTING CONDITIONS

The South Seas Resort Property owned by WS SSIR Owner, LLC ("Subject Property") is comprised of approximately 120.5 acres located on the northern terminus of Captiva Island. The Subject Property is partially developed with a wide range of resort uses ***including 107 hotel units***, private resort amenities and recreational uses, a marina, and conference center.

The 107-key hotel has been demolished due to hurricane damage and exceeding the FEMA 50% rule as a result of the LIMWA line being added to the FEMA flood maps, which occurred after Hurricane Ian's landfall.

In addition to the 107 hotel units constructed to date (and substantially damaged by the hurricane), the Subject Property is allocated 140 units (previously employee housing units but now demolished) and 25 undeveloped units per ADD2002-00098, as explained in Section III below.

. . .

III. PROPERTY HISTORY

. . .

In 1973, the SSRD was rezoned per Resolution Z-73-202, which changed the zoning from "RU-3 and RU-2 to RU-3 using a PUD Concept Plan as a guide with special limitation of 3 units per acre (***912 total units***) and special permit for up to 5 acres of commercial property". A memorandum attached to the signed resolution acknowledged, "the petition submitted will result in a downzoning from 3,900 units ***to 912 units*** but will provide flexibility of development by allowing cluster concepts under an overall RU-3 type zoning". . . .

The Master Development Plan (MDP) attached to the 1973 zoning resolution sited the permitted 120 hotel rooms, an 18-hole golf course and the 792 residential units across the following use areas:

- The "Resort" area was located in the northern portion of the property ***containing a hotel***, golf course, marina, restaurant and a planned tennis complex.
- "Golf Villas" were located south of the Resort area in the eastern portions of the site, east of South Seas Plantation Road and west of the Chadwick Bayou.
- "Beach Homes" and "Beach Villas" were located south of the Resort area and on the west side of South Seas Plantation Road.
- "Tennis Villas" were sited in the southern end of the development, alongside the 5-acres of commercial and employee housing.

. . .

VIII. DECISION-MAKING COMPLIANCE

. . .

> The proposed Master Concept Plan is part of the existing SSRD, which was approved in 1973. The MPD proposes ***a consistent mix of residential, hotel/resort***, and private, on-site recreational uses that are complementary to the surrounding area and will provide enhanced amenities to those residents within the SSRD.
>
> . . .
>
> Development in the resort began in the 1960's and evolved over time to ***an integrated mix of multifamily and single-family residential uses, timeshares, hotels***, resort amenities including recreation, restaurants and bars, a golf course and marina.

Revised Rezoning Application at 36–38, 54–55, 59 (emphasis added).

A. The Declaratory Litigation

17. On April 2, 2024, CCA filed a complaint against the County seeking a declaration of the parties' respective rights, duties, and obligations under the Settlement Agreement. That case is styled *Captiva Civic Association, Inc. v. Lee County, Florida*, Case No. 24-CA-2674 (the "Declaratory Litigation").

18. There, CCA requested, and the court entered, a declaration that the Settlement Agreement is a valid and enforceable agreement that limits the total number of dwelling units on South Seas to 912 units, and bars the County from issuing building permits that would cause that number to be exceeded at any time.

19. On November 19, 2024, CCA moved for summary judgment, arguing that Paragraph 3 of the Settlement Agreement is an essential provision of a lawfully executed and County-approved contract which memorializes and enforces the longstanding 912-unit cap that has governed South Seas for more than 50 years.

20. On January 3, 2025, SSIR and the County filed their joint opposition to CCA's motion for summary judgment. SSIR and the County argued that CCA's claim for declaratory judgment was not ripe for adjudication because (i) the term "dwelling unit" under the LDC "does not include rooms in hotels, motels, or institutional facilities"; and (ii) SSIR's rezoning application only seeks to increase hotel rooms. The court rejected both of those arguments.

21. On February 5, 2025, the court entered its order granting CCA's motion for summary judgment. *See* Exhibit 1. The court's findings of fact specifically state: "[t]he 1973 Zoning Resolution limited the development density for [South Seas] to 912 units, ***inclusive of hotel room units***" and "[t]he Administrative Interpretation ***identified and included 'hotel units'*** as part of the 912-unit density limitation." 2025 Summary Judgment Order at 1–2, ¶¶ 1-2 (emphasis added). That order further states that "[t]he Settlement Agreement ***memorialized the density limits of the 1973 Zoning Resolution***." *Id.* at 2, ¶ 4 (emphasis added).

