

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

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DISTRICT OF COLUMBIA,	)	
	)	
Plaintiff,	)	Case No. 2021 CA 002209 B
	)	Calendar # 12 – Civil 2
v.	)	Judge Yvonne M. Williams
	)	Next Event: Plaintiff’s Reply Brief on
MP PPH, LLC, <i>et al.</i> ,	)	Remedies, June 30, 2025
	)	
Defendants.	)	
_____	)	

**OPPOSITION OF DEFENDANTS MP PPH LLC AND DR. ANTHONY PILAVAS  
TO PLAINTIFF’S MOTION FOR REMEDIES**

COME NOW Defendants, MP PPH, LLC (“MP PPH” or the “Former Owner”) and Dr. Anthony Pilavas (“Dr. Pilavas”) (collectively, the “Defendants”), by and through counsel, pursuant to the Superior Court Civil Rules and the Court’s briefing schedule, and submit the foregoing Opposition to Motion for Remedies. For the reasons stated herein, the District of Columbia’s Motion for Remedies (“Remedies Motion”) must be denied in its entirety.

As a preliminary matter, Defendants are entitled to significant credits that reduce substantially, and actually negate fully, the amount the District is seeking. The District’s total demand in the Motion for Remedies is also \$13,224,674.10 more than what it sought in its Motion for Summary Judgment (the “MSJ”). It should not be permitted to seek more than what it argued it was entitled to in the MSJ, particularly when Marbury Plaza’s (the “Property”) conditions undeniably continued to improve after the MSJ was filed, as significant repair and improvement work continued (some with the involvement of AVCO Interests LLC and its principal, William Slover (“Mr. Slover”), the Court appointed receiver pursuant to the Consent Order Appointing Receiver dated February 7, 2024). Accordingly, taking into consideration all credits to which Defendants are entitled and the District’s arbitrary increase in its damages request, the resulting amount is in the negative, and the District should not receive any monetary award at all in this case.

	<u>Amount</u>	<u>Note</u>
	<b>\$46,680,863.10</b>	The amount the District requested in its Motion for Remedies.
subtract	\$13,224,674.10	The arbitrary and unjustified amount by which the District’s damages request increased between the MSJ and its Motion for Remedies.
subtract	\$28,618,672	The amount the Former Owner spent on the Property for repairs, improvements, remediation, etc. as of June 13, 2024.
subtract	\$6,933,142.69	The total amount of rent that tenants owed when the Property was sold on December 31, 2024,

		which was forgiven by the Former Owner as part of the sale.
subtract	\$1,100,000	The amount of the District's settlement with Vantage Management, Inc. ("Vantage"). The District asserted the exact same claims against Vantage that it asserted against the remaining Defendants.
subtract	\$1,350,000	The amount from the sale proceeds that was used to pay Class 4 and 5 claims asserted in the bankruptcy case.
subtract	\$122,760	The amount the Former Owner paid to the Court-appointed receiver.
subtract	\$3,000,000	The money the Former Owner contributed toward the sale of the Property to pay creditors.
subtract	\$1,189,358.54	The amount from the sale proceeds, to be used by the liquidated trustee to disburse to creditors.
subtract	\$5,300,000	The amount in escrow that the Former Owner agreed to fund per negotiations with the buyer (Clear Investment Group) and the District. The escrow fund was established to directly benefit the Property and tenants, with the funds to be used for mold remediation and other improvements at the Property after the sale. <i>See</i> Def. Ex. 1, Escrow Documents <sup>1</sup> .
<b>Total</b>	<b>-\$14,157,743.90</b>	(A negative amount.)

As the total amount calculated above is in the *negative* by over \$14 million, the District should be awarded nothing, and this case should be dismissed, with prejudice.

Additionally, in the First Amended Complaint, the District asserted joint and several liability among all of the named Defendants. Where the conduct of multiple defendants produces a single injury, which the District asserted is the case here (at least during the time Vantage was property manager), they are deemed to be joint tortfeasors, and the multiple defendants are jointly

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<sup>1</sup> The original contemplated amount for the escrow was \$6,885,300, but by the time the Property was sold, and in part due to the Former Owner's improvements, the buyer and Former Owner agreed to an escrow amount of \$5,300,000. *See* Ex. 1, p. 1 of Assurance of Voluntary Compliance Agreement and p. 1 of Closing Statement.

and severally liable for compensatory damages for that single injury. *See Leiken v. Wilson*, 445 A.2d 993, 999 (D.C. 1982). *See also Faison v. Nationwide Mortg. Corp.*, 268 U.S. App. D.C. 1, 7-8, 839 F.2d 680, 686-87 (1987) (applying joint and several liability under the CPPA) (citing *Leiken*), *cert. denied*, 488 U.S. 823 (1988). Thus, if the Court awards the District any amount in this lawsuit, the Former Owner and Dr. Pilavas would be entitled to a *pro rata* credit of 50% as a result of the Vantage settlement. *See Berg v. Footer*, 673 A.2d 1244, 1248 (D.C. 1996).

### **I. INTRODUCTORY COMMENTS**

The effect of this crushing litigation, and this Court's prior entry of an unprecedented civil Contempt Order immediately slashing past, present, and future rents by 50% and more, was to deprive the Former Owner and Dr. Pilavas of any shred of equity, value, profit, or benefit from the Property ownership. The Property itself was forced into bankruptcy and sold at a significant loss, with Bankruptcy Court approval. Although that unconstitutional and otherwise infirm Contempt Order and the abuses of discretion and other errors underpinning it are the subject of a pending appeal to the District of Columbia Court of Appeals, the foregone rental income, taken by the Court in one fell swoop of a pen, and the other overwhelming detrimental financial consequences of the Contempt Order, cannot be recovered. The resultant loss of Property equity and value is likewise irretrievable. Of note, the Former Owner and Dr. Pilavas have had no role in the operation or management of Marbury Plaza since the sale closed on December 31, 2024.

If the Former Owner prevails on its appeal of the Contempt Order, it will not be a pyrrhic victory. This is because, among other things, the lack of factual and evidentiary support for the Contempt Order (and, in turn, Judge Neal E. Kravitz's last-minute grant of partial summary judgment just before the change of assignment of this Calendar, which was based entirely on the

same plainly wrong, lacking in evidentiary support, and otherwise improper findings of fact on which he based the Contempt Order) will be exposed, reversed, and repudiated.<sup>2</sup>

The central premise of the District's remedies request is the unproven claim of "the horrid conditions in which more than 2,500 human beings have been forced to live, in violation of a court order and the District of Columbia Housing Code." *See* Mtn. at 1. That language quotes the Contempt Order, and reflects one of a series of factual findings lacking any supporting evidence (one of many issues raised in the pending appeal). Instead of relying on competent evidence, the Court relied on the testimony of three tenants in March 2023, without any showing that those individuals' alleged experience could be extrapolated to the thousands of other residents of Marbury Plaza during the entire years-long relevant time period (which the District claims runs from 2015 through 2024, *see* Mtn. at 1, 13-23).

The relief the District seeks is redundant, out of bounds of all proportionality, and unconstitutionally excessive. If the Court awards the District's unprecedented and extraordinary request for \$46,680,863.10, it will additionally sound the alarm to all landlords or prospective landlords in the District of Columbia that if the Office of the Attorney General for the District of Columbia ("OAG") gets a property in its clutches, landlords should refrain from making any improvements, from investing any funds into the property, and instead save those funds for a future crippling, unfathomable judgment. At a time when the City's housing stock should be enhanced, not depleted, punishing an out of state property owner in this manner will have the opposite effect

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<sup>2</sup> At the Status Conference on January 30, 2025, the parties and the Court discussed the pending appeal and the myriad ways that it could affect this case. This Court reserved judgment on whether to stay or otherwise hold in abeyance any decision or enforcement of any remedies request while the appeal remains pending. The Former Owner and Dr. Pilavas reiterate their concern that there is a very real possibility that the result of the pending appeal will negate the prior grant of partial summary judgment as well as any remedies, and again move for a stay of further action until the appeal is decided and a mandate issues from the Court of Appeals.

of discouraging the creation, maintenance, and operation of residential real properties in the District.

In March 2025, recognizing that, among other considerations, landlords have legal rights to be paid rent and take appropriate actions when that right is compromised, as well as to realize rental income to cover the increasing costs of property ownership, the District of Columbia Council began considering enactment of the “Rebalancing Expectations for Neighbors, Tenants, and Landlords (“RENTAL”) Act, Council Bill 260164. Mayor Muriel Bowser spoke in support of the legislation, noting the seriousness of these issues: “DC’s affordable housing system is facing significant financial distress, with many affordable housing providers struggling to cover expenses due to non-payment of rent and increased costs, putting projects at risk of foreclosure.” *See* Press Release dated Feb. 12, 2025 (<https://dc.gov/release/mayor-bowser-announces%E2%80%AFlegislation-protect-and-strengthen-dcs-housing-ecosystem>).

