

STATE OF COLORADO
DEPARTMENT OF LAW

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF IMPACT MOBILE HOME COMMUNITIES, INC.

This Assurance of Discontinuance (“Assurance”) is entered into between the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado (“the State”), and Defendant Impact Mobile Home Communities, Inc. (“Impact MHC”). This Assurance is entered into pursuant to the Attorney General’s powers under Colo. Rev. Stat. section 6-1-110(2) and constitutes a complete settlement between the State and Impact MHC (the “Parties”) regarding the State’s allegations as to Impact MHC.

I. INTRODUCTION

In recent years, cybercrime and identity theft have posed an increasing threat to residents of Colorado. Recognizing this threat, Colorado law requires companies that maintain sensitive personal information to take reasonable steps to protect the information, to dispose of it when it is no longer needed, and to notify Colorado residents promptly when their information is at risk of being misused by unauthorized third parties.

Impact MHC owns and operates mobile home communities throughout the United States, including in Colorado. The State alleges that Impact MHC

maintained sensitive personal information of its residents and employees, including social security numbers and financial information. Impact MHC stored some of this information in employee email accounts and did not have adequate policies for data disposal and data segmentation. Impact MHC was the victim of an email “phishing” attack in which an attacker gained access to login credentials for the email accounts of multiple Impact MHC employees. This attack exposed the confidential information that was stored in the employees’ email accounts.

Impact MHC’s inadequate data security practices allowed a cybercriminal to access Impact MHC’s files, including personal information of Colorado residents, for nine months before they were detected. In part because the information was stored in email accounts that contained hundreds of thousands of emails, Impact MHC took another ten months to identify and provide notice to the affected individuals. The Parties enter into this Assurance to ensure Impact MHC’s future compliance with Colorado’s data security laws.

II. PARTIES

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), C.R.S. sections 6-1-101 through 6-1-1121.

2. Impact MHC is a Colorado corporation with a principal office address of P.O. Box 457, Cedaredge, Colorado 81413.

III. DEFINITIONS

3. The term “Appropriate Standard” shall mean a cybersecurity standard or controls set by National Institute of Standards and Technology (NIST), SANS Institute, International Organization for Standardization (ISO), or a data security standard of comparable scope and thoroughness.

4. The term “Personal Identifying Information” includes all of the items set forth in C.R.S. sections 6-1-713(1)(b) and 6-1-716(1)(g).

5. The term “Effective Date” shall mean the first date upon which both Parties have executed and delivered this Assurance.

6. Unless otherwise specified, all definitions found in C.R.S. sections 6-1-105(1), 6-1-713(2), and 6-1-716(1) are incorporated herein by this reference, and any term defined in those sections shall have the same meaning when used in this Assurance.

IV. STATE’S ALLEGATIONS

A. Colorado’s Data Security Laws.

7. C.R.S. section 6-1-713 requires companies that maintain, own, or license paper or electronic documents containing personal identifying information

(PII) to develop a written policy for the destruction or proper disposal of those paper and electronic documents when they are no longer needed.

8. C.R.S. section 6-1-713.5 requires companies that maintain, own, or license personal identifying information of Colorado residents to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the PII and the nature and size of the business and its operations.

9. C.R.S. section 6-1-716 imposes obligations on companies that experience security breaches or potential security breaches. When a company becomes aware that a security breach may have occurred, the company must “conduct in good faith a prompt investigation to determine the likelihood that personal information has been or will be misused.” *Id.* § 6-1-716(2). The company “shall give notice to the affected Colorado residents unless the investigation determines that the misuse of information about a Colorado resident has not occurred and is not reasonably likely to occur.” *Id.* The company must give notice to residents in “the most expedient time possible, but no later than thirty days after the date that determination that a security breach occurred.” *Id.*

10. Business email compromise is an online crime where a criminal gains unauthorized access to employee email accounts. Business email compromise may harm individuals when a targeted business fails to implement security practices to adequately protect customer and employee PII. Cybercriminals may take or change

information stored in compromised mailboxes. Businesses play an integral role thwarting business email compromise and protecting consumer information when they implement proper technical safeguards and train their employees to detect phishing and other similar scams.

B. Factual Allegations.

11. Impact MHC maintains, owns, or licenses PII about its clients and employees, including social security numbers, official state or government-issued driver's license or identification card numbers, financial account information, employee credit and debit card numbers, medical information, and email account and password information.