22. On February 17, 2025, the court then entered the Amended Final Declaratory Judgment ("Declaratory Judgment"). A true and correct copy of the Declaratory Judgment is attached hereto as **Exhibit 7**. Having entered the 2025 Summary Judgment Order, the court thereupon declared that the Settlement Agreement is valid and binding, that Paragraph 3 of the Settlement Agreement is clear and unambiguous in limiting the total number of dwelling units on South Seas to 912, and that no building permits may be issued by the County that will cause the number of dwelling units within the 304-acre property known as South Seas Resort to exceed 912 dwelling units at any time. Declaratory Judgment at ¶ 2. The court also retained jurisdiction to enter further orders and grant supplemental relief pursuant to section 86.061, Florida Statutes, as may be necessary or proper to give full effect to the Declaratory Judgment. *Id.* at ¶ 3. SSIR's and

the County's appeals followed. Those appeals are pending before the Sixth District Court of Appeal.

23. On September 3, 2025 (after SSIR filed this lawsuit), at the hearing on CCA's Motion to Vacate Automatic Stay Pending Appeal, the court sought to confirm its recollection (and CCA's understanding) that the summary judgment ruling found that the 912-unit density limitation includes hotel units:

> THE COURT: Thank you.
> And, of course, I reviewed the file before today and thought about this case frequently since is ruling, frankly. It's a big issue. It's up on appeal. ***And I think the order that I entered from my previous ruling***, I think, Mr. Whitt -- I don't have it in front of me -- ***stated that it was limited to 912 units inclusive of hotel units***. It was based on the administrative interpretation, which identified and included hotel units.
>
> . . .
>
> MR. WHITT: And just so the record is clear, that would include any type of dwelling unit inclusive of –
> THE COURT: Any type of dwelling unit.
> MR. WHITT: -- hotel rooms, any –
> THE COURT: Well, ***I believe that the order issued -- that I issued indicates that limited to 912 units inclusive of hotel units.*** So I think it should include that as part of the order.

September 3, 2025 Hearing Transcript at 30:12–21, 35:13–21 (emphasis added).

B. The DOAH Proceeding

24. On May 28, 2024, CCA filed its Amended Petition under section 163.3213(5)(a), Florida Statutes, before the Florida Division of Administrative Hearings, challenging the LDC Amendments that exempted South Seas from its longstanding hotel density limits as inconsistent

with the Lee County Comprehensive Plan (the "DOAH Proceeding"). SSIR and the County actively participated in the DOAH Proceeding as respondents.

25. After a five (5) day evidentiary hearing, at which CCA, SSIR, and the County presented the testimony of their respective land use planning experts, on February 3, 2025 the Administrative Law Judge ("ALJ") entered her Final Order which is presently under appeal (the "Final Order"). A true and correct copy of the Final Order is attached hereto as **Exhibit 8**.

26. The Final Order's findings of fact state: "[t]he competent, substantial evidence supports a finding that South Seas' approval for 912 residential units includes 'guest facilities,' ***which is synonymous with hotel and motel units in today's language***. Hotels were developed on the property, prior to the 1973 rezoning, ***which the County did not exclude from the unit count.***" Final Order at 13, ¶ 30 (emphasis added). The findings in the DOAH Proceeding are consistent with the findings of this Court in entering the 2025 Summary Judgment Order.

27. The County's land use planning expert in the DOAH Proceeding, Brandon Dunn, testified both in deposition and at the final hearing that the 912-unit density cap includes hotel and residential units:

> Q. So let me ask you this. Under ADD 200200098, was South Seas subjected to a limitation on the number of hotel rooms it could build?
> A. Yes.
> Q. And what was that number?
> A. ***South Seas was permitted a combination or a mixture of hotel and residential dent -- dwelling units for -- 912.***

Brandon Dunn's July 31, 2024 Deposition Transcript ("Dunn Tr.") at 34:17–24 (emphasis added).

> Q. And both the ADD and the 1973 rezoning control the number of combined hotel and residential units that could be built at South Seas.· Right?
> A. They did.
> Q. ***And the number of the cap was***

912 combined hotel and residential units.· Right?
A. ***Yes.***
Q. ***And for purposes of the ADD then, hotel units at South Seas were deemed density for purposes of that 912-unit density cap.· Correct?***
A. ***They were at least calculated the same way.***

August 19–23, 2024 Final Hearing Transcript ("Final Hearing Tr.") at 779:24–780:10 (emphasis added).

28. SSIR's land use planning expert in the DOAH Proceeding, Alexis Crespo, AICP, LEED AP, testified at the final hearing that (i) hotel density in excess of three hotel units per acre was prohibited before the LDC Amendments, (ii) the Administrative Interpretation treats hotel units as dwelling units, and (iii) the County has interpreted the Administrative Interpretation's 912-unit cap as including both hotel and residential units:

Q. And the other thing that Ordinance 23-22 did was, ***before Ordinance 23-22, an application for rezoning to allow more than three hotel units per acre was not approvable. Is that accurate?***
A. ***For Captiva Island, yes.***

. . .