The District seeks an amount that wholly disregards: (a) the considerable improvements and funds the Former Owner invested into Marbury Plaza; (b) the District’s prior settlement with the original property manager and prior Defendant, Vantage; (c) that MP PPH LLC is no longer the owner and has no assets; (d) the devastating losses the Former Owner suffered from the Contempt Order and subsequent sale of Marbury Plaza; (e) the generous multimillion dollar windfall the tenants received in rent forgiveness when the Property was sold; and (f) the fact that the requested restitution sought is based on flawed and inaccurate calculations of what tenants actually paid in rent from 2017 to March 2024. Notably, throughout the Remedies Motion, the District argues that its exorbitant damages request should be awarded because, in part, it will deter Defendants from similar “wrongful behavior” in the future. Such an argument ignores the fact that MP PPH is no longer the owner, so any effort to deter future conduct has been rendered moot.

Nevertheless, by way of background, in 2015, MP PPH, LLC purchased Marbury Plaza, a 9-building, 642-unit apartment complex, for \$55,000,000. On December 31, 2024, after being forced into bankruptcy as a result of this lawsuit and the Contempt Order, MP PPH sold Marbury Plaza, which was the Former Owner's sole asset, for \$58,800,000. As discussed further herein, the Former Owner did not recover any proceeds from the sale, and actually had to contribute funds toward the sale to pay creditors and facilitate the sale being able to go forward. Additionally, during its ownership of Marbury Plaza, MP PPH invested over \$28,618,672 in upgrades, repairs, and improvements.

On November 27, 2024, the Court granted in part, and denied in part, the District's MSJ. In spite of Defendants presenting extensive legal authority, arguments and facts that precluded granting summary judgment, the Court focused on its prior grant of the District's Motion to Show Cause and the resulting Contempt Order, relying entirely on the facts it found in April 2023 when it issued the Contempt Order. The underlying evidence, offered at a March 13-15, 2023 evidentiary hearing before Judge Kravitz, was not and could not have reflected conditions at the Property at other times, including the time between the April 26, 2023 issuance of the Contempt Order and the December 31, 2024 sale of the Property. The Court acknowledged this repeatedly. On August 24, 2023, for example, just four months after entry of the Contempt Order, this Court noted the District's argument that conditions at Marbury Plaza were unchanged, and stated that, "I'm not sure that evidence that I heard back in March would support that argument." *See* Def. Ex. 2, H'g Trans. Aug. 24, 2023 at pages/lines 27:18-28:9. On December 12, 2023, this Court pondered the possibility of having an evidentiary hearing to focus on the current conditions: "But once we're kind of out of the realm of focusing on coercion through civil contempt, the law probably does favor focusing just on each individual. Because each - - each - - each unit's going to have different

issues, and, you know, they – they’re going to be shared issues.” *See* Def. Ex. 3, H’g Trans. Dec. 12, 2023 at pages/lines 27:5-29:10. No such hearing ever took place. The individualized assessments contemplated by the Court – and required under District of Columbia law, *see, e.g., Lynch v. Ghaida*, 319 A.3d 1008 (D.C. 2024) – have never been done. *Lynch* is binding authority the District ignored in its submission, and it reiterates that under our law, there are specific evidentiary requirements and standards of proof to establish a rent abatement for alleged Housing Code violations in residential housing units, including a requirement for specific evidence and determinations as to the duration, severity, and nature of any such Housing Code violations. *See* 319 A.3d at 1019-21. Such evidence and findings are entirely absent here.

Eventually, just before the change in judicial assignment for Calendar 12, Judge Kravitz hastily granted partial summary judgment in an order ignoring the issue, forgoing updated and individualized evidence, and relying solely on the evidence from March 2023 and the Contempt Order entered in April 2023. In doing so, the Court disregarded the numerous material facts in dispute and, instead, punished Defendants a second time by relying on the exact same testimony and evidence presented at the contempt hearing and concluded that the precise same evidence merited granting (in part) the MSJ. The Court denied the MSJ as to damages, noting that the District had not established, as a matter of law, its entitlement to the damages it sought.

Defendants will not re-argue all the reasons why summary judgment should not have been granted on liability, but note their objections and reservation of all rights of appeal to that ruling. They also incorporate by reference herein their Opposition to Motion for Summary Judgment, including their detailed responses to the claimed material facts not in genuine dispute (demonstrating conclusively the many disputes of material fact that preclude summary judgment in this case).

Following the Court's November 27, 2024 ruling, there was a change in calendar assignments, and at the first status hearing before the Honorable Yvonne M. Williams, a briefing schedule was set for the parties to address their arguments on the damages element of this case. On March 28, 2025, the District filed its Remedies Motion, in which it seeks an unfathomable and unfounded \$46,680,863.10, which is (inexplicably) \$13,224,674.10 *more* than the \$33,456,189 the District sought in its Motion for Summary Judgment. In the MSJ, the District sought restitution of 50% rent paid by Marbury Plaza's tenants, for a total of \$20,186,189. In its Remedies Motion, the District is seeking restitution of 75% of the rent paid. The facts of the case have not changed, and the District's arguments did not strengthen in between filing the MSJ and Remedies Motion. Therefore, it should not be permitted to seek a higher percentage of restitution than it sought in its dispositive motion.

Whether the requested relief is \$33,456,189 or \$46,680,863.10, the District's requested monetary relief should be denied in its entirety. Such an extravagant award would result in an unprecedented windfall to the District and tenants, as the current amount sought is *\$45,000,000 more* than the amounts the District has settled for in similar cases it has pursued in this Court (and \$45,000,000 more than the amount it settled for with the former property manager, Vantage). Vantage was the property management company in charge of the day-to-day operations at Marbury Plaza leading up to, and including, the District filing its lawsuit. An award of over \$46,680,863.10 would also be an extreme penalty against a Former Owner that: (a) has no assets; and (b) spent over \$28,618,672 in improvements and repairs. The District would be expected to then focus on Dr. Pilavas in an attempt to extract personal liability as managing member of the Former Owner, which would be not only egregious, unjustified and unlawful, but would seek an amount impossible to pay.

Defendants further oppose the requested relief because the District did not set forth the basis for their damages claim in discovery (which closed on July 31, 2023), and instead, waited until they filed their MSJ on April 30, 2024 (the exhibits to which were so voluminous that the filing of them was not completed until May 28, 2024). They even altered their damages claim and calculations to the increased amounts now sought and disclosed for the first time in their remedies briefing. Defendants previously filed a Motion to Compel information from the District regarding its damages claim, which the original Presiding Judge (the Honorable Heidi M. Pasichow) denied. *See* Def. Ex. 4, Order dated October 18, 2022 at 20-30. In particular, the Defendants sought to compel an explanation from the District regarding its claimed damages, including the evidence that the District might offer on those issues. *See id.* The District fought such disclosure tooth and nail, refusing to provide any meaningful information. *See id.* Among other things, the District insisted that the Defendants could determine the scope of the damages claim on their own and that communications with residents and other potential witnesses were “work product” protected from disclosure. *See id.* The Court accepted the District and its representatives at their word, declining to compel further discovery. *See id.*

The District engaged in a calculated plan to hide damages and other discovery from the Former Owner and Dr. Pilavas. At another Status Conference before Judge Pasichow on October 31, 2022, the Court asked the District the extent to which alleged recent complaints from tenants had been disclosed to the Former Owner and Dr. Pilavas. *See* Def. Ex. 5, H’g Trans. Oct. 31, 2022 at pages/lines 31:9-36:18. The District claimed to have revealed all related information in discovery, and disingenuously offered to submit tenant declarations: “Well, we’ve been more than happy, if the Court would like a number of declarations, we’d be more than happy to prepare those and submit those to the Court if that’s what the Court would like.” *Id.* at page/lines 31:18-31:21.

The Court made it clear that the substance of information received from tenants needed to be produced, and the District did not argue otherwise. *See id.* at pages/lines 41:16-42:11. In spite of those prior representations, with its MSJ in 2024, the District presented 30 tenant declarations, the earliest of which was dated June 17, 2021, 26 of which had never been provided before,<sup>3</sup> and from only six tenants who had been listed on the parties' Witness Lists.

Focusing in particular on the omission of disclosure of damages information, there was not only no information provided as to the District's plans to concoct a theory of and basis for a damages claim, but the District failed to even disclose or create an amount or a range of potential damages in discovery. Sup. Ct. Civ. Rule 26(b)(1) provides that the Defendants had a right to discovery, and there is no exception for damages-related discovery. In fact, a primary purpose of the discovery rules is to prevent unfair surprise. *See, e.g., Weiner v. Kneller*, 557 A.2d 1306, 1309 (D.C. 1989). At no time in this case, and certainly not after suffering through the crippling rent reductions imposed in the Contempt Order, were the Defendants placed on notice that the District would create and spring on the Defendants the damages theory pending before the Court – first in its MSJ and now in its increased demand set forth in the Remedies Motion. Even the \$1,100,000 settlement with Vantage, which the Court approved by Order dated November 21, 2023, reflected a value of the case and claims infinitesimally smaller than the claim now being presented. Parties are entitled to know the claim that is being pursued against them, instead of being blindsided at the summary judgment phase.