12. Impact MHC has stored PII in employee email accounts in combination with the Colorado residents' first name or first initial and last name.

13. A cybercriminal obtained unauthorized access to two Impact MHC employee email accounts between October 3, 2018 and July 8, 2019, using employee credentials. The cybercriminal accessed eight other accounts between July 1 and July 31, 2019.

14. On July 1 and 3, 2019, the cybercriminal sent fraudulent wire transfer requests through company email addresses.

15. On July 3, 2019, Impact MHC's investigation determined that the cybercriminal had obtained unauthorized access to the company's email accounts.

16. On July 11, 2019, Impact MHC retained legal counsel to begin the company's incident response process. On July 23, 2019, counsel hired a third-party forensic investigator to conduct a forensic investigation into the fraudulent transfer requests and determine whether the cybercriminal accessed consumer PII. Impact MHC asserts that its communications with the forensic investigator are privileged.

17. Around August 1, 2019, Impact MHC's investigation determined that the cybercriminal accessed a total of ten email accounts and likely gained access to the initial email account through a phishing scam prompting the employee to enter her account credentials. The cybercriminal placed rules in these mailboxes instructing the accounts to send phishing emails to account contacts.

18. Impact MHC determined that it was possible for the cybercriminal to have accessed and downloaded the entire contents of the compromised mailboxes without detection because the cybercriminal accessed the email account using valid login credentials.

19. In August and September 2019, the investigation performed a programmatic search of the ten compromised mailboxes for emails and attachments possibly containing PII and ultimately identified approximately 373,000 documents potentially containing PII.

20. Prior to September 2019 Impact MHC did not provide employees with phishing email awareness and detection training.

21. In October 2019, Impact MHC's legal counsel engaged another forensic vendor to conduct a programmatic search. This process was completed on November 26, 2019. A manual review of the search results was then completed on February 27, 2020 to identify documents that contain PII.

22. On or about February 27, 2020, Impact MHC received the list of individuals whose PII was stored in the compromised mailboxes, 719 Colorado residents.

23. Prior to March 1, 2020, Impact MHC's policies did not prohibit or limit employees from sending or receiving PII in unencrypted emails.

24. Impact MHC did not have a data disposal policy before March 1, 2020. The oldest email containing PII in the compromised mailboxes was sent in 2012.

25. Impact MHC notified Colorado residents and the Colorado Attorney General's Office on May 5, 2020, 307 days after first discovering the intrusion and 68 days after determining that employee email accounts containing PII had been accessed without authorization.

C. Legal Allegations.

26. The State alleges as follows:

1. *Impact MHC failed to comply with Colorado's Data Disposal Statute.*

27. C.R.S. section 6-1-713 requires companies that maintain, own, or license paper or electronic documents containing PII to develop a written policy for the destruction or proper disposal of documents containing personal identifying information when such documents are no longer needed.

28. Impact MHC maintained PII of its employees and customers in paper and computerized form.

29. Impact MHC violated C.R.S. section 6-1-713 by failing to have an information disposal policy until March 1, 2020. This failure allowed the cybercriminal to access personal identifying information that accumulated in employee mailboxes for seven years.

2. *Impact MHC failed to comply with Colorado's Data Protection Statute.*

30. C.R.S. section 6-1-713.5 requires companies to maintain and implement reasonable security procedures and practices that are appropriate to the nature of the PII the company maintains and the nature and size of the business.

31. Impact MHC had the responsibility to implement reasonable security procedures and practices because it maintained PII of its employees and customers.

32. Impact MHC failed to develop appropriate and reasonable security controls for the PII it owned and maintained. Employees of Impact MHC sent PII in emails and stored PII in employee mailboxes for up to seven years. This left the information vulnerable to phishing and other potential email compromises. Impact MHC failed to provide cybersecurity training, including phishing detection training, to its employees. Impact MHC failed to assess its cybersecurity risks and failed to implement appropriate technical security policies and practices to mitigate or eliminate that risk.

33. Impact MHC employees failed to detect phishing emails sent to their business email accounts, and Impact MHC failed to timely identify the compromise to its email environment. This allowed the cybercriminal to gain unauthorized access to ten employee mailboxes containing PII between October 3, 2018 and July 31, 2019.

3. *Impact MHC failed to comply with Colorado's Security Breach Statute in two ways.*

a. *Impact MHC violated the Security Breach Statute in failing to conduct a prompt, good faith investigation.*

34. Under C.R.S. section 6-1-716(2), companies that suspect a security breach may have occurred are required to determine the likelihood that personal information has been or will be misused.