Q. But then -- so look okay. Let's look at the ADD. It also required a limit of three hotel units per acre. Right?
A. Not explicitly.
Q. Let me put it this way: Did you hear Mr. Dunn testify yesterday that it did?
A. I would restate it that the ADD capped what is referred to as residential dwelling units at 912 units. ***And clearly, while it doesn't talk about hotel units being treated as dwelling units, there's reference to them being treated as such.***

. . .

Q. Okay. Well, putting aside whatever your interpretation of what you were told by a lawyer was,

the bottom line is that the ADD -- your argument with that, notwithstanding, ***has been interpreted by the County to limit hotel density at three units per acre at South Seas Island Resort. Correct?***

A. ***The current ADD, yes.***

Q. ***So your client had to comply with the three hotel unit per acre limit, whether it was from the code or whether it was from the ADD, in terms of the County's interpretation. Right?***

A. ***As -- as written, yes.***

Final Hearing Tr. at 854:23–855:2, 861:1–11, 862:21–863:7.

29. County Zoning Manager, Anthony Rodriguez, testified at his deposition in the DOAH Proceeding that the 912-unit density limitation under the Administrative Interpretation was inclusive of residential and hotel units:

Q. Okay. And when you mentioned a -- if I got your phraseology wrong, please correct me, but I think you mentioned either a maximum development or a development cap of 912. Correct me if I use the wrong verbiage, but what were you referring to there?

A. ***In that administrative interpretation, there is a reference to having a maximum of 912 units in South Seas.***

Q. ***And were those units inclusive both of what I'd call permanent residential dwelling units and hotel units?***

A. ***I -- I believe so. Yes.***

Q. This ADD, the ADD2002-00098, was it also referenced in county code as the standard governing development at South Seas Island Resort?

A. It was referenced in the county code. Yes.

Anthony Rodriguez's August 9, 2024 Deposition Transcript ("Rodriguez Tr.") at 19:5–20.

C. This FDUTPA Litigation

30. On April 30, 2025, CCA sent out the email included on its website updating its constituency on SSIR's rezoning application, CCA's appeal in the DOAH Proceeding, the pending appeals by SSIR and the County in the Declaratory Litigation (the "Legal Update"), and also

requesting contributions to the Protect Captiva Legal Fund. The Legal Update was one of 35 updates provided to the community during the course of those ongoing legal and quasi-legal proceedings. True and correct copies of the Legal Update and a screenshot of the post CCA made on its website ("Website Post") are attached hereto as **Exhibit 9** and **Exhibit 10**, respectively.

31. On May 21, 2025, SSIR filed the above-styled lawsuit against Defendants claiming that the Legal Update constitutes a deceptive and unfair practice under FDUTPA.

32. SSIR takes issue with the following one sentence of the extensive Legal Update: "If the Circuit Court decision is upheld, the County ***can never issue more than 912 building permits for hotel or residential dwelling units on South Seas*** regardless of the recommendation of the Hearing Examiner or the decision of the Commissioners in the current rezoning case." Compl. ¶ 27 (emphasis in original).

33. SSIR contends that this statement is "at the very least deceptive and misleading, and is, in reality, entirely false" because the term "dwelling unit" does not include hotel rooms. *Id.* ¶ 29.

34. SSIR has never made any financial contribution to the Protect Captiva Legal Fund, nor has SSIR even alleged it made any financial contribution to the Protect Captiva Legal Fund.

III. SUMMARY JUDGMENT EVIDENCE

35. Defendants intend to rely upon the following evidence in support of this Motion for Summary Judgment:

a. 2025 Summary Judgment Order in the Declaratory Litigation (Exhibit 1);

b. Administrative Interpretation (Exhibit 2);

c. Settlement Agreement (Exhibit 3);

d. County's Due Diligence Response (Exhibit 4);

e. Initial Rezoning Application Report (Exhibit 5);

f. Revised Rezoning Application (Exhibit 6);

g. Declaratory Judgment (Exhibit 7);

h. Final Order in DOAH Proceeding (Exhibit 8);

i. April 30, 2025 Legal Update (Exhibit 9);

j. Website Post (Exhibit 10);

k. Transcript of the September 3, 2025 hearing on CCA's Motion to Vacate Automatic Stay Pending Appeal in the Declaratory Litigation;

l. Relevant Portions of the Final Hearing Transcript in the DOAH Proceeding;

m. Transcript of the Deposition of Lee County's Expert, Brandon Dunn;

n. Transcript of the Deposition of Lee County Zoning Manager, Anthony Rodriguez;

o. All pleadings, affidavits, motions, and orders filed in this case, and all documents attached thereto; and

p. Any evidence needed in rebuttal to any opposition to this Motion filed by SSIR.