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<sup>3</sup> Twelve of the Declarations were dated before the October 31, 2022 Status Conference, at which the District acted as if it could prepare and produce tenant Declarations “if that’s what the Court would like.” The District concealed the fact that it was preparing and hoarding tenant declarations throughout the case, withholding them in discovery, and waiting to unleash them on the Defendants when they would be powerless to test the accuracy of the assertions in them or the extent to which the District drafted the Declarations for tenants (as opposed to having the tenants state their testimony in their own words).

The District's belated articulation of its damages claim is unfairly prejudicial to Defendants and should be rejected as a basis upon which to award the District damages. Defendants reiterate that the District seeks an award of \$46,680,863.10, which is broken down by: 75% in rent restitution and interest totaling \$30,983,248.60, civil penalties of \$14,900,00, and attorneys' fees of \$797,614.50. As discussed herein, as of the date of sale of Marbury Plaza, MP PPH spent over \$28,618,672 in repairs and improvements at the Property. If the District prevails on its Remedies Motion, the message to property owners in the District of Columbia will be that they can pour tens of millions of dollars into improving a property, and then be penalized to the tune of tens of millions of additional dollars for not making those improvements fast enough. It will also send the message that even when tenants do not pay full rent, whether due to a Court Order or because they choose not to pay rent, an owner must nevertheless have millions of dollars on hand to pay for the normal cost of operations, repairs, and improvements.

## **II. CASE BACKGROUND**

This case arises out of the District's claims for alleged violations of the Consumer Protection Procedures Act ("CPPA") and unlawful trade practices at Marbury Plaza, a 672-unit apartment complex located in the Anacostia neighborhood in Washington, D.C. Marbury Plaza is comprised of two (2) eleven-story high rise towers and seven (7) smaller "garden-style" buildings, in which a total of approximately 2,500 persons reside. On July 1, 2021, OAG filed suit against Defendant MP PPH, the former owner of Marbury Plaza, and Vantage, which served as the property manager from April 2015 – October 2021.

For many months after the case was filed, the Former Owner and the District negotiated a Consent Order that the District drafted, which this Court entered on March 2, 2022.<sup>4</sup>

On March 30, 2022, this Court granted the District leave to file a First Amended Complaint, adding Dr. Pilavas, the Managing Member of the Former Owner, as a Defendant. No tenants of Marbury Plaza are named as parties to the lawsuit. The Amended Complaint sets forth the following requests for relief: (a) appointment of a receiver to develop and supervise the repair and rehabilitation of Marbury Plaza; (b) contribution of funds from the Defendants, in excess of rent collected, to abate claimed Housing Code violations; (c) contribution of funds from the Defendants, in excess of rent collected, to address claimed threats to health, safety, or security of the tenants or the public; (d) restitution in the form of disgorgement of rents paid; (e) civil penalties under the CPPA; (f) reasonable attorneys' fees; (f) costs; and (g) further relief deemed just and proper.

On March 25, 2022, the District filed a Motion for an Order Directing Defendant MP PPH LLC to Show Cause as to Why It Should Not Be Held in Contempt, which the Former Owner opposed. Recognizing certain issues (namely, tenant refusal to provide access to residential units at Marbury Plaza, unforeseen and extensive asbestos remediation, and supply chain issues affecting the entire nation) were inhibiting the Former Owner's ability to complete some of the items required by the Consent Order, the Former Owner filed a May 5, 2022 Motion to Modify

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<sup>4</sup> This Court later stated that the actual date of entry was January 28, 2022, although the Order was actually docketed and signed on March 2, 2022. It included rulings on several other pending motions, and thus could not have been entered prior to March 2, 2022. Additionally, Judge Pasichow, the judge who entered the Consent Order, confirmed "the Consent Order as it is entered in the March 2, 2022, Court Order." *See* Def. Ex. 3 at p. 14. "Few persons are in a better position to understand the meaning of a consent decree than the judge who oversaw and approved it." *See District of Columbia v. Jerry M.*, 571 A.2d 178, 185 (D.C. 1990) (quoting *Brown v. Neeb*, 644 F.2d 551, 558 n. 12 (6th Cir. 1981)).

the Consent Order, which the District opposed. Meanwhile, the Former Owner made significant progress in addressing items required by the Consent Order, and filed related Monthly Reports with the Court to document those advances.

Judge Pasichow denied without prejudice both the District's Motion for an Order to Show Cause and the Owner's Motion to Modify the Consent Order by Order dated October 18, 2022. *See* Def. Ex. 1. In doing so, she indicated, "the Court strongly encourages the parties to engage in good-faith discussion regarding both the possible modification of the Consent Order, and the parties' attempted compliance with the Consent Order as it is entered in the March 2, 2022, Court Order." *Id.* at p. 14. She held, "it is abundantly clear to the Court that access to these units due to tenant/occupant refusal is an issue" and:

Based upon the information before it, the Court cannot find that Defendant MP PPH has failed to comply with the Consent Order. Although Defendant MP PPH has not completed all the items within the Consent Order in the fashion or speed to which Plaintiff District would like, the Court simply cannot find by clear and convincing evidence that Defendant MP PPH has not made good faith efforts to complete these necessary repairs and upgrades. Thus, the Court denies without prejudice Plaintiff District's Motion for an Order Directing Defendant MP PPH, LLC to Show Cause as to why it Should Not be Held in Contempt.

*Id.* at p. 18.

In the same Order, the Court also gave guidance to the parties regarding the future course of the litigation:

The Court is aware that the parties in this case are zealously representing their [clients], despite a series of challenges. However, the Court would also like to emphasize the importance of serving the needs of all those affected by this litigation, especially the residents of Marbury Plaza, and the Court takes great care to ensure that this litigation is effectuated as smoothly as possible. The Court believes the parties are diligently working toward resolution of the issues within this litigation, but there is still work to do.

*Id.* at p. 20.

Seizing on the change of judicial assignment effective January 1, 2023, and despite the Court's October 18, 2022 Order and the discussions at the October 31, 2022 Status Conference in which (among other things) the Court pressed the District to work with the Former Owner to help address tenant access and other issues,<sup>5</sup> the District renewed its request to have the Former Owner held in contempt by filing a Motion for an Order Directing Defendant MP PPH, LLC to Show Cause as to Why it Should Not be Held in Contempt (the "Second Show Cause Motion"). On April 26, 2023, after extensive briefing and an evidentiary hearing held on March 13-15, 2023, the Court granted the District's Second Show Cause Motion, held the Former Owner in contempt, and entered an Order memorializing its findings and penalties ("Contempt Order"). *See* Pl. MSJ Ex. 8.<sup>6</sup>

On November 21, 2023, the District resolved its claims with Vantage for \$1,100,000 and dismissed all claims against Vantage, with prejudice. That \$1,100,000 settlement was the value that the District undeniably placed on any claims and damages accruing before October 2021, when Vantage was terminated as property manager, despite the District's efforts now to reach back

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<sup>5</sup> The District resisted mightily the Court's suggestion at the October 31, 2022 Status Conference that the parties work together to jointly draft a Notice to the tenants of Marbury Plaza, but the Notice which was distributed to the tenants on November 16, 2022 provided information on the Owner's continuing efforts at mold investigation and remediation, the process being followed, information tenants could expect to receive regarding access needed to Units, and the need for tenant cooperation (including access to Units). *See* Eleventh Monthly Report of Defendant MP PPH, LLC Pursuant to the Consent Order Entered by the Court on March 2, 2022, filed November 30, 2022, at ¶ 8 and attachment; Def. Ex. 4 at pages/lines 9:18-28:5. This was another indication of the "win at all costs" attitude affected by the District and its relegation of tenant concerns (if they are a consideration at all) to a lower priority than its other goals.

<sup>6</sup> The Former Owner promptly filed and pursued its interlocutory appeal of the Contempt Order, pursuant to D.C. Code § 11-721(a)(2). The Contempt Order and related rulings have the effect of granting, continuing, or refusing to dissolve or modify injunctions, making them immediately appealable under D.C. Code § 11-721(a)(2)(A), and they change or affect the possession of property, making them immediately appealable under D.C. Code § 11-721(a)(2)(C). The appeal remains pending.

in time to June 15, 2015, when the Former Owner acquired the Property, and seek a multiplied amount for that time frame.

Following the imposition of the 50% rent credits, on August 31, 2023, the Owner filed a voluntary Chapter 11 Bankruptcy Petition. In that proceeding, the Bankruptcy Court directed that the rent abatements imposed by the Contempt Order were unenforceable from and after December 1, 2023. *MP PPH, LLC v. District of Columbia (In re MP PPH, LLC)*, 2024 WL 1087492 (Case No. 23-00246-ELG, Chapter 11, Adv. Proc. 23-10032-ELG) (Bankr. D.C. Mar. 12, 2024).