35. When Impact MHC discovered that employee email accounts were compromised, it was required to undertake a prompt, good-faith investigation to determine whether the cybercriminal had misused or was likely to misuse personal information stored in the compromised mailboxes.

36. Impact MHC failed to conduct a prompt, good faith investigation because it did not determine whether the July 3, 2019 security incident constituted a security breach until February 27, 2020.

b. Impact MHC violated the Security Breach Statute by failing to timely notify impacted Colorado residents.

37. Under C.R.S. section 6-1-716(2), a company that determines it has experienced a security breach must notify affected Colorado residents in the most expedient time possible and without unreasonable delay, but not later than thirty days after the date of determination that a security breach occurred.

38. Impact MHC notified impacted Colorado residents sixty-eight days after determining that a security breach occurred (February 27, 2020 to May 5, 2020), thirty-eight days after the deadline passed.

39. Impact MHC violated C.R.S. section 6-1-716(2) because it failed to notify affected Colorado residents within the statutory deadline.

40. Each of Impact MHC's violations of C.R.S. sections 6-1-713, 6-1-713.5, and 6-1-716 constituted a deceptive trade practice under the CCPA. C.R.S. § 6-1-105(1)(x).

V. LEGAL AUTHORITY

41. C.R.S. section 6-1-110(2) authorizes the Attorney General to accept an assurance of discontinuance of any deceptive trade practice listed in section 6-1-105 or Part 7 of the CCPA. Section 6-1-110(2) also allows the Attorney General to accept a voluntary payment from Impact MHC of the costs of the State's investigation and any action or proceeding by the Attorney General and any amount necessary to restore to any person any money or property that may have been acquired by Impact MHC by means of any deceptive trade practice.

VI. CONSIDERATION

42. The Parties enter into this Assurance for the purpose of compromising and resolving all disputed claims and to avoid further expense of protracted litigation. This Assurance does not constitute an admission by Impact MHC of any violation of the CCPA, nor shall it be construed as an abandonment by the State that Impact MHC has violated the CCPA. Impact MHC has agreed to this Assurance of Discontinuance in order to efficiently resolve the State's investigation without any admission of any wrongdoing.

43. Impact MHC shall pay to the State \$55,000. Within 10 days of the Effective Date, Impact MHC will pay \$25,000 to the State. The State agrees to suspend Impact MHC's payment of the remaining \$30,000 if Impact MHC complies fully with the terms outlined in paragraphs 46 through 53. The State acknowledges

that some of the terms outlined in paragraphs 46 through 53 have already been undertaken and/or completed by Impact MHC as of the date of this document. Payment shall be in the form of a certified check, cashier's check, or money order made payable to the "Colorado Department of Law," shall reference "In the Matter of Impact Mobile Home Communities, Inc." and shall be delivered to:

Mica Moore, Administrative Assistant
Consumer Protection Section
Colorado Department of Law
1300 Broadway, 7th Floor
Denver, Colorado 80203

All payments under this paragraph 43 are to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

VII. RELEASE

44. The State acknowledges by its execution hereof that this Assurance constitutes a complete settlement and release of all claims under the CCPA on behalf of the State against Impact MHC with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA for the conduct described in this Assurance, that arose prior to the Effective Date and relating to or based upon the acts or practices which

are the subject of this Assurance. The State agrees that, except as provided in the foregoing paragraph, it shall not proceed with or institute any civil action or proceeding under the CCPA against Impact MHC for any conduct or practice prior to the Effective Date which relates to the subject matter of this Assurance.

45. Nothing herein precludes the State from enforcing the provisions of this Assurance, or from pursuing any law enforcement action under the CCPA with respect to the acts or practices of Impact MHC not covered by this Assurance or any acts or practices of Impact MHC conducted after the Effective Date. Nothing herein shall be construed to be a waiver or limitation of Impact MHC's legal rights, remedies, or defenses in connection with any claim, matter, or suit related to the subject matter of this Assurance other than an action by the State to enforce the provisions of this Assurance.

VIII. FURTHER ASSURANCES OF IMPACT MHC

46. Impact MHC, and any of its principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who have received actual notice of this Assurance, agree that:

A. Data Disposal Requirements.

47. Impact MHC shall comply with the provisions of C.R.S. section 6-1-713 by developing, within sixty days after the Effective Date, a written policy for the destruction or proper disposal of paper and electronic documents containing PII.