IV. MEMORANDUM OF LAW

Effective May 1, 2021, the Florida Supreme Court "align[ed] Florida's summary judgment standard with that of the federal courts" and "adopt[ed] almost all of the text of Federal Rule of Civil Procedure 56" as well as the "federal summary judgment standard." *In re Amends. to Fla. R. Civ. P. 1.150*, 309 So. 3d 192, 192 (Fla. 2020); *In re Amends. to Fla. R. Civ. P. 1.150*, 317 So. 3d 72, 73 (Fla. 2021). In Florida, a moving party is no longer required to disprove the nonmovant's theory of the case. *In re Amends. to Fla. R. Civ. P. 1.150*, 309 So. 3d at 193–94. Gone too is

Florida's prior "expansive understanding of what constitutes a genuine . . . issue of material fact." *Id.* Instead, summary judgment "must be rendered immediately" if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 196.

The party moving for summary judgment bears the initial burden of establishing the absence of any genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). In a case where the nonmoving party bears the burden of proof at trial, the moving party has two avenues to support its motion. *U.S. v. Four Parcels of Real Property in Greene & Tuscaloosa Counties in State of Ala*., 941 F.2d 1428, 1438 (11th Cir. 1991). First, the moving party may show that there is "an absence of evidence to support the nonmoving party's case." *Id*. (citation omitted). Second, "the moving party may support its motion for summary judgment with affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial." *Id.* (citation omitted). If the moving party successfully demonstrates this, the nonmoving party must provide affirmative evidence to show that a genuine issue of material fact does exist to preclude summary judgment. *Commodores Ent. Corp. v. McClary*, 324 F. Supp. 3d 1245, 1250 (M.D. Fla. 2018) (*quoting Porter v. Ray*, 461 F.3d 1315, 1320 (11th Cir. 2006)). To that end, an issue is "genuine" only if a reasonable jury could return a verdict for the non-moving party based on the evidence. *Allen v. Bd. of Pub. Educ. for Bibb Cty.*, 495 F.3d 1306, 1313 (11th Cir. 2007). Moreover, a fact is "material" only if, under the applicable substantive law, it could affect the outcome of the case. *Id.*

Furthermore, in opposing a motion for summary judgment, "[a] mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." *Brooks v. Cty. Comm. of Jefferson Cty., Ala.*, 446 F.3d 1160, 1162 (11th Cir. 2006) (citation and internal quotations omitted). Thus, the non-moving

party "must do more than simply show that there is some metaphysical doubt as to the material facts" and must "come forward with specific facts showing that there is a genuine issue for trial." *Matsushita*, 475 U.S. at 586 (internal quotations omitted).

For the reasons detailed herein, Defendants are entitled to final summary judgment as a matter of law against SSIR on its FDUTPA claim because there can be no genuine dispute as to any material fact. Indeed, the only conduct by Defendants at issue in this litigation is whether a single sentence in CCA's Legal Update is actionable under FDUTPA. The Court is called upon to simply read that sentence and determine whether it violates FDUTPA—an extremely narrow issue.

A. Failure to State a Cause of Action Under FDUTPA

SSIR has the burden of proof to show that Defendants violated FDUTPA. *Avant Design Grp., Inc. v. Aquastar Holdings, LLC*, 351 So. 3d 62, 71 (Fla. 3d DCA 2022). SSIR seeks injunctive relief in alleging that the single sentence within the Legal Update constitutes a "device, scheme, or artifice" by CCA "to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise" under section 496.415(13) of the Florida Statutes, which in turn constitutes "an unfair or deceptive act or practice under FDUTPA." *See* Compl. ¶¶ 4, 37, 39–40, 43, 46–47, WHEREFORE Clause.

FDUTPA is a statutory cause of action created by the Florida Statutes. *See generally* Fla. Stat. § 501.201 et seq. To state a claim for injunctive or declaratory relief under FDUTPA, a plaintiff must allege: (1) a deceptive or unfair act or practice in trade; and (2) that the plaintiff is a person "aggrieved" by the deceptive act or practice. *Caribbean Cruise Line, Inc. v. Better Bus. Bureau of Palm Beach Cty., Inc.*, 169 So. 3d 164, 166–67 (Fla. 4th DCA 2015) (citation omitted). "While an entity does not have to be a consumer to bring a FDUTPA claim, it still must prove the elements of the claim, including an injury to a consumer." *Stewart Agency, Inc. v. Arrigo Ents.,*

Inc., 266 So. 3d 207, 214 (Fla. 4th DCA 2019) (citing *Caribbean Cruise Line, Inc.*, 169 So. 3d at 169). *See also* § 501.204(2), Fla. Stat. ("[D]ue consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017.").

As set forth below, SSIR fails to state a cause of action because the statement contained in the Legal Update is true. As such, CCA neither engaged in any act prohibited by section 496.415(13) of the Florida Statutes nor violated FDUTPA. Finally, SSIR is not an "aggrieved party" within the meaning of section 501.211(1), Florida Statues.