On May 21, 2024, the Former Owner and Clear Investment Group signed a Purchase and Sale Agreement for the sale of Marbury Plaza. The sale was finalized on December 31, 2024.

As of December 31, 2024, MP PPH made over \$28,618,672 in improvements and repairs at Marbury Plaza since this lawsuit was filed in 2021, including but not limited to the following:

- \$1,386,574 to replace roofs of all nine (9) buildings;
- \$2,569,476 to modernize all seven (7) elevators;
- \$17,576,133 in asbestos remediation and mold assessment and remediation;
- \$566,518 for pest control services;
- \$28,435 to replace the chairlift;
- \$236,000 to replace the chillers;
- \$685,000 to replace the boilers; and
- \$438,545 for plumbing work.

See Def. Ex. 6, Declaration of Cynthia Browning ¶¶ 4-6.

It must also be emphasized that all of these improvements were paid for and performed, and Marbury Plaza was kept in operation as a home for over 2,500 individuals, despite the crushing rent reductions imposed by the Court and defended by the District. Rent is literally the life's blood

of a residential complex like Marbury Plaza, which is a key reason why District of Columbia law recognizes the importance of ensuring that all tenants make their rent payments. *See, e.g., McNeal v. Habib*, 346 A.2d 508, 512 (1975) (“To the extent that one tenant pays no rent for the use of particular premises, he (1) may make it financially impossible for his landlord to make needed repairs, and (2) heightens the landlord’s need to increase rental charges to the paying tenants to compensate for the lost income. These consequences hardly are fair to those tenants who honor their contractual commitments.”). In this instance, the Former Owner had no option to increase rental charges, because the Court took away even that right, by imposing reductions on future tenants. *See also Brown v. Pearson*, 241 A.3d 265, 276 n. 48 (2020) (recognizing landlords’ right to rental income). The Former Owner had to pay utilities, repair, taxes, and other expenses, without the benefit of rent. By the District’s view, those efforts make no difference at all in the outcome of this case. This is not even to mention that the Former Owner’s constitutional real property rights were taken away,<sup>7</sup> even as it spent tens of millions of dollars to improve the Property – which the District spurns. The extensive efforts the Former Owner carried out should be credited, and the adverse effects created not by the Owner but through the improper use of the civil contempt process should be considered in denying the unseemly duplicative punishment the District now asks the Court to award.

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<sup>7</sup> *See Lindsey v. Normet*, 405 U.S. 56, 74 (1972) (“Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom.”); *Davis v. Rental Assocs., Inc.*, 456 A.2d 820, 827 (D.C. 1983) (“the trial court must recall ‘that the Constitution expressly protects against confiscation of private property or the income therefrom’”) (quoting *Lindsey*). *See also Brown*, 241 A.2d at 276 n. 48 (quoting *Davis*).

### **III. ARGUMENT**

#### **A. THE DISTRICT'S DAMAGES CALCULATION, IN ADDITION TO BEING WITHHELD IN DISCOVERY, IS DEEPLY FLAWED.**

As noted above, in the District's MSJ it sought two extreme, unprecedented, unconstitutional, and untenable categories of monetary relief: (1) an award of \$20,186,189 in "restitution," and (2) statutory penalties of \$13,270,000, for a total award of \$33,456,189. Inexplicably, the District sought *33 times* what it recovered from Vantage (\$1,100,000), apparently asking the Court to award an unprecedented windfall against the remaining Defendants in the case – MP PPH and Dr. Pilavas. In a master stroke of understatement, admitting (albeit no doubt unintentionally) to the disputed nature of the evidence, issues, and related material facts, the District baldly stated that "the District's restitution request is exceedingly reasonable." *See* Pl. MSJ at 35.

After prevailing on liability in the MSJ, the District upped the ante and decided that instead of trying to justify a windfall award of \$33,456,189, it would ask the Court to award \$46,680,863.10, with payment due a mere 30 days after entry of judgment.

Reasonable certainty and a legitimate basis for a damages claim is mandatory. "A jury should never be permitted to guess as to a material element of the case, such as damages." *Hawthorne v. Canavan*, 756 A.2d 397, 401 (D.C. 2000) (citations omitted). Damages may not be based on mere speculation or guesswork; instead, the evidence offered to prove damages "must form an adequate basis for a reasoned judgment." *Romer v. District of Columbia*, 449 A.2d 1097, 1100 (D.C. 1982). The amount claimed by the District also would result in an excessive verdict, "so large that it is 'beyond all reason, or [] so great as to shock the conscience.'" *See Phillips v. District of Columbia*, 458 A.2d 722, 724 (D.C. 1983) (citing and quoting *Wingfield v. Peoples Drug Store, Inc.*, 379 A.2d 685, 687 (D.C. 1978) and *Williams v. Steuart Motor Co.*, 161 U.S.

App. D.C. 155, 166, 494 F.2d 1074, 1085 (1974)). The District openly and improperly seeks to invoke passion, prejudice, mistake, or consideration of improper factors other than a measured assessment of the degree of injury shown. *See Scott v. Crestar Fin. Corp.*, 928 A.2d 680, 687-88 (D.C. 2007).

The District's requested relief in this case is indeed unprecedented. By way of comparison, Defendants provide the following summary of agreements reached or Court orders entered in litigation between the District and other landlord defendants in recent years:

- Congress Heights (Case Nos. 2016-CA-000162 B, 2018-CA-000844 B, 2018-CA-000953 B): the District alleged that the defendants violated the CPPA at three (3) properties by: failing to provide habitable living conditions for 155 tenants; violating housing and fire codes; and misrepresenting rentals as safe and habitable. Defendants agreed to pay \$1.1 million in restitution and \$755,000 in penalties.
- Forest Ridge and The Vista Apartments (Case No. 2018-CA-007285-B): the District alleged that the defendants refused to address chronic Housing Code violations, including repeated flooding, severe rodent infestations, and a lack of working smoke detectors. The District further alleged that the defendants failed to implement basic security measures to address rampant gun and drug-related crime and violence in and around the property. The defendants agreed to pay at least \$1.9 million to former tenants (398 units in total), (roughly) \$1 million to the District to support the OAG's community-driven violence reduction program, and additional funds to charity.
- Somerset and Sheridan Apartments (Case No. 2021-CA-002139 B): the District alleged that tenants in these two buildings (59 units) suffered assaults, robberies, and attempted home invasions as a result of unsafe conditions at the properties. The defendants agreed to pay \$2 million to the District, an undisclosed portion of which was to be used for restitution.
- Hawaii-Webster Apartments (Case No. 2022-CA-000446 B): the District alleged that property owners were intentionally neglecting the property and forcing tenants to live with hazards like mold, crumbling lead paint, and pervasive infestations of vermin. The defendants agreed to complete renovations and pay \$1 million to the District, the "majority" of which was used to provide restitution to tenants.
- Atlantic Terrace and Southern Hills: the District alleged that an investigation by the OAG uncovered evidence of hundreds of Housing Code violations, including many that threatened the health, safety, and well-being of more than 400 tenants across 451 units. The defendants agreed to pay \$1.15 million in penalties to the District, and \$850,000 in restitution to the tenants.

- District of Columbia v. Equity Residential Management, L.L.C., et al. (Case No. 2017-CA-008334-B): the District pursued CPPA claims regarding advertising and leasing practices between February 2013 and February 2019 at a 625-unit rental apartment property at 2002 Van Ness Street, N.W., Washington, DC 20008. This included claims that the rent ceiling was not calculated properly to take into account rent concessions offered at lease inception. After this Court awarded \$869,344.19 for damages related to specifically-proven issues with specific tenancies, interest, and attorneys’ fees and costs totaling \$1,010,493.00, the claims were reportedly settled for \$2 million with roughly half going to the individual tenants in question. See <https://www.multifamilydive.com/news/equity-residential-to-pay-2m-in-washington-dc-rent-hike-scam-case/626689/>).
- District of Columbia v. A.J. Edwards Realty, et al. (Case No. 2022-CA-002823-B): the District pursued CPPA and Lead Hazard Prevention and Elimination Act claims regarding chronic mismanagement of nine multi-family residential apartment buildings (123 units) primarily between January 2018 and April 2023, but including 7,236 proven lead paint violations that “stretch[ed] back over a decade” and 1,493 proven CPPA violations. This Court awarded \$1,535,199.45 in tenant restitution, \$5 million in civil penalties, and \$300,247.00 in attorneys’ fees. Of 82 tenants paying rent during the relevant time, testimony was received from 29 of them (approximately 35%), and restitution was based on the actual rent paid during the relevant time. The Court also found no basis for deterrence, given the advanced age of the property owner’s principal.

The pattern in these cases is clear: the District has resolved or taken to judgment substantially similar claims for far less than what it is seeking in this case. Further, the District wants no constraints on how it might apply funds obtained from a judgment. *See* Pl. Proposed Order at para. 11 (“The use of the civil penalty shall be within the sole discretion of the District, including but not limited to restitution to tenants.”). The relief sought is not for the benefit of tenants, but instead for any use the District might, at the whim of the OAG, decide to put it to.