When such documents are no longer needed or required to be maintained to comply with legal or regulatory requirements, Impact MHC shall destroy or arrange for the destruction of the documents within its control containing PII by shredding, erasing, or otherwise modifying the PII to make it unreadable or indecipherable through any means.

B. Information Security Requirements.

48. Within sixty days after the Effective Date, Impact MHC shall comply with the provisions of C.R.S. section 6-1-713.5.

49. As part of Impact MHC's compliance with this Assurance, within one hundred days after the Effective Date, Impact MHC shall develop, implement, and maintain a comprehensive written information security program (ISP) reasonably designed to protect the security, integrity, and confidentiality of PII. In the ISP, Impact MHC shall explain how the ISP complies with applicable requirements under Colorado law, adheres to an Appropriate Standard, and contains administrative, technical, and physical safeguards appropriate to:

- a. The size and complexity of Impact MHC's operations;
- b. The nature and scope of Impact MHC's activities; and
- c. The sensitivity of the personal information that Impact MHC maintains, licenses, or owns.

- d. Address the specific vulnerabilities leading to the breach, including:
 - i. A designated employee to develop and implement the information security program;
 - ii. Written policies for the secure storage and proper disposal of PII and other sensitive information;
 - iii. At least annual training on secure storage and handling of PII that includes but is not limited to phishing awareness and detection for all employees and other workers;
 - iv. Appropriate controls to verify user identity upon system or application access with supporting rationale; and
 - v. Policies and protocols for employee reporting of suspected phishing emails.

50. Impact MHC shall, on at least an annual basis, review the safeguards it has put in place to protect PII to ensure that Impact MHC is up-to-date with any evolutions or modifications to the Appropriate Standard.

C. Incident Response and Breach Notification Requirements.

51. Impact MHC shall comply with the provisions of C.R.S. section 6-1-716 by creating an Incident Response Plan (“Plan”) within sixty days after the Effective Date. The plan will include:

- a. A designated employee responsible for developing and implementing the Plan; and
- b. A requirement that the incident response team establish milestones designating when the company will accomplish specific tasks to ensure that Impact MHC complies with the requirements of C.R.S. section 6-1-716. On the date of each milestone, the company’s incident response team will submit a written status report to Impact MHC’s leadership, including the president, detailing steps taken in the investigation to accomplish the given tasks.

52. Impact MHC shall submit compliance reports, sworn under penalty of perjury by an individual or individuals with authority to bind Impact MHC, to the Attorney General on the first and third anniversaries of the Effective Date of this Assurance. The compliance reports must:

- a. Identify the primary postal and email address and telephone number, as designated points of contact, which the State may

use to communicate with Impact MHC in connection with this Assurance;

- b. Describe, in detail, the steps Impact MHC has taken to comply with each paragraph of this Section VIII;
- c. Identify and describe all data security incidents or potential data security incidents that have occurred in the reporting period, including a detailed description of all steps taken in any investigations Impact MHC has undertaken; and
- d. Describe all adjustments or improvements Impact MHC has made as a result of any security incident or potential data security incident reported under paragraph 52(c), above.

53. Impact MHC further agrees to cooperate with any proceedings or investigations arising out of the State's monitoring or investigation of compliance with this Assurance. This includes submission of additional compliance reports the State may reasonably request and promptly responding to reasonable requests for information made by the State.

IX. ENFORCEMENT

54. The obligations set forth in this Assurance are of a continuing legal nature.

55. The Parties consent to venue and jurisdiction for any proceeding necessary to enforce the terms of this Assurance within the District Court, City of Cedaredge, and County of Delta, Colorado.

56. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA under C.R.S. section 6-1-110(2). If the State believes that Impact MHC has violated any term of this Assurance, the State shall be entitled to file a civil action under the CCPA and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

57. In any such action, upon a showing by the State of a material violation of this Assurance by Impact MHC, Impact MHC stipulates to 1) a judgment in the amount of \$30,000, which reflects the suspended payment described in ¶ 42, above; and 2) an order converting this Assurance into a permanent injunction against Impact MHC. The State may seek, and the Court may enter, any additional remedies that are deemed proper. Impact MHC agrees to waive any counterclaims that it may have had with respect to the subject matter of this Assurance and agrees to limit any defenses to (1) whether a violation has occurred; (2) whether additional remedies are proper; and (3) in the event damages or a monetary penalty is requested, whether the amount of the proposed damages or penalty is appropriate and proportionate.