1. SSIR Cannot Make a Threshold Showing of a Violation of Section 496.415, Fla. Stat.

To be actionable under FDUTPA through section 496.415(13) of the Florida Statutes, a solicitation must employ a "***device, scheme, or artifice to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise***." (emphasis added). Such conduct is deemed an "unfair or deceptive act or practice" under FDUTPA. § 496.416, Fla. Stat. *See also Device*, Black's Law Dictionary (12th ed. 2024) (defining "device" as "[a] scheme to trick or deceive; a stratagem or artifice, as in the law relating to fraud"); *Scheme*, Black's Law Dictionary (12th ed. 2024) (defining "scheme" as "[a]n artful plot or plan, usu. to deceive others"); *Artifice*, Black's Law Dictionary (12th ed. 2024) (defining "artifice" as "[a] clever plan or idea, esp. one intended to deceive"). *Cf. Malouf v. Securities & Exchange Comm'n*, 933 F.3d 1248, 1260 (10th Cir. 2019) ("A 'device' . . . is simply that which is devised, or formed by design; a 'scheme' is a project, plan, or program of something to be done; and an 'artifice' is an artful stratagem or trick.") (citations omitted).

The only deceptive act or unfair practice alleged by SSIR in this litigation is the one sentence contained in the April 30, 2025 Legal Update. *See* Compl. ¶¶ 27–29, 32, 34, 38, 40–41,

43. *See also* Exhibit 9. That single sentence cannot constitute a "device, scheme, or artifice", as those terms are defined, "to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise." § 496.415(13), Fla. Stat.

2. CCA's Statement was True—Not Unfair or Deceptive.

As SSIR is aware (or should be aware), its allegations that Defendants solicited donations based on deceptive, misleading, or false statements are incorrect. The evidence that hotel units are included in the 912-unit cap is overwhelming. It includes SSIR's own admissions, the sworn testimony of SSIR's own experts, and the admissions and sworn testimony of the staff of the County (i.e., the defendant in the Declaratory Litigation). The evidence was also dispositive to the ALJ in the DOAH Proceeding, and to this Court in entering the 2025 Summary Judgment Order. SSIR knew when it filed this lawsuit that based upon the evidence, CCA has every reason to believe and report in its Legal Update that the 912-unit density cap memorialized in the Settlement Agreement included hotel units.

The evidence available to SSIR includes the following:

a. July 2021: Lee County confirmed to SSIR that the maximum density at South Seas is 912 units, inclusive of 107 hotel units. *See supra* Part II at ¶ 10; Exhibit 4.

b. December 18, 2023: SSIR's Initial Rezoning Application Report admits the 912-density cap includes hotel rooms. *See supra* Part II at ¶15; Exhibit 5.

c. May 28, 2024: SSIR's Revised Rezoning Application admits multiple times the 912-unit density cap includes hotel units. *See supra* Part II at ¶ 16; Exhibit 6.

d. August 19 through 23, 2024: During the 5-day evidentiary hearing in the DOAH Proceeding, the County's Zoning Manager and the County's land planning expert, as well as

SSIR's land planning expert, all testified under oath that the 912-unit density cap includes hotel units. *See supra* Part II.B at ¶¶ 27–29.

e. February 3, 2025: The ALJ in the DOAH Proceeding entered a Final Order which found the allowable 912 residential units includes hotel units. *See supra* Part II.B at ¶¶ 25–26; Exhibit 8.

f. February 5, 2025: This Court entered its 2025 Summary Judgment Order, finding the 912-unit density limitation included hotel units. *See supra* Part II.A at ¶ 21; Exhibit 1.

g. September 3, 2025: After SSIR filed this lawsuit, this Court reiterated its prior factual finding that the 912-dwelling unit cap is inclusive of hotel units. *See supra* Part II.A at ¶ 23.

Under FDUTPA, "unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . declared unlawful." § 501.204(a), Fla. Stat. An "unfair practice" in this context is "one that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." *Caribbean Cruise Line, Inc.*, 169 So. 3d at 169 (quoting *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003)). And "deception" has been defined as "a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." *Id.* (quoting *PNR, Inc.*, 842 So. 2d at 777). FDUTPA employs "an objective test . . . in determining whether the practice was likely to deceive a consumer acting reasonably." *Waste Pro USA v. Vision Constr. ENT, Inc.*, 282 So. 3d 911, 917 (Fla. 1st DCA 2019) (citation omitted).