**1. The Court Should Deny the District’s Request for Restitution.**

The District argues that Defendants should be ordered to pay “restitution” in the form of a 75% rent credit to all tenants who resided at Marbury Plaza from January 2017 to March 2024 (excluding June 2022 – November 2023, when the tenants received a 50% to 75% rent credit per the Contempt Order). The District is effectively asking the Court to determine that every single tenant out of the tenant population comprising over 2,500 individuals has suffered a lack of

habitability at Marbury Plaza every single day for 2,646 days, each in exactly the same manner and with the exact same impact. Stated another way, the District is asking the Court to find that both MP PPH and Dr. Pilavas violated the CPPA every single day from January 1, 2017 – March 31, 2024 and that all 2,500+ tenants suffered equally and without exception, for the entirety of that time frame. This “one size fits all” remedy violates the law. *See, e.g., Lynch*. It also fails to take into account the improvements at the Property and the extent to which those improvements not only met the habitability standard, but exceeded it. For example, the District cannot argue credibly that brand new elevators, laundry facilities and roofs did not substantially improve Marbury Plaza. The District cannot argue credibly that the mold remediation that occurred in all common areas but one (as of the date of the sale), at least once in over 500 units, and more than once in over 300 units, did not improve habitability for the tenants at Marbury Plaza. The District, however, completely ignores the improvements and fails to even attempt to reduce the damages amount it is seeking. Instead, the District claims, repeatedly, that Defendants failed to comply with the Consent Order and argues that the alleged failure merits an unprecedented damages award even higher than it requested in the MSJ. If the Former Owner had simply done nothing to improve the Property, it is hard to imagine the District asking for the same or more relief in this case – but the Former Owner spent over \$28 million and worked for years to improve the Property, with acknowledgements in open Court from the Court-appointed receiver, Mr. Slover, about the efficacy of those efforts. Theoretically, there are obvious practical limits in reviewing individualized information covering 672 units and thousands of tenants, but it is patently obvious that a relief claim based on a few dozen people and a similar number of units falls far short of the necessary evidentiary threshold.

The size of the Property poses intractable issues for the District, but the Consent Order is just one of many examples throughout the case wherein the District has tried to use Marbury Plaza's considerable size as an unyielding sword against the Defendants. For example, the deadlines that the District insisted upon for the Consent Order (*e.g.*, all assessments complete in 30 days, all mold remediation complete in 90 days, etc.) may have been realistic for a 20-unit apartment complex, but proved time and time again to be completely unrealistic and unattainable for a property the size of Marbury Plaza. In spite of this glaringly obvious fact, the District has berated and punished the Former Owner for failing to comply with those unattainable deadlines, and now seeks to further repetitively punish both the Former Owner and Dr. Pilavas through its Remedies Motion.

Critically, in spite of the District's argument that all 2,500 tenants suffered equally, in the same manner, and for an identical length of time, *only 27 tenants* (or 1.08% of the population at Marbury Plaza) submitted Declarations in support of the MSJ. In their Opposition to the MSJ, the Defendants presented thorough and irrefutable arguments as to the flaws in those Declarations, and will not rehash fully those arguments here. It has been conceded, moreover, by the District in its Appellate Brief (at p. 35) (*see* Def. Ex. 7), that the OAG was involved in drafting the Declaration for Barbara Cooper, a fact that the District denied vehemently before. (At a May 7, 2024 Status Conference, the District had represented that the OAG does not draft Declarations for tenants to sign – a statement that is plainly untrue.) On several occasions, as Defendants had to point out to the Court (*see, e.g.*, Dfdt MP PPH, LLC's Opp. to Pltf's Mtn to App't a Receiver, Sept. 5, 2023, at 2 n. 1), OAG representatives were observed in the Courthouse fomenting dissent and unrest with tenants before Court hearings, unfortunately leading to chaotic disruptions in the proceedings, in particular at hearings on August 24, 2023 and January 8, 2024. Defendants obviously cannot know

the full extent of the District's efforts to sway evidence from tenants, as that information was hidden improperly under the rubric of "work product." The entire way that these issues and the related information was handled (and hidden) in discovery by the District should not be countenanced.

Moreover, the fact remains that without evidence specific to each tenant, there is no basis for the Superior Court to make a one-size fits all determination that all 2,500+ tenants from January 2017 through March 2024 (whether a current or former resident) was injured or damaged, regardless of his or her specific circumstances, and award a windfall in the form of an across-the-board 75% rent credit. Each tenant should have to present evidence to establish, at a minimum, lack of habitability, to form a basis for the relief the District is seeking. *See, e.g., Lynch; District of Columbia v. Bongam*, 271 A.3d 1154, 1157-58 (D.C. 2022). For each tenant, there would also be specific considerations of mitigation of damages, release, set-off, and other defenses. Additionally, for matters already pursued to judicial decision (such as cases where the Court conducted a hearing and determined whether and to what extent a rent abatement was required for Housing Code violations under *Bell v. Tsintolas Realty Co.*, 139 U.S. App. D.C. 101, 112, 430 F.2d 474, 485 (1970)), *res judicata* or collateral estoppel would apply.

In addition, even if the Court adopts the District's "one size fits all" approach, the District's rent analysis is flawed. *See* MSJ Ex. 23, Paravano Declaration. The District argues, erroneously, that tenants paid \$40,372,378 from January 2017 through March 2024. There are several apparent reasons for this error. The first and most impactful reason is the difference in report types utilized between the various management companies. *See* Def. Ex. 6, Declaration of Cynthia Browning. Ms. Browning is the Special Operations Director for Noble Realty Advisors, the former property manager of Marbury Plaza. Ms. Browning analyzed the Paravano Declaration and the documents

upon which Ms. Paravano and her team relied in making their calculations, and noted the following:

- Regarding records of Vantage and/or its affiliated entity, Edgewood Management Corporation, from January 2017 through October 2021, the District utilized the gross potential rent (GPR) listed on the rent rolls as rent collected. The GPR is the amount of rent that was billed to the tenants, not the amount paid by the tenants. There is no area on the rent roll that would reflect the amounts collected during the month. Using this method, the assumption is that every tenant paid on-time, in full, the entire amount of “potential rent.” There is a column on the report that shows total balance due for each tenant, but the rent paid cannot be determined accurately from this data. “Potential” rent is not the amount of rent actually received.
- There are 2 months where no data was input in the District’s calculations – October 2018 and September 2021. The Paravano Declaration notes a lack of underlying data for these missing months.
- Regarding TM Associates’ records from November 2021 through August 2023 and Noble Realty Advisors’ records from September 2023 through March 2024, the District used the tenant ledgers to calculate the data, which was more accurate than utilizing the rent rolls.
- In comparing the rent averages on the District’s report, the rent collections listed under Vantage using the GPR from 2017 to 2021 averaged \$628,000 per month. In contrast, the actual rent collected listed under TM utilizing ledgers averaged \$424,000 per month.
- Due to the District analyzing Vantage’s rent rolls from January 2017 through October 2021, which was not a reliable method of analysis, Ms. Browning concluded that the District’s rent calculation for this time period is off by a bare minimum of \$4,467,213.<sup>8</sup>

*Id.* ¶¶ 8-16. The Parvano Declaration is thus inaccurate, unreliable, and inadmissible. The Former Owner and Dr. Pilavas thus object to its receipt in evidence or consideration herein, on the grounds that it consists of or irretrievably includes inadmissible material. Exhibit A to that Declaration lists

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<sup>8</sup> As should be apparent from the detailed arguments set forth herein, Defendants are in no way suggesting to the Court that the District’s incorrect rent total of \$40,372,378 should merely be reduced by a bare minimum of \$4,467,213 and then have 75% of that amount form the basis of a restitution award. Defendants dispute the District’s restitution claim in its entirety, and the fact that its rent analysis is flawed is just one reason out of many as to why the restitution claim fails.

rent charged to tenants per Vantage's rent rolls from January 2017 through December 2021, but fails to show what was actually collected during those years. Ms. Parvano listed the amounts actually collected per month *after* TM Associates and then Noble Realty became the property managers. The District has only established, through the Parvano Declaration, that tenants paid \$4,029,250.32, because it has not demonstrated what tenants paid while Vantage was the property manager. As the District bears the burden of proof, it should not be permitted to speculate wildly about what was collected and then use that amount as a basis for a damages award. Defendants contend the Court should reduce the District's calculation of \$40,372,378 to \$4,029,250.32 in rent collected, and then continue the analysis as to what, if anything, should be awarded in damages.