X. MISCELLANEOUS PROVISIONS

58. This Assurance is the final, complete, and exclusive statement of the Parties' agreement on the matters contained herein, and it supersedes, terminates, and replaces any and all previous negotiations, agreements, and instruments as may exist between the Parties. Other than any representation expressly stated in this Assurance, the Parties have not made any representations or warranties to each other, and no Party's decision to enter into this Assurance is based upon any statements by any other Party outside of those in this Assurance. No change or modification of this Assurance shall be valid unless in writing and signed by all Parties. If any provision(s) of this Assurance is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

59. This Assurance shall neither create nor waive or otherwise affect any private rights or remedies in any third parties nor waive any rights, remedies, or defenses of the Parties in respect to any third parties. Under no circumstances shall this Assurance or the name of the Attorney General or any of the State's employees or representatives be used by Impact MHC or any person under their direction or control in any way that suggests the State's endorsement of Impact MHC's past, present, or future conduct.

60. Nothing herein relieves Impact MHC of its duty to comply with all applicable laws, regulations, or rules of the State of Colorado nor constitutes authorization by the State for Impact MHC to engage in acts and practices prohibited by such laws.

61. Impact MHC acknowledges that it is the State's customary position that an agreement restraining certain conduct by a party does not prevent the State from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the State's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the State from taking enforcement action to address conduct occurring after the Effective Date that the State believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Assurance shall not be a defense to any such enforcement action.

62. The terms and provisions of this Assurance may be enforced by the current Colorado Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives. Nothing herein precludes the Parties from enforcing the provisions of this Assurance pursuant to its terms, or the State from pursuing any law enforcement action under the CCPA with respect to any unrelated acts or practices of Impact MHC not covered by the State's

investigation and this Assurance or any acts or practices of Impact MHC conducted after the Effective Date of this Assurance.

63. Pursuant to C.R.S. section 6-1-111(2), this Assurance shall be a matter of public record.

64. Impact MHC acknowledges that it had a full opportunity to review this Assurance and consult with legal counsel regarding it. The undersigned representatives of Impact MHC agree and represent that they have read and understood this Assurance, accept the legal consequences involved in signing it, and that there are no other representations, agreements, or understandings between the State and Impact MHC that are not stated in writing herein.

65. This Assurance may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Assurance. Facsimile and electronic copies of this Assurance and the signatures hereto may be used with the same force and effect as an original.

XI. Notice

66. All notices regarding this Assurance shall be sent by certified mail, return receipt requested or reputable overnight delivery service (e.g., FedEx, UPS) at the addresses set forth below unless any Party notifies the other Parties in writing of another address to which notices should be provided:

If to Impact Mobile Home Communities:

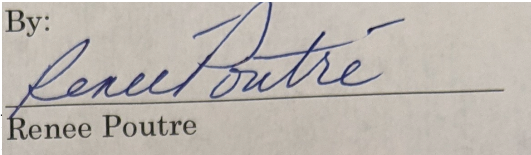

Renee Poutre
Vice President, Human Resources & Risk Management
PO Box 457
Cedaredge, CO 81413

With copies to legal counsel, Christopher DiIenno, Rebecca Jones, by email at cdiienno@mullen.law, rjones@mullen.law.

If to the State:

Colorado Attorney General
1300 Broadway, 7th Floor
Denver, Colorado 80203
Attn.: Mica Moore Administrative Assistant, Consumer Fraud Unit,
mica.moore@coag.gov
Attn.: Abigail Hinchcliff, First Assistant Attorney General,
abigail.hinchcliff@coag.gov
Attn: Mark Bailey, Senior Assistant Attorney General II, mark.bailey@coag.gov
Attn: Chelsea Kelleher, Assistant Attorney General, chelsea.kelleher@coag.gov

[Signatures appear on the following page(s)]

<p>STATE OF COLORADO:</p> <p>PHILIP J. WEISER, ATTORNEY GENERAL</p> <p>By:</p> <p><u>s/ Chelsea Kelleher</u></p> <p>Chelsea A. Kelleher Assistant Attorney General 55041</p>	<p>IMPACT MOBILE HOME COMMUNITIES, INC.</p> <p>By:</p>  <p>Renee Poutre</p>  <p>Christopher DiLenno, Counsel for Impact MHC – 205868.</p>
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