CCA's Legal Update states that "[i]f the Circuit Court decision [in the Declaratory Litigation] is upheld, the County can never issue more than 912 building permits for hotel or residential dwelling units on South Seas regardless of the recommendation of the Hearing Examiner or the decision of the Commissioners in the current rezoning case." SSIR claims that

an affirmance of this Court's ruling in the Declaratory Litigation now under appeal will not limit the County from issuing building permits for hotel units in excess of the 912-unit density limitation. That is, SSIR claims that "dwelling units" in the Settlement Agreement does not include hotel units. SSIR's position is that because the Declaratory Judgment does not expressly state that the 912 "dwelling unit" limitation includes hotel units, the Legal Update was false and misleading (despite the fact that the 2025 Summary Judgment Order specifically made such a finding). *See* Compl. ¶¶ 24, 29–31.

Not only is SSIR's claim wrong on its face as a factual matter, it is absurd for SSIR to suggest that CCA's view of what is included in the Settlement Agreement's 912-unit count—an interpretation shared by this Court, the ALJ in the DOAH Proceeding, the County's experts, and SSIR's own experts and legal documents—violates FDUTPA. That the definition of dwelling units may or may not be addressed on appeal is irrelevant to the instant matter. If this Court's decision in the Declaratory Litigation is upheld by the District Court of Appeal, SSIR will have great difficulty in finding any way to challenge the definition of dwelling units and what is included in the 912-unit cap. There is simply no evidence that the 912 dwelling units referenced in the Settlement Agreement excludes hotel units. And there is virtually no one—other than SSIR and its counsel in the instant proceeding—that contends the 912-unit cap does not include hotel units. The statement contained in the Legal Update is true and does not constitute a "deceptive or unfair practice" under FDUTPA.[3] Nor does the single statement at issue constitute a "device, scheme, or artifice", as those terms are defined, "to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise." § 496.415(13), Fla. Stat.

[3] SSIR claims that section 34-2 of the LDC defines "dwelling unit" to exclude rooms in hotels. Compl. ¶ 11. However, the definition of "dwelling units" in the LDC is irrelevant since the meaning of the 912 dwelling units in the Settlement Agreement, and whether it includes hotel rooms, is not based on the LDC, but rather on the 1973 Zoning Resolution and the ADD—and the consistent interpretation of those documents thereafter for more than 50 years.

Importantly, the undisputed evidence shows that the net impression created by the Legal Update was not likely to (and did not) mislead consumers, i.e., any potential contributor to the Protect Captiva Legal Fund. *Coleman v. CubeSmart*, 328 F.Supp.3d 1349, 1361 (S.D. Fla. June 21, 2018) (noting that, in the context of a FDUTPA claim, "courts consider the net impression created" to determine "whether a representation is likely to mislead consumers acting reasonably") (citing *F.T.C. v. RCA Credit Servs., LLC*, 727 F.Supp.2d 1320, 1329 (M.D. Fla. July 21, 2010)).

Even if SSIR could put together a non-frivolous claim in some future lawsuit that the 912-unit cap memorialized in the Settlement Agreement does not include hotel units, CCA's statement in the Legal Update is not a basis for liability. An opinion of what would result should the decision in the Declaratory Litigation be upheld, if reasonably based, is fair and not actionable. *See Scientific Mfg. Co. v. F.T.C.*, 124 F.2d 640, 644–45 (3d Cir. 1941) (acknowledging that "Congress did not intend to authorize the Federal Trade Commission to foreclose expression of honest opinion"); *Hay v. Ind. Newspapers, Inc.*, 450 So. 2d 293, 295 (Fla. 2d DCA 1984) (noting that statements of pure opinion are protected speech which are not actionable as defamation). Even if SSIR had pled sufficient facts to establish that CCA's statement was somehow debatable (which it is not), CCA's statement does not rise to the level of being "unfair and deceptive" under FDUTPA as it is not likely to mislead consumers. *See Akai Custom Guns, LLC v. KKM Precision, Inc.*, 707 F.Supp.3d 1273, 1288 (S.D. Fla. Dec. 6, 2023) (noting that a FDUTPA claim "requires a showing of probable, not possible, deception that is likely to cause injury to a reasonable relying consumer.") (citation omitted). At its very worst, CCA's statement constitutes a good faith interpretation and opinion of prior sworn testimony and court decisions.

3. SSIR Is Not an "Aggrieved Party" and Lacks Standing.

To assert a claim for injunctive relief under FDUTPA, the plaintiff must be "aggrieved" by the deceptive act or practice. *Caribbean Cruise Line, Inc.*, 169 So. 3d at 166–67. "[F]or someone to be aggrieved, the injury claimed to have been suffered cannot be merely speculative." *Stewart Agency, Inc.*, 266 So. 3d at 214-15 (affirming summary judgment rejecting the plaintiff's FDUTPA claim for injunctive relief where any losses "would be entirely speculative and require building an inference upon an inference"). For purposes of section 501.211(1), an "aggrieved" person "must be able to demonstrate some specific past, present, or future grievance". *Ahearn v. Mayo Clinic*, 180 So. 3d 165, 173 (Fla. 1st DCA 2015).