If the Court does not reduce the amount as suggested above, further analysis reveals additional flaws in the District's damages calculations. As Ms. Browning noted in her Declaration, the average amount collected in rent was \$424,000 per month. If the Court considers that amount and multiplies it by 65 months (January 2017 – May 2022), the total is \$27,884,226.10. Per the District's original request for restitution in the amount of 50% of rent paid, that would be \$13,942,113. For the months of December 2023 – March 2024, the damage caused by the rent credits imposed per the Court's Contempt Order persisted even after the bankruptcy court lifted the automatic stay in December 2023 and ordered rent payments to be paid in full. This is reflected in the Parvano Declaration, which indicates that tenants only paid \$475,888.69 in that time period. Considering the average of \$424,000 that tenants had been paying previously, at least \$1,696,000 should have been collected from December 2023 – March 2024. Defendants contend they should get a credit of \$1,220,111.31, reflecting the difference between what was (on average) collected and what the tenants actually paid. They should also get a significant credit because the Consent Order was substantially complete and a receiver had been appointed in that time period.

Further, District of Columbia law does not support a sweeping restitution claim for all tenants at Marbury Plaza. In *Javins v. First Nat. Realty Corp.*, 138 U.S. App. D.C. 369, 428 F.2d 1071 (1970), the court did not award rent abatement to appellee tenants, who appealed an eviction action for non-payment of rent, but rather found that demonstrating a failure to meet the implied warranty of habitability allowed tenants to withhold rent as a remedy to landlord's nonperformance under the lease.

The *In re Stancil* court explained that rent abatement is not an absolute remedy, but exists on a scale: "The reduction of required rent is based on the seriousness of the code violations. The law contemplates a sliding scale of rent abatement, depending on the conditions: the factfinder may find that 'no part of the tenant's rental obligation is found to have been suspended' because the problems were *de minimis*; that 'part of the tenant's rental obligation has been suspended but that part of the . . . rent is indeed owed to the landlord,' or, finally, that 'the entire rental obligation has been extinguished by the landlord's total breach.'" *In re Stancil*, Case. No. 01-02220 at \*63 (Bankr. D.D.C. Nov. 7 2005) (internal citation omitted).

The Court of Appeals in *George Washington Univ. v. Weintraub*, 458 A.2d 43, 47 (D.C. 1983), held "a tenant may use breach of the implied warranty of habitability as the basis for an affirmative action for damages in this jurisdiction." However, the Court of Appeals did not find in favor of the tenant regarding their claim of a violation of the warranty of habitability because the landlord was not on notice of a plumbing issue prior to it causing an apartment flood. Rather, the tenant was allowed to move forward on a theory of rent abatement due to a clause in the lease specifically abating rent for any period the unit was uninhabitable.

In each of the foregoing cases, the court addressed claims asserted by each tenant, but did not make sweeping determinations as to habitability or penalties for lack thereof, on a global scale

that would cover thousands of tenants over almost a decade, as the District urges this Court to do. Also, the District's request is based on unproven and disputed claims of "illicit profits." *See* MSJ at 26. In that regard, the District argues that "[r]estitution under consumer protection statutes like the CPPA reflects the principle that those who engage in deceptive practices should not be permitted to retain any portion of their illicit profits." There is no proof of "profits" by the Defendants, the amount of any such "profits," anything "illicit," or the amount of any "illicit profits." Nor was any such claim or information disclosed in discovery. The District cites to one Maryland case, *Consumer Prot. Div. v. Consumer Publ'g Co.*, 501 A.2d 48, 73 (Md. 1985). Pl. Mot. at 34. That case is not as represented by the District. The holding of the Supreme Court of Maryland in that case was as follows:

We agree with the cases in other jurisdictions which, under statutes like Maryland's, require that a restitution order provide a procedure for individual determination of consumer restitution claims. *State ex rel. Kidwell v. Master Distributors*, [101 Idaho 447, 615 P.2d 116 (1980)] *supra*; *State ex rel. Guste v. General Motors Corp.*, [354 So.2d 770, *aff'd* 370 So.2d 477 (La.1978)] *supra*; *State v. Ralph Williams' N.W. Chrysler Plymouth*, [87 Wash.2d 298, 319, 553 P.2d 423, 438 (1976)] *supra*. The Division may not simply require the mailing of refunds to all Maryland consumers who bought Company products during a certain period. Purchasers should be notified that they may obtain a refund; in order to be entitled to such refund, they should be required to state that they relied on the false impressions created by the advertising. In this way, purchasers who were not deceived will not receive an "automatic" refund. It should not be necessary that each purchaser present additional evidence that he was actually deceived and relied on the misrepresentations in the advertisements. To require proof of reliance, beyond the purchaser's statement, would make recovery difficult and complicated.

*See* 501 A.2d at 74-75. The case thus refers to a specific situation involving sales carried out through false advertising, and a procedure for consumers to make related requests for refunds while documenting that they relied on the related false impressions. In that situation, a viable claim can lie with respect to a benefit (payments received) that it would be unjust for the recipient to keep, and which is therefore subject to disgorgement – there is no proof in this case of any such benefit(s) being

held by either the Former Owner or Dr. Pilavas that would be subject to disgorgement.<sup>9</sup> In no conceivable way does this case present any persuasive or other authority relevant to the case at bar.

## **2. The Court Should Deny the District's Request for Statutory Penalties.**

The District argues that it is entitled to recover up to \$5,000 for each claimed violation of the CPPA, citing D.C. Code § 28-3909(b), for a total of \$14,900,000. The District came up with that amount after identifying three categories it thinks support the request:

### *(1) Leases*

The District argues that 1,111 leases were entered into between January 2017 to March 2024, assumes without evidence that “illegal housing conditions remained unabated” at the time each of those 1,111 leases were signed, and concludes that Defendants should be penalized \$5,000 per lease, for a total of \$5,555,000. The record is devoid of proof that each time Defendants entered into a lease during the relevant time period, the unit in question was riddled with housing violations. In fact, a careful analysis of the documents the District relied on in support of its MSJ (*e.g.*, the Department of Consumer and Regulatory Affairs (“DCRA”) and Department of Buildings (“DOB”) violations) reveal that there are many units at Marbury Plaza that never had a violation. The District only produced Declarations from 27 tenants, a tiny fraction of the 2,500+ tenants at Marbury Plaza. It is a gross and unsupported exaggeration to suggest that at the time 1,111 leases were entered into, there were unabated, illegal housing conditions present in every single one of the units covered by each lease. There is no evidence to support that generalization, fatally undermining this aspect of the remedies claim.

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<sup>9</sup> The Marbury Plaza investment undeniably was a net loss, in the extreme, to both the Former Owner and Dr. Pilavas.

(2) *Mold*

In a twisted lease interpretation exercise, the District argues that the statement “make all reasonable repairs” entitles the District (which is and never was a leaseholder) to \$3,715,000 for the alleged presence of mold in each of the 645 units and 98 common areas at Marbury Plaza. First, the District’s calculation is flawed because there are 642 units, not 645. Second, this “mold category” is duplicative of the first category, “leases.” The District should not be able to seek double recovery for an alleged lease violation, and has not offered any support for such a claim.

Finally, the District completely ignores the tens of millions of dollars the Defendants spent on mold remediation. Although it is correct that there were units awaiting remediation when the Former Owner sold the Property, the Former Owner spent over \$17,576,133 in mold assessments and remediation prior to the sale. As that amount greatly exceeds the \$3,715,000 the District seeks in “mold penalties,” the District’s request should be denied.

(3) *Violations of the DCMR*

The District focuses on two categories of violations – those cited in the CTI inspection reports that the District requested before it filed this lawsuit, and the allegedly 687 DOB violations that existed when the District filed the MSJ.

Regarding the CTI violations, although Defendants did not have notice of those 430 violations before the District filed its Complaint, Vantage records indicate that it abated and/or attempted to abate those violations in a timely manner. *See* Def. MSJ Opp. Ex. 5, Vantage Tracker. The 18 units that CTI inspected represent 2.6% of the units at Marbury Plaza. Vantage corrected 119 violations by October 21, 2021 according to the tracker it produced in discovery. *Id.* According to Vantage, 119 violations could not be addressed (before Vantage ceased being the property management company) because the tenants refused entry. *Id.* It is telling that 18 tenants permitted

*CTI* to inspect their units and find violations in June 2021, and 10 of those 18 tenants denied access when Vantage tried to correct violations. Tenant access issues persisted throughout the relevant time period, as evidenced by the discussions with Judge Pasichow at the October 31, 2022 Status Conference and the joint Notice to tenants that the District grudgingly and with the Court's prodding worked with the Former Owner to prepare. Critically, it was Vantage's responsibility to address the CTI violations and any that it could not complete were due to tenants barring access. The Former Owner and Dr. Pilavas should not be penalized for Vantage's inability to remedy the CTI violations, and they certainly cannot be penalized for the situations in which tenants denied access. Further, the District's view of the effect of Vantage's efforts is reflected in the \$1,100,000 settlement with Vantage, a paltry amount compared to what the District now claims should be the punishment to the remaining parties.