SSIR claims to be an "aggrieved" party because the donations received by Defendants are being used "to prolong litigation against [SSIR] . . . and hinder [SSIR's] efforts to repair and redevelop, and ultimately fully reopen the [South Seas] Resort in an economically feasible and viable manner." Compl. ¶ 42. But any claim that donations in support of CCA's participation in lawful proceedings before the County and the courts were based upon one contested sentence in one of 35 updates is the very definition of "speculative." Equally speculative is the claim that any of the lawsuits involving the Captiva community and SSIR would not have continued had that one sentence never been posted. And more directly, as a "consumer" under FDUTPA, SSIR has not alleged that it was harmed by any donations it made to the Protect Captiva Legal Fund because they made none. In fact, no consumers or donors have complained about the contents of the Legal Update or that they were adversely affected. *Caribbean Cruise Line, Inc.*, 169 So. 3d at 169; *Stewart Agency, Inc.*, 266 So. 3d at 212.

Furthermore, SSIR's claim that it is aggrieved by prolonged litigation does not permit it to assert a viable FDUTPA claim. CCA was entitled to seek a declaration of its rights under the

Settlement Agreement against the County, to participate in public hearings before a County Hearing Examiner and the Board of County Commissioners, and to bring colorable legal claims before the DOAH and the Circuit Court. *See, e.g.,* 2025 Summary Judgment Order at 4–5, ¶¶ 4–5.[4] The fact that SSIR has incurred attorneys' fees, as an intervenor, an appellant, and an appellee in a series of lawsuits regarding its controversial development project, including its appeal of an unfavorable judgment in the Declaratory Litigation, does not make SSIR an "aggrieved" party for purposes of FDUTPA; such a conclusion requires "building an inference upon an inference" and would be entirely speculative. *Stewart Agency, Inc.*, 266 So. 3d at 214-15.

Finally, SSIR cannot rely on alleged harm to its standing and reputation to achieve "aggrieved" status under FDUTPA. First, as detailed above, the statement in the Legal Update was true and constitutes an absolute defense to any harm to reputation claim. *Hay*, 450 So. 2d at 295. *Cf. Allied Chem. Corp. v. Eubanks Inds., Inc.*, 155 So. 2d 740, 741 (Fla. 3d DCA 1963) (finding that "special damages for loss of reputation are too speculative" in a breach of warranty claim). Second, SSIR's alleged harm is imaginary at best. Any harm to SSIR's standing and reputation, which may have resulted from any number of controversial and damaging actions taken by SSIR on South Seas and Captiva, can hardly be attributed to one sentence in one of 35 updates issued between October 2023 and March 2026.

B. Collateral Estoppel

"The doctrine of collateral estoppel -- which is also known as issue preclusion and estoppel by judgment—bars re-litigation of identical issues between identical parties in two proceedings." *Provident Life & Accident Ins. Co. v. Genovese*, 138 So. 3d 474, 477 (Fla. 4th DCA 2014) (citing

[4] *See also* § 86.021, Fla. Stat. ("Any person claiming to be interested or who may be in doubt about his or her rights under a . . . contract, . . . article, . . . or instrument in writing . . . may have determined any question of construction or validity . . . and obtain a declaration of rights, status, or other equitable or legal relations thereunder.").

Topps v. State, 865 So. 2d 1253, 1255 (Fla. 2004)). Collateral estoppel requires the following elements: (1) an identical issue is presented in a prior proceeding; (2) the issue was a critical and necessary part of the prior determination; (3) there was a full and fair opportunity to litigate the issue; (4) the parties in the two proceedings are identical; and (5) the issues must have been actually litigated. *Id.* (citation omitted). "An issue is a critical and necessary part of the prior proceeding where its determination is essential to the ultimate decision." *Id.* at 478. *See also Rice-Lamar v. City of Fort Lauderdale*, 853 So. 2d 1125, 1131 (Fla. 4th DCA 2003) (noting that collateral estoppel "does not require prior litigation of an entire claim, only a particular issue").

SSIR and CCA were parties to the Declaratory Litigation. SSIR raised the issue of whether the 912-unit density limitation on South Seas included hotel units. SSIR argued at summary judgment that the term "dwelling units" under the 1973 Zoning Resolution and the Administrative Interpretation ***did not*** include hotel units. The court's 2025 Summary Judgment Order rejected that argument and found that both the 1973 Zoning Resolution and the Administrative Interpretation 912-unit density limitations included residential ***and*** hotel units—and that the Settlement Agreement memorialized the density limits of the 1973 Zoning Resolution. Under these circumstances, the elements of collateral estoppel are satisfied and SSIR should be estopped from raising its identical claims in this proceeding.