Regarding notices of violation issued by the DOB (which formerly were issued by DCRA), although Defendants had notice of only a few such violations prior to the District filing its lawsuit, Defendants dispute the District is entitled to seek recovery for the violations issued as of the filing of the MSJ because they were substantially abated. Defendants are also not privy to the same information provided by Aaron Eastlack, the DOB official from whom the District obtained a Declaration for its Motion. *See* Def. Opp. to MSJ Ex. 1, ROSF ¶¶ 80-84.

The District represented in its Remedies Motion that as of April 10, 2024, there were 148 unabated emergency violations pending at Marbury Plaza and 687 violations in total. Due, in part, to lack of reliability in the DOB's portal for tracking violations and abatements that occurred after the District filed its MSJ, Defendants are not certain as to exactly how many violations were pending as of April 10, 2024, but as of December 31, 2024 when the Property was sold, there were a mere 8 routine violations remaining to be abated, with zero open emergency violations. *See* Pl.

Remedies Motion Ex. 3, Final Owner's Monthly Report. Defendants should not be penalized for violations that were abated, particularly when the DOB did not fine them for those violations. The District has the burden of proof, and it is not met without reasonably certain, admissible, evidence such as is lacking on this issue.

In support of the District's argument, it turns to a series of federal and out-of-state cases for guidance. The District cites *U.S. v. Dish Network L.L.C.*, 754 F. Supp. 2d 1002, 1003 (C.D. Ill. 2010) for its finding that "[t]he amount of civil penalties to be imposed is an issue for the Court [rather than a jury]." The District, however, buries the lede, as the *Dish Network* court affirmed a right to a jury trial when determining liability for the imposition of civil penalties. "An action for civil penalties is an action at law for which the Seventh Amendment guarantees the right to a jury trial to determine liability." *Id.* (internal citations omitted).

Further, the *Dish Network* court found that when claims are brought in both law and equity, the Constitutional right to a jury trial remains intact for all common elements of both claims. "When, as here, a 'legal claim is joined with an equitable claim, the right to a jury trial on the legal claim, including all issues common to both claims, remains intact.'" *Id.* (quoting *Curtis v. Loether*, 415 U.S. 189, 196 (1974) ("The Supreme Court makes it clear that the right to a jury trial exists in actions for civil penalties, and the right to a jury trial remains intact even though legal and equitable claims are joined in the same action.")). *See also* Sup. Ct. Civ. Rule 38, *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 641 A.2d 495, 505 (D.C. 1994). (An advisory jury would also be available under Sup. Ct. Civ. Rule 39 even if some of the claims or issues were not technically otherwise triable to a jury.)

The District also relies on *State ex rel. Nixon v. Consumer Auto Research Inc.*, 882 S.W.2d 717, 722 (Mo. Ct. App. 1994), a pyramid scheme case under Missouri's consumer protection act,

as an example of a court weighing the magnitude and severity of violations to determine the amount of civil penalties. However, in *Nixon*, the appellate court agreed with the trial court that the magnitude and severity of violations warranted civil penalties, but did not rule as to how that determination should affect the amount of the civil penalties to awarded. *Id.* at 721-22. The *Nixon* trial court awarded \$200 for every violation of the applicable consumer protection statute out of an available \$1,000 per incident and the appeals court did not disturb this finding. *Id.*

In *Commonwealth v. AmCan Enterprises*, 712 N.E.2d 1205 (Ma. 1999), the Massachusetts Appeals Court affirmed, in part, and reversed in part, the imposition of a civil penalty of \$1,000,000 for approximately 2,345,000 individual “deceptive solicitations” mailed to Massachusetts businesses over the course of four years (1990-1994) to place ads in an unaffiliated phone book. *Id.* at 1211. The court used the states’ *Fall River* factors, modelled off the federal *Reader’s Digest*<sup>10</sup> factors, to determine the civil penalty for defendants: “(1) the good or bad faith of the defendants; (2) the injury to the public; (3) the defendant’s ability to pay; (4) the desire to eliminate the benefits derived by a violation; and (5) the necessity of vindicating the authority of the [Commonwealth].” *Id.* (quoting *Commonwealth v. Fall River Motors Sales, Inc.*, 409 Mass. 302 at 311 (1991)). The trial court found the \$1,000,000 penalty was necessary:

In order to punish the defendants and to deter them as well as others from engaging in similar schemes in the future to bilk Massachusetts consumers, a civil fine equal to the conservative estimate of the damages sustained by Massachusetts consumers is within the court’s discretion to impose, particularly where the defendants have not been required to pay any significant restitution.

*AmCan*, 712 N.E.2d at 1212. However, the appeals court reduced the overall civil penalty due to a lack of constructive notice to defendants that their mailers were deceptive. The penalty was reduced by almost 27%, to \$733,000, with the court finding the penalties should only be imposed

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<sup>10</sup> *United States v. Reader’s Digest Ass’n*, 662 F.2d 955, 969 (3d Cir. 1981).

for deceptive mailers sent out after a 1991 U.S. Postal Service administrative complaint put the defendants on constructive notice the mailers were considered deceptive.

The District cites a Federal Debt Collection Practices Act (“FDCPA”) case, *United States v. Nat’l Fin. Servs., Inc.*, 98 F.3d 131 (4th Cir. 1996), to demonstrate that it is entitled collect to a separate penalty for each misrepresentation made by defendant under the CPPA. In *Nat’l Fin. Servs.*, the court found that each of the millions of notices mailed by defendants to debtors containing misleading statements about potential legal action was an individual violation of the FDCPA (“A separate violation occurs every time a prohibited threat or misrepresentation is made.” *Nat’l Fin. Servs.*, at 141.). However, as discussed herein, D.C. law does not allow for *per se* violations of the CPPA based on a Housing Code violation alone.

In this jurisdiction, the United States District Court for the District of Columbia issued a Memorandum Opinion addressing statutory damages under the CPPA. *Sloan v. Soul Circus, Inc.*, No. 15-01389, 2015 U.S. Dist. LEXIS 169565 (D.D.C. Dec. 18, 2015). In that case, District of Columbia residents who purchased UniverSoul Circus tickets claimed that the touring circus troupe made false and misleading claims that it was committed to the proper treatment of animals and opposed to cruelty or mistreatment of animals. *Id.* at \*2. The District Court, interpreting the D.C. statute, held that “per violation” should mean “per purchase,” thus significantly lowering the valuation of a plaintiff’s potential damages recovery. *Id.* at \*24-25 (citing *Zuckman v. Monster Beverage Corp.*, 958 F. Supp. 2d 293, 297-301 (D.D.C. 2013) (allotting one CPPA statutory damages award per purchase of the defendant’s product)). Based on the statutory language – that plaintiffs may seek relief from a trade practice involving consumer goods “purchased or received” – the Court held that “statutory damages awards flow from a purchase or receipt of consumer

goods or services – not the mere observation of a merchant’s unlawful communication.” *Id.* at \* 16.

The Court applied this standard in *District of Columbia, et al. v. EADS LLC, et al.* In *EADS*, Judge Williams found Defendants liable for material representations concerning pest infestations, lack of heat and hot water, fire safety hazards, and electrical and security concerns at that particular property. “Because the CPPA violations concern Defendants’ material misrepresentations in the lease agreements with their tenants, Defendants violated the CPPA each time they collected rent from the tenants living at the property during the relevant time period.” *See* Def. Ex. 8, *EADS Order on Remedies* at p. 10. However, the award was limited to four (4) former tenants who actually testified at trial. *Id.* at p. 3-4. The Court of Appeals in *District of Columbia v. Bongam* in a similar vein affirmed this Court’s determination of damages on a District of Columbia Wage Payment & Collection Law claim to those violations testified to by specific witnesses (not, as the District asked, for an award based on testimony from a supposed “representative group” of 49 individuals to impose liability for an entire group of 136 alleged aggrieved persons). In *Bongam*, the District asserted that the fact of complaints filed with the District of Columbia Department of Employment Services Office of Wage-Hour Compliance was sufficient to establish liability for statutory violations, a claim rejected by this Court in a ruling affirmed by the Court of Appeals.

In the *EADS* case, at the time of the remedies ruling, the Court had already found that the District failed to present sufficient evidence of rents paid by other tenants, and thus those tenants did not benefit from the award of civil penalties. In total, the District proved that Defendants “committed 52 violations of the CPPA for the uninhabitable rental conditions within four units occupied by former tenants who testified at trial (13 months x 4 tenants = 52 CPPA violations).” *Id.* at p. 10.

Here, then, the proper calculation is not a tally of each Notice of Violation. Instead, the proper calculation involves specifically identifying each unit that was effected by the violations, determining whether Defendants had notice of each violation, determining whether the violations were remedied within a reasonable amount of time, and calculating how long the problem persisted to assess the penalty. These are all fact-specific inquiries that involve evidence the District has not provided and cannot produce. As the District has not presented a proper calculation, its request for civil penalties should be denied.

### **3. Attorneys' Fees**

The District requests \$797,614.50 in attorneys' fees based on the Declarations submitted by Brendan Downes and Matthew Meyer. Their accounting of time allegedly spent on tasks in this case from its commencement to the present reflect non-contemporaneous bulk time references with minimal details in the descriptions, and include time spent litigating their claims against Vantage. As noted herein, the District settled its claims, which are identical to the claims asserted against MP PPH and Dr. Pilavas, for \$1.1 million. Presumably, that amount includes attorneys' fees incurred as a result of pursuing claims against Vantage. Therefore, all time spent on Vantage-related issues should be deducted from the Meyer and Downes calculations. Additionally, all time spent on the case after March 2024, which is the District's cutoff point for the restitution and penalties it seeks, should be deducted. Finally, the time they spent on the bankruptcy case, which was necessitated by the crippling rent credits imposed by the Contempt Order, should not be claimed in this case. This case was not stayed during the pendency of the bankruptcy action, and the District spent a considerable amount of time challenging the efforts of the debtor (Former Owner) to lift the rent credits which had decimated the Property's operating funds, to sell the

Property, and bring the sale to a closing. Such challenges only served to hurt the Former Owner further, and did not advance the Superior Court litigation.

Accordingly, *at a minimum*, Mr. Downes' hours should be reduced from 640.5 to 403.75, with the requested amount reduced to \$270,108.75. Mr. Meyers' hours should be reduced from 576.75 to 357.75, with the requested amount reduced to \$228,960.

There is another significant issue with the District's attorneys' fee claims, and the submissions under oath by Mr. Downes and Mr. Meyers, concerning their claimed time spent on issues related to this case. Although they do not admit it here, the time entries in their respective Declarations are merely after-the-fact estimates of the work they did. They are not based on contemporaneous time records, and no such contemporaneous time records exist. Both Declarations of Mr. Downes and Mr. Meyer refer to not including time for which an award was already requested in the context of the Contempt Order ("OAG is not requesting fees for time spent litigating the successful motion to hold MP PPH in contempt, as fees in connection with those efforts were previously awarded"). Downes Decl. ¶ 4; Meyer Decl. ¶ 4. When the District filed "Plaintiff District of Columbia's Fee Petition" on May 10, 2023, which led to the award they refer to, the District – in stark contrast with their submission here – candidly conceded that the amounts of hours and tasks were based on a so-called "conservative estimation" done after the fact, not contemporaneously. *See* Pltf. Dist. Of Col's Fee Petition at 1. In Court on June 8, 2023, the District admitted that it does not keep contemporaneous time records and was not basing its submission on such records, that this Court in another matter had reduced the request by 50% as a result, and that they had gone back and estimated time based on a review of emails. *See* Def. Ex. 9, H'g Trans. June 8, 2023 at pages/lines 16:16-17:17.

This Court's June 8, 2023 Order confirmed that, "Counsel for the District confirmed that Mr. Downes and Mr. Meyer did not keep contemporaneous records of the time they spent on the case." Judge Kravitz reduced that request by 25%. Even Judge Kravitz found that "[w]ithout the ability to rely on contemporaneous time records, however, the court is not sufficiently confident in the accuracy of the District's time computations" and that "the District should bear the burden of possible unfairness given its fault in failing to maintain proper records." *See* Order dated June 8, 2023. The lack of candor in this submission seems conspicuous, and there is certainly a basis to deny the request or reduce it even more substantially. It is appropriate to reduce a fee award significantly for failure to keep contemporaneous time records, as is undeniably the case here. *See Hensley v. Eckerhart*, 461 U.S. 424, 438 n. 13 (1983).

#### **4. The District's Relief Requested is Unconstitutional.**

Finally, any claim for damages and other relief must be proven through admissible evidence meeting the required burden of proof, and cannot be consist of penalties and punishment completely disproportionate to the proof provided. The District's admitted desire to simply "punish" and get a "penalty" from the Defendants (MSJ at pp. 38-43), and to seek over \$46 million in damages, would impose violations of due process and other substantive and procedural Constitutional rights. *See, e.g., BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 583-86 (1996) (punitive damages award grossly excessive in comparison to conduct at issue violated Due Process Clause of the Fourteenth Amendment to the United States Constitution). As a general matter, the Due Process Clause "prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor." *Daka, Inc. v. McCrae*, 839 A.2d 682, 697 (D.C. 2003) (vacating award of punitive damages at a ratio of 26:1 to the compensatory damages award). A penalty also violates the Excessive Fines Clause of the Eighth Amendment to the United States Constitution where it is

“grossly disproportional to the gravity of a defendant’s offense.” *One 1995 Toyota Pick-Up Truck v. D.C.*, 718 A.2d 558, 561 (D.C. 1998) (vacating forfeiture award).

**5. The District’s Requested Relief Should be Denied in Full.**

At the commencement of this Opposition, Defendants highlighted the credits that should be applied, as well as a reduction from the current, wildly unsupported requested amount of \$46,680,863.10, to the equally unjustifiable original amount of \$33,456,189, which is the amount the District sought in its MSJ. Taking into consideration the credits, flaws in the District’s damages claims, and case law and arguments highlighted herein, the District’s requested relief is not only reduced to zero, but to tens of millions of dollars in the red. Defendants respectfully implore the Court to consider the following:

	<u>Amount</u>	<u>Note</u>
	<b>\$46,680,863.10</b>	
subtract	\$28,618,672	The amount the Former Owner spent on the Property for repairs, improvements, remediation, etc. as of June 13, 2024
subtract	\$6,933,142.69	The total amount of rent that tenants owed when the Property sold on December 31, 2024, which was forgiven by the Former Owner as part of the sale.
subtract	\$1,100,000	The amount the District settled with Vantage Management in this lawsuit. The District asserted the exact same claims against Vantage that it asserted against the remaining Defendants.
subtract	\$1,350,000	The amount from the sale proceeds that was used to pay Class 4 and 5 claims asserted in the bankruptcy case.
subtract	\$122,760	The amount the Former Owner paid to the Court-appointed receiver.
subtract	\$3,000,000	The money the Former Owner contributed toward the sale of the Property to pay creditors.
subtract	\$1,189,358.54	money from the sale for the liquidated trustee to disburse
subtract	\$14,900,000	This is the District’s requested penalties amount. It should be subtracted due to the District’s flawed rationale for a penalties award.

subtract	\$30,983,248.60	This is the District’s requested restitution amount. It should be subtracted due to the District’s flawed rationale and lack of proof as to what tenants actually paid in rent.
subtract	\$298,545.75	Minimum amount by which the District’s attorneys’ fees claim should be reduced.
subtract	\$5,300,000	The amount in escrow that the Former Owner agreed to fund per negotiations with the buyer (Clear Investment Group) and the District. The escrow fund was established to directly benefit the Property and tenants, with the funds to be used for mold remediation and other improvements at the Property after the sale.
<i>Add</i>	\$2,014,625.16	This amount reflects 50% of \$4,029,250.32. As discussed herein, the District should be limited to 50% rent reduction, which is what they asked for in the MSJ, and \$4,029,250.32 is what they proved in actual rent collected.
<b>TOTAL</b>	<b>-\$45,100,239.70</b>	(A negative number.)

As the total amount is in the *negative* by over \$45 million (even without applying a *pro rata* credit for the Vantage settlement), the District should be awarded nothing, and this case should be dismissed, with prejudice.

**6. The Court Should Deny the District’s Request for Prejudgment Interest.**

The District claims it is a noncontroversial proposition that prejudgment interest at a 5% simple interest rate is available on its CPPA claim. *See* Mtn. at 30. The CPPA does not provide for such relief, but the District claims that “explicit statutory authorization” is not needed. *See id.* (citing *Riggs Nat’l Bank v. District of Columbia*, 581 A.2d 1229, 1254 (D.C. 1990)). That citation is misleading, as the Court of Appeals explained (in the text following the section quoted by the District) that D.C. Code § 15-108 provides generally for interest in a contract action “to recover a liquidated debt on which interest is payable by contract or by law or usage.” The statute refers to a “principal debt” and “the rate fixed by the contract,” neither of which applies to this case. This case does not involve a debt at all, much less a liquidated debt. The District does not assert or

prove any contract, law, or usage supporting the request. *In re Huber*, 708 A.2d 259 (D.C. 1998), which the District also cites, was a case involving an attorney required to refund sums misappropriated from clients – also wholly inapplicable to this matter. No tenant is a party to this case and no mechanism exists or has ever existed for the Former Owner to repay a debt or make any other payments to tenants in the context of this case. The District filed the case in July 2021 yet wants to seek interest going back years before that date. The 5% amount selected arbitrarily by the District finds no support in any applicable statute or other law. This request should also be denied.

### **CONCLUSION**

For all foregoing reasons and the entire record cited herein, Defendants MP PPH LLC and Dr. Anthony Pilavas respectfully request that this Court DENY Plaintiff's Motion for Remedies in its entirety.

Respectfully submitted,

*/s/ Kathryn E. Bonorchis*

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that copies of the foregoing pleading was served on this 30th day of May, 2025, via *eFileDC* on the parties listed below:

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