C. Equitable Estoppel

"To establish a claim of equitable estoppel: (1) the party against whom estoppel is sought must have made a representation about a material fact that is contrary to a position it later asserts; (2) the party seeking estoppel must have relied on that representation; and (3) that party must have changed his or her position to their detriment, based on the representation." *Campbell v. Dep't of Transp.*, 267 So. 3d 541, 547 (Fla. 1st DCA 2019).

SSIR, through its planner, testified under oath in the DOAH Proceeding that the 912-unit density limitation set by the 1973 Zoning Resolution and the Administrative Interpretation, includes hotel units. *See* Final Hearing Tr. at 854:23–855:2, 861:1–11, 862:21–863:7. Moreover, SSIR recognized that the 912-unit density cap on South Seas combines and includes both hotel units and residential dwelling units in its own rezoning materials submitted to the County. *See* Initial Rezoning Application Report at 3; Revised Rezoning Application at 36–38, 55, 59. CCA had good reason to (and did) rely upon SSIR's accurate representations in posting the Legal Update. SSIR should be equitably estopped from claiming that Defendants' interpretation of the 912-unit density limitation is "deceptive and misleading" to consumers in this litigation.

D. Unclean Hands

"Unclean hands is an equitable defense much like fraud." *U.S. Bank N.A. as Trustee for C-Bass Mortg. Loan Asset-Backed Certificates, Series 2006-CB8*, 342 So. 3d 855, 859 (Fla. 1st DCA 2022) (citation omitted). "The defense applies to bar an equitable claim no matter the claim's merits when the plaintiff has engaged in some manner of unscrupulous conduct, overreaching, or trickery that would be condemned by honest and reasonable men." *Id.* (citations and internal quotations omitted). In addition to condemnable conduct, the defense of unclean hands requires reliance on the conduct, relation to the litigation, and a resulting injury. *Id.*

As set forth above, SSIR, through its land planner, testified under oath in the DOAH Proceeding that the 912-unit density limitation set by the 1973 Zoning Resolution and the Administrative Interpretation, includes hotel units. *See* Final Hearing Tr. at 854:23–855:2, 861:1–11, 862:21–863:7. SSIR is also aware that its Initial Rezoning Application Report and its Revised Rezoning Application admits multiple times that the 912-density cap includes hotel rooms. *See* Exhibits 5–6. And SSIR is likewise aware that the County has repeatedly and consistently

interpreted the 912-unit density limit to include hotel units when calculating the 912-unit density limitation – including advising SSIR in response to its due diligence inquiry. *See* Dunn Tr. at 34:17–24; Final Hearing Tr. at 779:24–780:10; Rodriguez Tr. at 19:5–20; County's Due Diligence Response at 1. That SSIR now claims that this very interpretation when repeated by CCA is "deceptive and misleading" is clearly improper—a transparent excuse to engage in vexatious litigation. CCA had every good reason to rely upon SSIR's and the County's accurate representations in posting the Legal Update, as well as the Circuit Court's decision. They also relate directly to the instant proceeding which CCA has been forced to respond and defend. For these reasons, SSIR's FDUTPA claim should also be barred by the doctrine of unclean hands.

V. CONCLUSION

For the above reasons, CCA and the Foundation respectfully request that this Court enter an Order: (a) granting Defendants' Motion for Final Summary Judgment; (b) declaring that SSIR's FDUTPA claim against Defendants fails as a matter of law because SSIR lacks standing and cannot state a cause of action, or alternatively because such claim is barred by the doctrines of collateral estoppel, equitable estoppel, and unclean hands; and (c) awarding such other further relief that the Court deems appropriate.

Dated: April 21, 2026

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CERTIFICATE PURSUANT TO FLA. R. CIV. P. 1.202

I certify that conferral prior to filing this motion is not required under Florida Rule of Civil Procedure 1.202(c)(5).

/s/ Michael R. Whitt
ATTORNEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April, 2026, a true and correct copy of the foregoing was electronically filed and served through the Florida Court e-Filing Portal upon: ETHAN J. LOEB (EthanL@BLTHLaw.com; KerriR@BLHTLaw.com); E. COLIN THOMPSON (ColinT@BLHTLaw.com), STEVEN GIESELER (StevenG@BLHTLaw.com; MariaC@BLHTLaw.com), ALLISON DOUCETTE (AllisonD@BLHTLaw.com; MarjorieP@BLHTLaw.com), MATTHEW S. GARNETT (MatthewG@BLHTLaw.com; MarjorieP@BLHTLaw.com), ELLIOT P. HANEY (ElliotH@BLHTLaw.com), Bartlett Loeb Hinds Thompson & Angelos, 1001 Water Street, Suite 475, Tampa, FL 33602.

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